

amortized from the income from said bonds or securities as follows: The yield on said bonds or securities shall be calculated on the basis of cost including premiums. From each interest payment to be received there is hereby appropriated and there shall be transferred to the respective trust funds the difference between the yield of the bond or security so calculated for that interest period and the interest received, so that at the maturity of the bond, or security the respective trust funds will be completely reimbursed for the amount of premiums paid. *When United States government obligations are purchased below par, all discounts shall be accumulated on such bonds or securities as follows: At the time each interest payment is received there shall be transferred from the principal to the income of the respective trust funds the difference between the yield of the bond, or security so calculated for that interest period and the interest received so that at the maturity of the bond, or security, income will be credited with the full amount of the interest yield, namely the amount received from the coupons plus the amount of the discount. The amount received from the bond, or security, at maturity will be credited to principal and will completely reimburse the principal for: (1) The amount paid from principal for the purchase of the bond at a discount, and (2) the amounts transferred from principal to income to cover the difference between the yield of the bond, or security, and the interest received from the coupons. The yield from United States treasury bills shall be the difference between the cost price and selling price or maturity value and shall be regarded as interest income. The state board of investment shall initiate those entries that are necessary to give effect to the above provision applicable to those investments purchased on and after January 1, 1955.*

Approved May 23, 1961.

EXTRA SESSION
CHAPTER 35—S. F. No. 18

[Coded]

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to confer powers and duties on the Minnesota state commissioner of business development and on per-

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sons, as herein defined, engaged in the sale of cigarettes at wholesale or retail; and providing remedies and imposing penalties for violations thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **[325.64] Minnesota unfair cigarette sales act; findings and policy.** The legislature finds that unfair, dishonest and fraudulent business practices exist in transactions involving the sale of, or offer to sell, cigarettes in the wholesale and retail trades in this state and are demoralizing and disorganizing the said trades.

Offering for sale, or sale of cigarettes below cost in the wholesale and retail trade is declared by the legislature to have the intent or effect of injuring a competitor, destroying or lessening competition, and is deemed an unfair and deceptive business practice and an unfair method of competition.

Such practices affect collection of taxes and license fees imposed on distributors, wholesalers, retailers, and persons engaged in the sale of cigarettes.

It is hereby declared to be the policy of the state of Minnesota and the purpose of this act to protect the public by prohibiting such sales.

Sec. 2. **[325.65] Short title.** This act shall be known as the "Minnesota Unfair Cigarette Sales Act."

Sec. 3. **[325.66] Definitions.** Subdivision 1. For the purposes of this act, the words, terms and phrases defined in this section have the meanings ascribed to them except where the context clearly indicates a different meaning.

Subd. 2. "Cigarettes" means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Subd. 3. "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

Subd. 4. "Wholesaler" means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established

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place of business including but not limited to their residences or motor vehicles where substantially all of the business is the sale of cigarettes and related merchandise at wholesale to persons licensed under this act, and where at all times a substantial stock of cigarettes and related merchandise is available to retailers for resale, or any cigarette manufacturer or manufacturer's representative who sells to retailers or to other persons for resale.

Subd. 5. "Retailer" means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

Subd. 6. "Sale" and "sell" mean and include any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution in any manner or by any means whatsoever.

Subd. 7. "Sell at wholesale," "Sale at wholesale," and "wholesale sales" mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

Subd. 8. "Sell at retail," "sale at retail," and "retail sales" mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

Subd. 9. "Basic cost of cigarettes" means whichever of the two following amounts is lower, namely, (1) the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (2) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less in either case, all trade discounts, promotional discounts and any other discounts for cash or merchandise, plus the full face value of any stamps which may be required by any cigarette tax act of this state, unless included by the manufacturer in his list price.

Subd. 10. (1) "Cost to wholesaler" means the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this act.

(2) The cost of doing business by the wholesaler is four percentum of the basic cost of said cigarettes, plus cartage to the retail outlet, if furnished or paid for by the wholesaler. Such cartage cost is one-half of one percent of the basic cost of the cigarettes in the absence of proof of a lesser or higher cost.

