

## Regulations Relating To Trade

## CHAPTER 325

## REGULATION OF MANUFACTURES AND SALES

**325.01 DEFINITIONS.**

**HISTORY.** 1913 c. 167 ss. 1, 2; G.S. 1913 ss. 3772, 3773; G.S. 1923 ss. 3966, 3967; M.S. 1927 ss. 3966, 3967; 1929 c. 358 s. 1; 1937 c. 116 s. 3; 1937 c. 117 s. 1; 1937 c. 412 s. 13; 1937 c. 456 s. 1; 1939 c. 403 s. 2; M. Supp. ss. 3976-1, 3976-42, 3976-51, 3976-83.

The word "bedding" combined with the word "reclining" applies to an article of furniture in which a person may sleep and recline, but not to a straight back, or a rocking chair. OAG April 2, 1930.

Wholesaler, as defined in part 2 of this act, comes into the provisions of part 1 as a distributor. OAG May 21, 1937 (681h).

"Actual current delivered invoice" defined in relation to unfair trade practice, as applied to Laws 1941, Chapter 326, Section 2, Subdivision 1. 1942 OAG 349, July 31, 1941 (681a).

Effect of "the general maximum price regulation" enforceable by office of price administration on Minnesota "unfair trade law." 1942 OAG 350, May 15, 1942 (681a).

**325.02 APPLICATION.**

**HISTORY.** 1937 c. 116 pt. 1 s. 1; 1937 c. 116 pt. 2 s. 1; M. Supp. ss. 3976-37, 3976-40.

A statute which requires persons buying farm products for manufacture or re-sale, to deduct from the price paid, the actual cost of transportation from point of purchase to locality of manufacture or sale, without providing which items comprise actual cost or how total is to be apportioned if several purchases are collected from number of producers located varying distances from point of manufacture or sale in the course of one trip, does not adequately define acts constituting unlawful discrimination, but are so vague and uncertain as to deny due process of law. *State v N. W. Poultry & Egg Co.* 203 M 438, 281 NW 753.

A labor dispute is presented in an action by an employer against a labor union which threatens to picket because of employer's proposal to reduce prices charged his customers, thereby lessening compensation of numerous employees working on commission. *Lichterman v Laundry & Dry Cleaning Drivers Union*, 204 M 75, 282 NW 689, 283 NW 752.

Legislature may prohibit habitual sales below cost, which result in injury to competition, as detrimental to public welfare. *McElhone v Geror*, 207 M 580, 292 NW 414.

Act does not discriminate between retailers on a cash and carry basis, with low overhead cost, and others with higher overhead, because its terms permit sales below cost, in good faith, to meet local prices of a competitor. *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

The provision making one guilty of a crime who sells merchandise below cost, for the purpose of injuring competitors and destroying competition, does not prohibit sale below cost regardless of seller's intent. *Great At. & P. Tea Co. v Ervin*, 23 F. Supp. 70.

The provision defining cost, within other provisions prohibiting sale of merchandise below cost under certain circumstances, as list price published by manu-

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facturer less his published discounts plus cost of doing business by seller, is unconstitutional, as being arbitrary and discriminatory. *Great At. & P. Tea Co. v Ervin*, 23 F. Supp. 70.

Appraisal of federal emergency price and inflation control acts. *Rottenberg v United States*, 137 F(2d) 850.

Actual current delivered invoice defined. 1942 OAG 349, July 3, 1941 (681-A).

## 325.03 DISCRIMINATION UNLAWFUL.

HISTORY. 1937 c. 116 pt. 1 s. 2; M. Supp. s. 3976-38.

## 325.04 SELLING BELOW COST FORBIDDEN.

HISTORY. 1937 c. 116 pt. 2 s. 2; 1939 c. 403 s. 1; M. Supp. s. 3976-41; 1941 c. 326 s. 1.

Act does not discriminate between retailers on a cash and carry basis, with low overhead cost, and others with higher overhead, because its terms permit sales below cost, in good faith, to meet local prices of a competitor. *Fredricks v Burnquist*, 207 M 490, 292 NW 420.

