

CHAPTER 600—S. F. No. 992

[Coded]

An act relating to cigarettes, and the prevention of unfair competition and trade practices in connection therewith; and providing license fees therefor; repealing Minnesota Statutes 1965, Sections 325.64 to 325.76.

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 purposes of sections 1 to 14 to protect the public by prohibiting such sales.

Sec. 2. **[325.65] Short title.** Sections 1 to 14 shall be known as the "Minnesota Unfair Cigarette Sales Act."

Sec. 3. **[325.66] Definitions.** Subdivision 1. For the purpose of sections 1 to 14, 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, trade association, company, partnership, nonprofit corporation, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

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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 place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed to sell cigarettes by the state or any municipality, and where at all times a stock of cigarettes is available to retailers for resale, or any cigarette manufacturer or manufacturer's representative who sells to retailers or to other persons for resale, and any person defined as a "distributor" under Minnesota Statutes, Section 297.01, Subdivision 7.

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 sections 1 to 14.

(2) The cost of doing business by the wholesaler is presumed to be four percentum of the basic cost of said cigarettes, in the absence of proof of a lesser or higher cost, except that the cost of doing business by the wholesaler is two percent of the basic cost of said cigarettes, when such cigarettes are sold to a wholesaler, in the absence of proof of a lesser or a higher cost.

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Subd. 11. (1) "Cost of 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 sections 1 to 14.

(2) The cost of doing business by the said retailer is presumed to be eight percentum of the basic cost of cigarettes in the absence of proof of a lesser or a higher cost.

(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, in the absence of a lesser or a higher cost of doing business, 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).

Subd. 12. "Subjobber" means any person who buys stamped cigarettes and sells them to persons other than ultimate consumers, and any licensed distributor who delivers to and sells or distributes stamped cigarettes from a place of business other than that for which he has obtained his distributor's license; who does not use a distributor's license for any plan or scheme to circumvent the Minnesota Unfair Cigarette Sales Act or any other law relating to the sale of cigarettes, who does not use such subjobber's license for the principal purpose of selling cigarettes to retail cigarette licensees in which such subjobber has an ownership interest, and who sells at least 75 percent of his total cigarette volume to retail outlets in which the subjobber has no more than a ten percent ownership interest, directly or indirectly, and who sells to at least 25 retail customers.

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 sections 1 to 14 for the purpose or with the effect of injuring a competitor or destroying competition. 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 sections 1 to 14 shall be prima facie evidence of a violation of sections 1 to 14 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

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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 transactions, 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 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 sections 1 to 14 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 permitting 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 sections 1 to 14. 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 sections 1 to 14. 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 re-

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tailers, 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. **Cost to wholesalers and retailers.** 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 section 1 to 14 purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or 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 sections 1 to 14 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 sections 1 to 14 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 the wholesale distributors who do not have their principal place of business within the state of Minnesota.

Sec. 11. [325.74] Remedies; sales of government agencies. Subdivision 1. The state department of business development, any corporation, partnership, trade association, or any person or persons who would suffer injury from any threatened violation of sections 1 to 14 may maintain an action to enjoin such actual or threatened violation and proof of actual damages need not be alleged or proved in cases of threatened violation. If a violation or threatened violation of the Minnesota unfair cigarette sales act shall be established, the court shall enjoin such violator or threatened vio-

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lator, and, in addition thereto, the court shall assess in favor of the plaintiff and against defendant the injuries of the suit including reasonable attorneys fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and cost of suit including reasonable attorneys fees, shall be entitled to recover from defendant the actual damages sustained by him.

Subd. 2. All state, municipal and other governmental agencies shall be governed by the Minnesota Unfair Cigarette Sales Act, and no such agency of government shall accept any bid offer which is below the "cost to wholesaler" as defined by Minnesota Statutes, Section 3, Subdivision 10 (1) nor shall sell such cigarettes at a cost less than provided for in Minnesota Statutes, Section 3, Subdivision 11.

Sec. 12. [325.75] **Rules and regulations; enforcement.**
Subdivision 1. The state department of business development may adopt rules and regulations for the enforcement of sections 1 to 14 and he 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 he shall deem necessary and it shall be permissible to use such cost survey as provided in section 8, subdivision 2 and section 9, subdivision 2.

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 of business development 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.

Subd. 4. Each cigarette wholesaler as defined herein, and subjobber as defined in Minnesota Statutes, Section 297.01, subdivision 14, shall pay the respective amounts of \$100, and \$87.50, per annum, such amounts shall be collected by the commissioner of taxation and deposited forthwith in the state treasury and credited to the:

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general revenue fund. Payments under this section shall be made in one sum yearly commencing July 1, 1967.

Sec. 14. [325.76] **Partial unconstitutionality.** The provisions of sections 1 to 14 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 sections 1 to 14.

Sec. 15. Minnesota Statutes 1965, Sections 325.64 to 325.76 are hereby repealed.

Sec. 16. **Effective date.** This act shall take effect upon date of passage.

Approved May 19, 1967.

CHAPTER 601—S. F. No. 1915

[Not Coded]

An act relating to distribution of taxes accruing to the village of Cooley under Minnesota Statutes, Sections 298.24 and 298.32.

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

Section 1. **Cooley, village of; tax distribution.** Any taxes distributable to the village of Cooley under Minnesota Statutes, Sections 298.24 and 298.32 in excess of permissible levies under Minnesota Statutes, Section 295.11, shall be distributed to the village of Nashwauk, the village of Keewatin, the town of Nashwauk, the town of Lone Pine and the town of Greenway all in Itasca county on a per capita basis, based on the latest available federal or state census. In computing the population of any town, the population of any organized municipality within such town shall be excluded.

The amounts distributable hereunder to said towns and villages shall be included in computing their respective permissible levies under Minnesota Statutes, Section 275.10 or under any other applicable statute limiting said town levy and under Minnesota Statutes, Section 275.11, provided, in computing the deduction from permissible levies of said villages by reason hereof effect shall be given to the cost of living adjustment allowed by section 275.11, subdivision 2,

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