

CHAPTER 565—H. F. No. 1282

[Coded in Part]

An act relating to unfair trade practices in the dairy industry; amending Minnesota Statutes 1961, Sections 32A.04; 32A.05, Subdivision 3; 32A.06, Subdivisions 1 and 2; and 32A.09, by adding a new subdivision.

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

Section 1. Minnesota Statutes 1961, Section 32A.04, is amended to read:

32A.04 Dairy industry; unfair trade practices. Subdivision 1. No manufacturer, distributor or wholesaler, either directly or indirectly, or through a subsidiary or affiliate corporation, or by an officer, director, stockholder, employee, partner, agent or representative thereof, shall, for the purpose or with the effect of restraining, lessening or destroying competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or to impair or prevent fair competition in the sale of selected dairy products to retailers in this state, engage in or threaten to engage in any of the trade practices or methods of doing business described in this section. Proof that any person has engaged in any of the trade practices or methods of doing business described in this section shall be *prima facie* evidence of an intent to violate or that it has the effect of violating the provisions of this section.

a. Own, control or have any greater financial interest than five percent (5%) in any retail business selling or offering for sale any selected dairy product in this state unless the business name, address, nature and extent of ownership or control of such retail business by such manufacturer, distributor, or wholesaler shall be prominently displayed at all times at the main public entrance to the premises where such business is being conducted in type not less than 24-point Gothic capitals.

b. Purchase any real or personal property from a retailer and lease back or resell such property to the retailer under a deferred payment contract except as follows:

1. A written lease signed by both parties thereto specifying (a) the rental which shall be consistent with the value of like property in the locality where the retailer is located at the time the lease is executed, and (b) containing other terms and conditions consistent with leases of like property in that locality made at or about the same time by persons not having the relationship existing be-

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tween the retailer, as the purchaser, and the lessor, as the seller, of a selected dairy product.

2. A written contract for the sale of such property signed by both parties thereto specifying (a) the purchase price which shall be consistent with the fair market value of like property in the locality where the retailer is located at the time the contract is executed, (b) the down payment on such purchase price, (c) the periodic payments on the unpaid balance thereof, and (d) containing other terms and conditions consistent with contracts of sale of like property in that locality made at or about the same time by persons not having the relationship existing between the retailer, as the purchaser, and the vendor, as the seller, of a selected dairy product.

No contract or agreement for the lease-back or resale to a retailer of any property purchased from such retailer by the wholesaler, manufacturer or distributor shall contain any requirement that the retailer shall purchase any selected dairy product from the other party to the contract for sale or the lease, or from any manufacturer, wholesaler or distributor.

c. Give, lend, or advance any money, credit or other thing of value to a retailer or to any person for the benefit or relief of a retailer, or furnish, give, lend, lease, or sell to a retailer any furniture, fixtures, fittings, or equipment, as an incentive or inducement to such retailer to purchase, handle, store, display, sell or trade in, any one or more selected dairy products of any manufacturer, wholesaler, or distributor. Nothing herein shall prevent any sale of furniture, trade fixtures, or equipment to a retailer in accordance with section 32A.07, subdivision 1-a or the placing of refrigeration facilities on the premises of a retailer in accordance with section 32A.08, subdivision 2.

d. Provide, pay for, guarantee, or in any other manner, directly or indirectly, assume, satisfy or discharge the cost or obligation of a retailer for painting, decorating, improving, repairing or rebuilding any existing billboard, outdoor sign, display area, wall, fence, building or structure, or any other type of outdoor display advertising having a fixed location, or build, construct, erect, or purchase any new billboard, outdoor sign, or other outdoor advertising having a fixed location, or any structure or facility for use as an outdoor display for the direct benefit of a retailer except that if no reference is made to any retailer, a manufacturer, wholesaler, or distributor may engage in all forms of outdoor advertising to advertise one or more selected dairy products which he manufactures, processes or distributes.