The act prohibiting sales below cost, for the purpose or with the effect of injuring competitors and destroying competition, is the promotion of a policy within the police power of the state. *McElhone v Geror*, 207 M 580, 292 NW 414.

Even if there is no purpose to destroy competition, any sale of bread below cost injures competitors and the crime is complete. OAG May 24, 1944 (681a).

Unfair trade practices. 24 MLR 258; 26 MLR 245.

## 325.05 BANKRUPT SALES NOT TO BE CONSIDERED IN FIXING COSTS.

HISTORY. 1937 c. 116 pt. 2 s. 4; M. Supp. s. 3976-43.

## 325.06 CLOSING OUT SALES.

HISTORY. 1937 c. 116 pt. 2 s. 6; 1939 c. 403 s. 3; M. Supp. s. 3976-45; 1941 c. 326 s. 3.

The act exempts from its operation many sales, e.g., sales for purpose of discontinuing trade or sales of style, perishable or deteriorated goods. *McElhone v Geror*, 207 M 580, 292 NW 414.

Act permits sales below cost, in good faith, to meet the local prices of a competitor. *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

Act provides for sales, in good faith, to close out stock, of seasonable goods, merchandise where style is paramount, perishable or deteriorated goods, sales by officer acting under court orders, and sales made in good faith to meet local prices of a competitor. *Great At. & P. Tea Co. v Ervin*, 23 F. Supp. 70.

A merchant having knowledge that price of a particular item has been raised by competitor to proper level, cannot justify his sale below cost, as made in good faith to meet competition. OAG May 21, 1937 (681h).

Unfair competition. 23 MLR 861.

Unfair trade practices. 24 MLR 258; 26 MLR 245.

## 325.07 REMEDIES CUMULATIVE.

HISTORY. 1937 c. 116 pt. 3 s. 3; 1939 c. 403 s. 6; M. Supp. s. 3976-48.

Although title of 1939 law purports to repeal Laws 1937, Chapter 116, as amended by Laws 1937, Chapter 456, the body of the act does not respond to that declared intent. *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

Unfair trade practices. 24 MLR 258.

## 325.08 CERTAIN CONTRACTS NOT TO BE IN VIOLATION OF LAW.

HISTORY. 1937 c. 117 s. 2; M. Supp. s. 3976-52.

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Federal district court has jurisdiction of suit to enjoin sale of commodities for less than retail prices fixed by fair trade contracts when value of amount is measured by loss caused to the right to do business under contracts in state wherein such court sits, and value of trade name is affected by such cut-rate practices. *Heddon's Sons v Callender*, 28 F. Supp. 643.

A retailer, not a party to a fair trade sales contract between a manufacturer of trade-marked goods and other retailers, may be enjoined from selling at prices less than those provided for in the contract as to such merchandise as was acquired subsequent to date of notice of such contract. *Heddon's Sons v Callender*, 29 F. Supp. 579.

Act applies to "on sale" of intoxicating liquor. OAG Nov. 4, 1937 (681-x).

A retailer of films, under fair trade, gave with each film sold a coupon creditable when returned, on other merchandise in his store. Held a violation. 1938 OAG 252, July 11, 1938 (681b).

Trade-marks and trade names; unfair competition; fair trade acts. 25 MLR 805.

### 325.09 WHAT ARE VIOLATIONS.

HISTORY. 1937 c. 117 s. 3; M. Supp. s. 3976-53.

Unfair competition; fair trade acts. 24 MLR 297.

### 325.10 MINIMUM PRICES, BY WHOM FIXED.

HISTORY. 1937 c. 117 s. 4; M. Supp. s. 3976-54.

### 325.11 LIMITATIONS.

HISTORY. 1937 c. 117 s. 5; M. Supp. s. 3976-55.

### 325.12 UNFAIR COMPETITION.

HISTORY. 1937 c. 117 s. 6; M. Supp. s. 3976-56.