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Subd. 11. (1) "Cost to the retailer" means the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this act.

(2) The cost of doing business by the said retailer is eight percentum of the basic cost of cigarettes.

(3) If any retailer in connection with his purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be the sum of the cost of doing business by the retailer and, to the extent that he shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as defined in subdivision 10 (2).

Sec. 4. [325.67] **Sales at less than cost; penalty.** Subdivision 1: It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this act. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a misdemeanor.

Subd. 2. Evidence of advertisement, offering to sell or sale of cigarettes by any wholesaler or retailer at less than cost to him as defined by this act shall be prima facie and presumptive evidence of a violation of this act in civil cases.

Sec. 5. [325.68] **Combination sales.** In all offers for sale or sales involving cigarettes and any other item at a combined price and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever, and which are not given by the wholesaler or retailer with all sales made by him in the ordinary course of his trade or business, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in such transaction, except that if any such articles, products, commodities, gifts, or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in subdivision 9 of section 3.

Sec. 6. [325.69] **Sales by a wholesaler to a wholesaler.** When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his

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selling price to the latter, the cost to the wholesaler, as defined by section 3, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section.

Sec. 7. [325.70] Sales exceptions. The provisions of this act shall not apply to a sale at wholesale or a sale at retail made (a) in an isolated transaction; (b) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes offered for sale, or to be sold; (c) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.

Sec. 8. [325.71] Transactions permitted to meet lawful competition. Subdivision 1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this act. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in this act. The price of cigarettes offered for sale, or sold under the exceptions specified in section 7 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

Subd. 2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 9, subdivision 2.

Sec. 9. [325.72] Admissible evidence. Subdivision 1. In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this act purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or

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under such invoices, as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

Subd. 2. Cost survey. Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this act is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this act to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance, or other expenses.

Sec. 10. [325.73] Sales outside ordinary channels of business; effect. In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, including purchases from wholesale distributors who do not have their principal place of business within the state of Minnesota.

Sec. 11. [325.74] Action to enjoin. The state department of business development, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this act, may maintain an action to enjoin such actual or threatened violence and proof of actual damages need not be alleged or proved in cases of threatened violation.

Sec. 12. [325.75] State department of business development; powers and duties. Subdivision 1. The state department of business development may adopt rules and regulations for the enforcement of this act and it is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as it shall deem necessary and it shall be permissible to use such cost survey as provided in sections 8, subdivision 2, and 9, subdivision 2.

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Subd. 2. Said department may, upon notice and after hearing, suspend or revoke any permit issued under the cigarette tax provisions and the rules and regulations of the department promulgated thereunder, for failure of the permit holder to comply with any provisions of this unfair cigarette sales act or any rule or regulation adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Subd. 3. Any person aggrieved by the decision order or finding of the department relative to suspending or revoking any such permit may appeal therefrom to the district court in the same manner and subject to the same procedure as is provided by law.

Sec. 13. [325.76] **Partial unconstitutionality.** The provisions of this act shall be deemed to be severable and if for any reason any provisions shall be determined to be unconstitutional or invalid, such determination shall not be held to affect any other provisions hereof. And no such determination shall be deemed to invalidate or render ineffectual any of the other provisions of this act.

Approved May 25, 1961.

EXTRA SESSION

CHAPTER 36—H. F. No. 7

[Not Coded]

An act authorizing the issuance of bonds and refunding of capital loans by independent school district No. 279.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Independent school district No. 279; bonds.** Notwithstanding the limitations of Minnesota Statutes 1957, Section 475.53, and without being required to comply with Extra Session Laws 1959, Chapter 27, Section 8, Subdivision 6, Independent School District No. 279 is hereby authorized to issue and sell its bonds in an aggregate amount not to exceed \$3,000,000 over and above indebtedness heretofore incurred by it and loans made to it under said chapter 27, for the pur-

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