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e. Have any interest in or pay for any license for a retailer or advance, furnish, lend or give money for the payment of any license fee for a retailer or any expense incident to the obtaining of any such license, except that a manufacturer, wholesaler, or distributor may purchase in his own name any license required by law for the sale of his selected dairy products in this state or any municipality therein.

f. Become bound in any manner for the repayment of any loan of money or the fulfillment of any financial obligation of any retailer.

g. Extend or give any additional credit to a retailer at a time when there has been due from such retailer for more than ~~40~~
15 days from the end of the month of the day in which delivery was made, any indebtedness arising out of the delivery to him of selected dairy products.

h. Furnish and maintain inside signs of a permanent nature unless such signs are used only for advertising or promoting one or more selected dairy products manufactured, distributed or sold by the person furnishing such sign, or items of food made principally from a selected dairy product so advertised or the brand name of the selected dairy product so advertised, or any combination thereof. The furnishing of "point of sale" advertising material made of paper or other like materials to a retailer free of charge for the sole purpose of promoting the sale of a selected dairy product of the person furnishing the same shall not constitute a violation of sections 32A.01 to 32A.09.

i. Furnish, give, lend, finance, pay for, contribute to or by any other means, scheme or device, participate in cooperative advertising using newspapers, radio, television or any other advertising media if any retailer selling, handling or offering for sale any selected dairy product of such manufacturer, wholesaler or distributor is named or otherwise identified or referred to in such advertising, except that a manufacturer, wholesaler or distributor may purchase and pay for such lineage or space actually used in advertising one or more of his or its selected dairy products in a newspaper advertisement, handbill or other form of printed advertising put out by a retailer or for the time actually so used in any radio or television program sponsored by a retailer.

j. Pay, loan or give money, credit, compensation, or anything of value to a retailer for the privilege of placing a sign, advertisement or other sales promotion material in or upon the premises of the retailer, or for storing, advertising, or displaying any selected dairy product in connection with its sale or promotion (except that

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a manufacturer, wholesaler or distributor may furnish paint and maintain an insulated truck body used exclusively in the sale and delivery of his or its selected dairy products by the person making retail sales thereof).

k. No wholesaler, manufacturer, or distributor shall credit to the account of or pay any retailer for any selected dairy product which the retailer claims to have become stale, spoiled or otherwise unsaleable unless the particular product for which such credit or payment is sought is in fact spoiled or otherwise unsaleable.

1. In connection with any sale to a distributor or retailer in this state of a selected dairy product, make or offer to make any gift of money, merchandise, trading stamps, coupons, service, supplies, or anything of value, or to grant or offer to grant any rebate, discount, or advertising allowance other than as expressly permitted by sections 32A.01 to 32A.09.

m. Charge a combined price for any selected dairy product together with another commodity or a service which is less or is represented to be less than the aggregate of the price of the particular selected dairy product and the price or value of such other commodity or service when sold or offered for sale separately, or from otherwise applying or attempting to apply any method or device in the sale or distribution of a selected dairy product intending to defeat the policy of sections 32A.01 to 32A.09 or to defeat or evade any provision of sections 32A.01 to 32A.09 or any order, ruling or regulation issued by the commissioner thereunder.

n. The provisions of section 325.04, shall apply to and include a manufacturer of any selected dairy product. No manufacturer, wholesaler, distributor or retailer of a selected dairy product engaged in business within this state shall sell, offer for sale or advertise for sale any selected dairy product below "cost" as that term is defined in section 325.01 or give, offer to give, or advertise the intent to give away any selected dairy product for the purpose or with the effect of violating sections 32A.04, 32A.06, 32A.07, 325.03, 325.04, and 325.06. The *prima facie rule of evidence* provisions of *this section 325.52 and 325.06* shall apply to any such violation. And it is the legislative intent that the provisions for relief set forth in section 32A.09 shall apply to any legal action under this paragraph.

Subd. 2. It shall be unlawful and an unfair trade practice in violation of the dairy industry unfair trade practices act for any person doing business in this state in the course of such business knowingly to induce an act or knowingly to receive a discrimina-

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tion or benefit from an act prohibited by the dairy industry unfair trade practices act.