A retailer, not a party to a fair trade sales contract between a manufacturer of trade-marked goods and other retailers, may be enjoined from selling at prices less than those provided for in the contract as to such merchandise as was acquired subsequent to date of notice of such contract. *Heddon's Sons v Callender*, 29 F. Supp. 579.

Unfair competition. 24 MLR 139.

### 325.13 EXCEPTIONS.

HISTORY. 1937 c. 117 s. 7; M. Supp. s. 3976-57.

### 325.14 CITATION.

HISTORY. 1937 c. 117 s. 10; M. Supp. s. 3976-60.

Equity. 22 MLR 559.

### 325.141 UNLAWFUL TRADE PRACTICES.

HISTORY. 1943 c. 144 s. 1.

### 325.142 DEFINITION.

HISTORY. 1943 c. 144 s. 2.

### 325.143 WHEN SALE OR TRANSFER NOT UNLAWFUL.

HISTORY. 1943 c. 144 s. 3.

### 325.144 MISREPRESENTATIONS; DISPLAY OF FICTITIOUS PRICE TAGS.

HISTORY. 1943 c. 144 s. 4.

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**325.145 MISREPRESENTING QUALITY.**

HISTORY. 1943 c. 144 s. 5.

**325.146 DISPOSAL OF OTHER THAN OWN PRODUCTS FORBIDDEN.**

HISTORY. 1943 c. 144 s. 6.  
Minnesota Labor Relations Act. 28 MLR 64.

**325.147 VIOLATION; RESTRAINING ORDER.**

HISTORY. 1943 c. 144 ss. 7, 8.

**325.148 APPLICATION.**

HISTORY. 1943 c. 144 s. 9.

**325.149 DELIVERY TICKETS TO ACCOMPANY FUEL DELIVERIES.**

HISTORY. 1943 c. 328.

**325.15 MOTOR VEHICLES, MANUFACTURER FORBIDDEN TO FINANCE SALES OF.**

HISTORY. 1937 c. 412 s. 1; M. Supp. s. 3976-71.

**325.16 CERTAIN THREATS, STATEMENTS, OR PROMISES TO BE PRIMA FACIE EVIDENCE.**

HISTORY. 1937 c. 412 s. 2; M. Supp. s. 3976-72.

**325.17 WHEN PRESUMPTION MAY BE PRIMA FACIE EVIDENCE.**

HISTORY. 1937 c. 412 s. 3; M. Supp. s. 3976-73.

**325.18 UNLAWFUL FOR MANUFACTURER TO GIVE SUBSIDIES.**

HISTORY. 1937 c. 412 s. 4; M. Supp. s. 3976-74.

**325.19 UNLAWFUL TO RECEIVE SUBSIDIES.**

HISTORY. 1937 c. 412 s. 5; M. Supp. s. 3976-75.

**325.20 PERSONS RECEIVING SUBSIDIES FORBIDDEN TO ENGAGE IN FINANCE OF SALES.**

HISTORY. 1937 c. 412 s. 6; M. Supp. s. 3976-76.

**325.21 PROCEEDINGS INSTITUTED.**

HISTORY. 1937 c. 412 s. 7; M. Supp. s. 3976-77.

**325.22 FOREIGN CORPORATIONS MAY BE PROHIBITED FROM DOING BUSINESS IN THE STATE.**

HISTORY. 1937 c. 412 s. 8; M. Supp. s. 3976-78.

**325.23 PROVISIONS CUMULATIVE.**

HISTORY. 1937 c. 412 s. 11; M. Supp. s. 3976-81.

**325.24 AUTOMOBILE DEALERS' ANTI-COERCION ACT.**

HISTORY. 1937 c. 412 s. 14; M. Supp. s. 3976-84.

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### 325.25 USE OF SECOND-HAND MATERIAL FORBIDDEN IN CERTAIN CASES.

HISTORY. 1929 c. 358 s. 2; M. Supp. s. 3976-2.

### 325.26 SALE OF BEDDING.

HISTORY. 1929 c. 358 s. 3; M. Supp. s. 3976-3.

### 325.27 MATERIAL MUST BE RENOVATED.

HISTORY. 1929 c. 358 s. 4; M. Supp. s. 3976-4.

### 325.28 DEVICES MUST BE APPROVED.

HISTORY. 1929 c. 358 s. 5; M. Supp. s. 3976-5.

### 325.29 SUBJECT TO INSPECTION.

HISTORY. 1929 c. 358 s. 6; M. Supp. s. 3976-6.

### 325.30 SALES FORBIDDEN; EXCEPTIONS.

HISTORY. 1929 c. 358 s. 7; M. Supp. s. 3976-7.

### 325.31 SHODDY MATERIAL TO BE LABELED.

HISTORY. 1929 c. 358 s. 8; M. Supp. s. 3976-8.

### 325.32 BEDDING TO BE LABELED.

HISTORY. 1929 c. 358 s. 9; M. Supp. s. 3976-9.

A person running a second-hand store who removes tag bought from emergency relief administration, violates this section. OAG June 17, 1935 (270i).

A firm which purchases material for mattresses, to be made by a bedding manufacturer at a stipulated price, cannot label them as being manufactured for the firm, without naming the manufacturer, or vendor. OAG Oct. 14, 1938 (270i).

### 325.33 FEATHERS TO BE RENOVATED.

HISTORY. 1929 c. 358 s. 10; M. Supp. s. 2976-10.

### 325.34 MANUFACTURE AND SALE OF COTTON DUCK OR CANVAS; STAMPS, BRANDS, AND MARKS.

HISTORY. 1913 c. 167 s. 3; G.S. 1913 s. 3774; G.S. 1923 s. 3968; M.S. 1927 s. 3968.

### 325.35 CERTAIN SALES UNLAWFUL; MISSTATEMENTS FORBIDDEN.

HISTORY. 1913 c. 167 s. 4; G.S. 1913 s. 3775; G.S. 1923 s. 3969; M.S. 1927 s. 3969.

### 325.36 CONCEALING OR MISSTATING SIZE UNLAWFUL.

HISTORY. 1913 c. 167 s. 5; G.S. 1913 s. 3776; G.S. 1923 s. 3970; M.S. 1927 s. 3970.

### 325.37 UNLAWFUL TO DEFACE MARK.

HISTORY. 1913 c. 167 s. 6; G.S. 1913 s. 3777; G.S. 1923 s. 3971; M.S. 1927 s. 3971.

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## **325.38 SALE OF FIREWORKS FORBIDDEN; EXCEPTIONS.**

HISTORY. 1929 c. 300 s. 1; M. Supp. s. 3976-14.

Explosives. 26 MLR 240.

## **325.39 LICENSES GRANTED.**

HISTORY. 1929 c. 300 s. 2; M. Supp. s. 3976-15.

## **325.40 APPLICATION; FEE.**

HISTORY. 1929 c. 300 s. 3; M. Supp. s. 3976-16.

## **325.41 IMITATION INDIAN-MADE GOODS TO BE BRANDED.**

HISTORY. 1937 c. 196 s. 1; M. Supp. s. 3976-61.

## **325.42 BRAND.**

HISTORY. 1937 c. 196 s. 2; M. Supp. s. 3976-62.

## **325.43 GOODS NOT TO BE SOLD WITHOUT BRAND.**

HISTORY. 1937 c. 196 s. 3; M. Supp. s. 3976-63.

## **325.44 PRISON-MADE GOODS ARE SUBJECT TO LAWS OF STATE.**

HISTORY. 1935 c. 267 s. 1; M. Supp. s. 3976-21.

Prisons. 20 MLR 77.

## **325.45 PRISON-MADE GOODS MUST BE MARKED.**

HISTORY. 1935 c. 268 s. 1; M. Supp. s. 3976-31.

## **325.46 "PRISON MADE" TO BE PLACED ON PRISON-MADE GOODS.**

HISTORY. 1935 c. 268 s. 2; 1939 c. 57; M. Supp. s. 3976-32.

## **325.47 SALE OF UNMARKED GOODS FORBIDDEN.**

HISTORY. 1935 c. 268 s. 3; M. Supp. s. 3976-33.