Sec. 2. Minnesota Statutes 1961, Section 32A.05, Subdivision 3, is amended to read:

Subd. 3. The commissioner is authorized and empowered to call together manufacturers, distributors, wholesalers, retailers and producers of selected dairy products manufactured, processed, produced or sold in this state for the purpose of inquiry into trade practices prevailing from time to time in this state, and if need be, to conduct hearings in connection with such trade practices for the purpose of making findings relative to any trade practice found to exist within this state involving the manufacture, sale or distribution of any selected dairy product covered by sections 32A.01 to 32A.09, and thereafter to promulgate rules or regulations for the elimination of any trade practice found to be contrary to the provisions of sections 32A.01 to 32A.09. All such rules and regulations shall be adopted and all such hearings shall be held in accordance with the provisions of Laws 1945, Chapter 452, as amended, and for the purpose of any such hearing the commissioner shall have the power to subpoena witnesses and otherwise require as provided by law the production of evidence, either oral or written, respecting the subject matter of the particular hearing, but no person or witness in any such hearing so conducted shall be subject to any penalty for or on account of any transaction, matter or thing concerning which he may be thus required to testify or produce evidence, documentary or otherwise.

In addition to the powers and duties set forth above, whenever the commissioner or his duly authorized agent have good reason to believe that the testimony of any person who is a party or who has information pertaining to any transaction prohibited by sections 32A.01 to 32A.09, and acts amendatory thereof or the books of account or other business records of any such person is material or pertinent to any inquiry of prevailing trade practices, *authorized department investigation, or administrative enforcement proceeding commenced pursuant to the authority contained in section 32A.09*, the commissioner or his duly authorized agent shall have the power to issue subpoenas to take the testimony under oath of any such person and to have such person produce his books of account or other business records material or pertinent to such inquiry, *investigation, or administrative enforcement proceeding*, for examination by the commissioner or his authorized agent at all reasonable times.

If a person fails or refuses to obey a subpoena issued, the commissioner may apply to district court to issue an order requiring the

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person to appear before the department to produce evidence or to give testimony concerning the matter under inquiry, investigation, or administrative process. The application for the order shall be filed with the district court having jurisdiction in the area of residence, principal place of business, or registered office of the person involved. Any person failing to obey an order of the district court shall be punished by the district court under existing laws of contempt.

Sec. 3. Minnesota Statutes 1961, Section 32A.06, Subdivision 1, is amended to read:

32A.06 Schedule of prices. Subdivision 1. Each manufacturer, wholesaler and distributor shall file with the commissioner a dated schedule of current wholesale prices showing all rebates, discounts, refunds and price differentials for the selected dairy products offered for sale at wholesale by the person filing such price schedule, to retailers or to any other person for sale at wholesale to a retailer. Any discount given a retailer for the volume of a selected dairy product delivered in a given period of time at a specific location must reflect only the savings in delivery costs to the seller, provided always that where a retailer or distributor is supplied with selected dairy products by more than one manufacturer, wholesaler or distributor, then the total volume of the selected dairy products supplied to such retailer by all such suppliers shall determine the only discount he shall receive from any person and the same discount shall be allowed to all other retailers in the same area purchasing the same quantity of the particular selected dairy product from the same seller in the same period of time. Upon demand of the commissioner all such discounts shall be justified by the seller granting the same. A manufacturer, wholesaler or distributor selling a selected dairy product of any class at wholesale to another manufacturer, wholesaler or distributor shall not be required to file a schedule of prices on any selected dairy product so sold, but if the first purchaser in any such transaction buys the selected dairy product for the purpose or with the intent of reselling the same to a retailer, then the first purchaser shall file his schedule of prices for each class of selected dairy products he sells or intends to sell to a retailer. If a person acts as agent for one or more retailers in purchasing a selected dairy product, all such sales shall have the status of a sale at wholesale to a retailer and in each such sale the manufacturer, wholesaler or distributor making such sale shall file his schedule of prices on each class of selected dairy products sold or to be sold to such agent. A manufacturer, wholesaler or distributor selling a selected dairy product to a retailer shall furnish to the retailer, at the time of negotiating any sale, the seller's current price list for the selected dairy products sold and shall supply the retail customer with all such subsequent applicable price lists. *A man-*

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facturer, wholesaler or distributor, negotiating a sale to a retailer upon making a bona fide offer to sell at other than his filed price or legal deviation shall forthwith communicate this information in writing to the commissioner. This information shall be confidential and shall not be disclosed to any person but shall only be used by the commissioner or his duly authorized agents for their information in permitting lawful deviations to any competitive condition created by the offer at other than the filed price of the maker.