## **325.48 VIOLATIONS; PENALTIES.**

HISTORY. 1913 c. 167 s. 7; M.S. 1927 s. 3972; 1929 c. 300 s. 4; 1929 c. 358 s. 11; 1935 c. 268 s. 4; 1937 c. 116 pt. 3 s. 1; 1937 c. 196 s. 4; 1937 c. 412 s. 9; 1939 c. 403 s. 1; M. Supp. ss. 3976-11, 3976-17, 3976-34, 3976-46, 3976-64, 3976-79; 1941 c. 326 s. 4.

Argument that the statute must fall because section 325.48 is amended thereby but is not listed in the title as one of the sections to be amended; is unsound because though omitted from the 1939 law as published, section 325.48 was among the sections listed in the title of the act as passed and approved. Fredricks v Burnquist, 207 M 590, 292 NW 420.

Laws 1937, Chapter 116, Part 3, Section 1, Paragraphs 2, 3, making any director, officer, or agent of firm or corporation, who aids a firm, corporation, or principal in violating the act, equally responsible, and making allegation and proof of unlawful acts sufficient in prosecution of the director, officer or agent, denies due process and equal protection, and is unconstitutional. Great At. & P. Tea Co. v Ervin, 23 F Supp. 70.

Department of agriculture, dairy, and food, need not enforce this act. OAG May 26, 1937 (681f-3).

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### 325.49 INJUNCTIVE RELIEF.

**HISTORY.** 1937 c. 116 pt. 3 s. 2; 1939 c. 403 s. 5; M. Supp. s. 3976-47; 1941 c. 326 s. 5.

A litigant cannot attack a statute as unconstitutional until some constitutional right is actually threatened by the law, or its attempted enforcement. *McElhone v Geror*, 207 M 580, 292 NW 414.

The issuing of a temporary restraining order, pending trial, is a matter of judicial discretion. *McFadden Lambert Co. v Winston & Newell Co.* 209 M 242, 296 NW 18.

In a conflict between OPA orders and state law, the federal order controls. 1942 OAG 350, May 15, 1942 (681a).

### 325.50 CONTRACTS OR AGREEMENTS IN VIOLATION VOID.

**HISTORY.** 1937 c. 412 s. 10; M. Supp. s. 3976-80.

### 325.51 DAMAGES RECOVERABLE.

**HISTORY.** 1937 c. 412 s. 12; M. Supp. s. 3976-82.

### 325.52 CERTAIN SALES AS PRIMA FACIE EVIDENCE; WHEN INJUNCTIVE RELIEF FORBIDDEN.

**HISTORY.** 1937 c. 116 pt. 2 s. 3; 1937 c. 456 s. 1; 1939 c. 403 s. 2; M. Supp. s. 3976-42; 1941 c. 326 s. 2.

Without defining the elements to be computed in determining actual cost, nor how the cost is to be apportioned where several purchases are made at varying distances from the point of manufacture or sale, a statute is so uncertain that it denies due process of law. *State v N. W. Poultry & Egg Co.* 203 M 438, 281 NW 753.

Cost may be defined as the actual current delivered invoice or replacement cost, whichever is lower, plus the cost of doing business at said location by said vendor. The manufacturers' published list prices, less current discounts, plus cost of doing business, may be prima facie evidence of cost to the retailer. *McElhone v Geror*, 207 M 580, 292 NW 414.

Apparent omissions from the title of the act as printed in Laws 1939, have no importance because the title of the act as passed and approved included the repealed laws not mentioned in the act as published. *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

A party charged with violation of this act, cannot show as a defense, that the particular item upon which the accusation rests, may be segregated from the entire business for the purpose of allocating as to it, the cost of doing business. *McFadden Lambert Co. v Winston & Newell Co.* 209 M 242, 296 NW 18.

The actual current delivered invoice or replacement cost, whichever is lower, not including customary cash discounts, plus the cost of doing business at said location by said vendor, defined. 1942 OAG 349, July 31, 1941 (681A).

Unfair trade practices. 24 MLR 258.