Sec. 4. Minnesota Statutes 1961, Section 32A.06, Subdivision 2, is amended to read:

Subd. 2. Price schedules on any class of selected dairy products can be superseded, changed or withdrawn only on forms prescribed and furnished by the commissioner and by posting, as specified above, the new or modified price schedule and filing a copy thereof with the commissioner at least ten (10) full business days before the new schedule becomes effective and until that time, the old schedule shall continue in force. Any new price schedule shall continue unchanged for ten full business days. The commissioner is authorized and empowered to investigate any price for any selected dairy product on any schedule or prices filed with the commissioner which appear to be in violation of sections 32A.01 to 32A.09, 325.04, 325.06, 325.52, and acts amendatory thereof, and to suspend the effective date of any such price for a period of ten calendar days or during the period of such investigation, whichever is the lesser, and upon such suspension shall give prompt notice thereof by mail to the person filing such price schedule. If within this ten day period the commissioner fails to determine that such suspended price is invalid, it shall be presumed to be a valid price, effective at the expiration of the ten day period. If the commissioner determines the price to be invalid, he shall so advise in writing the person filing such price schedule. If the person filing a price schedule containing a price which is suspended fails or refuses upon written request of the commissioner to make available all of his record pertinent to the determination of the validity of such suspended price, the period of suspension may be extended by the commissioner for a period of ten days from the time such records are made available. Upon written request to the commissioner by any person who has filed a price schedule hereunder for information concerning any price schedule, the commissioner, if satisfied that such request is bona fide and is made by a person who is in direct competition with the person whose price schedule is requested, shall comply with such request; otherwise All price schedules filed with the commissioner shall be confidential and shall not be disclosed unless necessary to prepare or institute legal action.

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Sec. 5. Minnesota Statutes 1961, Section 32A.09, is amended by adding a new subdivision to read:

Subd. 6. The commissioner may impose a penalty upon any person licensed by the department in any of its areas of jurisdiction which in any way involve the handling, processing, distributing, and selling of selected dairy products if the person is found to be in violation of the provisions of this dairy industry unfair trade practices act.

Whenever the commissioner has reason to believe that the person has violated the act and it appears that a proceeding should be held to determine whether a penalty should be imposed the commissioner shall serve notice on such person in writing by certified mail of the charges and grounds on which a penalty is sought to be imposed and of the time and place, not less than ten days after the mailing of a notice, at which a hearing shall be held to determine whether to impose a penalty. Any person upon whom a penalty is sought to be imposed shall have full right to counsel and to produce witnesses in his behalf at the hearing. After full investigation and hearing the commissioner may upon proof of a first violation impose a penalty of not less than \$50 nor more than \$100 for each act in violation. However, in no event shall the penalty exceed \$1,000. Upon proof of a second violation the commissioner may impose a penalty of not less than \$100 or more than \$500 for each act in violation. However, the maximum penalty imposed shall not exceed \$5,000. Upon proof of a third violation the penalty provisions applicable upon proof of a second violation shall apply.

The commissioner shall by certified mail or by personal service notify the person upon whom a penalty has been imposed, setting forth the reasons for the decision. The imposition of penalty shall become effective 30 days after the mailing or service in person of the notification unless that person complies with the provisions of Laws 1963, Chapter 809, Section 1, providing for a procedure for judicial review of the determination in the district court. In addition to the provisions contained therein, the person may petition to the district court that the review procedure shall be by trial de novo.

Imposition of any penalties under this section shall be construed as civil and not criminal in nature.

Any amounts received by the commissioner as a result of the imposition of penalties under this provision shall be deposited with the state treasurer and shall be placed in the "dairy industry unfair trade practices account."

Approved May 21, 1965.

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