

## CHAPTER 362

## BUSINESS DEVELOPMENT

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362.01-362.06 [Repealed, 1947 c 587 s 22]

**362.07 DEPARTMENT OF BUSINESS DEVELOPMENT.** There is hereby created and established a department of the state government to be designated and known as the Department of Business Development, said department and all officials thereof to be subject to the provisions and limitations of sections 362.07 to 362.24.

[1947 c 587 s 1; 1953 c 754 s 1]

**362.08 DEFINITIONS.** As used in sections 362.07 to 362.24, "department" means the department of business development, and "commissioner" means the commissioner of business development.

[1947 c 587 s 2; 1953 c 754 s 2]

**362.09 COMMISSIONER; ADVISORY COMMISSION.** Subdivision 1. The department shall be under the supervision and control of a commissioner of business development, who shall be appointed by the governor, by and with the advice and consent of the senate. He shall be chosen with regard to his knowledge, training, experience, and ability in administering the functions of the department. He shall serve for a term of four years from the first Monday in January of the year of his appointment and until his successor is appointed and has qualified, or until he is removed by the governor for cause after notice and hearing. In case of a vacancy, the governor may appoint a commissioner for the unexpired term, who shall thereupon immediately take office and shall carry on all the duties of the office until the next session of the legislature, when his appointment shall be submitted to the senate for approval. The commissioner shall receive a salary of \$6,000 per year, payable semimonthly. He shall give a bond to the state in the sum of \$10,000.

Subd. 2. The governor shall appoint a commission of ten members to act in an advisory capacity to the commissioner. In making such appointments the governor shall give reasonable representation to the various geographical areas and occupational groups of the state. The commission shall meet at the call of the chairman or the commissioner. Members of the commission shall serve without compensation but may be reimbursed for actual expenses incurred in accordance with rules and regulations relative to travel of state officers and employees pursuant to Minnesota Statutes 1949, Section 16.02(19).

[1947 c 587 s 3; 1951 c 713 s 33; 1953 c 754 s 3]

**362.10 FUNCTIONS.** The department of business development shall encompass the following functions:

- (1) Research and statistics;
- (2) Publicity and promotion,

- (3) Enforcement, and
  - (4) Business and industrial development services.
- [1947 c 587 s 4; 1953 c 754 s 4]

**362.11 DUTIES OF COMMISSIONER.** The commissioner shall have power, and it shall be his duty, to exercise the functions, perform the work, and carry on the activities specified in sections 362.13, 362.14, 362.15 as functions of the department.

[1947 c 587 s 5]

**362.12 SCOPE OF DEPARTMENTAL POWERS AND DUTIES.** Subdivision 1. Enumeration. The department shall:

- (1) Investigate, study, and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Minnesota business, industry, and commerce, within and outside the state;
- (2) Locate markets for manufacturers and processors and aid merchants in locating and contacting markets;
- (3) Investigate and study conditions affecting Minnesota business, industry, and commerce and collect and disseminate information, and engage in technical studies, scientific investigations, and statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department in promoting and developing Minnesota business, industry, and commerce, both within and outside the state;
- (4) Plan and develop an effective business information service both for the direct assistance of business and industry of the state and for the encouragement of business and industry outside the state to use economic facilities within the state;
- (5) Compile, collect, and develop periodically, or otherwise make available, information relating to current business conditions;
- (6) Conduct or encourage research designed to further new and more extensive uses of the natural and other resources of the state and designed to develop new products and industrial processes;
- (7) Study trends and developments in the industries of the state and analyze the reasons underlying such trends; study costs and other factors affecting successful operation of businesses within the state; and make recommendations regarding circumstances promoting or hampering business and industrial development;
- (8) Serve as a clearing house for business and industrial problems of the state; and advise small business enterprises regarding improved methods of accounting and bookkeeping;
- (9) Encourage and develop commerce with other states and foreign countries and devise ways and means of removing trade barriers hampering the free flow of commerce between this and other states;
- (10) Cooperate with interstate commissions engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry, and commerce;
- (11) Cooperate with other state departments, and with boards, commissions, and other state agencies, in the preparation and coordination of plans and policies for the development of the state and for the use and conservation of its resources insofar as such use, conservation, and development may be appropriately directed or influenced by state agency;
- (12) Assemble and coordinate information relative to the status, scope, cost, and employment possibilities and the availability of materials, equipment, and labor in connection with public works projects, state, county, and municipal; recommend limitations on said public works; gather current progress information with reference to public and private works projects of the state and its political subdivisions with reference to conditions of employment; inquire into and report to the governor, when requested by him, with respect to any program of public state improvements and the financing thereof; and request and obtain information from other state departments or agencies as may be needed properly to report thereon;
- (13) Study changes in population and current trends and prepare plans and suggest policies for the development and conservation of the resources of the state;
- (14) Confer and cooperate with the executive, legislative, or planning authorities of the United States and neighboring states and of the counties and municipalities

palities of such neighboring states, for the purpose of bringing about a coordination between the development of such neighboring states, counties, and municipalities and the development of this state;

(15) Generally, gather, compile, and make available statistical information relating to business, trade, commerce, industry, transportation, communication, natural resources, and other like subjects in this state; with authority to call upon other departments of the state for statistical data and results obtained by them and to arrange and compile that statistical information in such manner as may seem wise.

**Subd. 2. Information available to the public.** Statistical and other information obtained by the division of research and statistics in the exercise of its powers and duties shall be available at all times to the public.

**Subd. 3. Governor may assign new duties; transfer from other departments.** The Governor may by order in writing transfer at any time the whole or any part of any office, bureau, division, or other branch of the state government engaged in statistical work to the department of business research and development, and in every such case the duties and authority performed by and conferred by law upon such office, bureau, division, or other branch of the state government or the part thereof so transferred shall be thereby transferred with such office, bureau, division, or other branch of the state government or the part thereof which is so transferred.

[1947 c 587 s 6]

12.578 2/ 362.13 **ADDITIONAL POWERS AND DUTIES.** The Department shall:

(1) Have control of the work of carrying on a continuous program of education for business men;

(2) Publish, disseminate, and distribute information and statistics acquired by the division of research and statistics in cooperation with that division;

(3) Promote and encourage the expansion and development of markets for Minnesota products;

(4) Promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business and for that purpose cooperate with state and local agencies and individuals, both within and outside the state;

(5) Advertise and disseminate information as to natural resources, desirable locations, and other advantages for the purpose of attracting business to locate in this state;

(6) Aid the various communities in this state in getting business to locate therein;

(7) Advise and cooperate with municipal, county, regional, and other planning agencies and planning groups within the state for the purpose of promoting coordination between the state and localities as to plans and development in order to maintain a high level of gainful employment in private profitable production and achieve commensurate advancement in social and cultural welfare; coordinate the activities of state-wide and local planning agencies, correlate information secured from them and from state departments, and disseminate information and suggestions to such planning agencies; and encourage and assist in the organization and functioning of local planning agencies where none exist; and may provide at the request of any governmental subdivision hereinafter mentioned planning assistance, which includes but is not limited to surveys, land use studies, urban renewal plans, technical services and other planning work to any city or other municipality in the state or perform similar planning work in any county, metropolitan or regional area in the state providing that the department of business development shall not perform such planning work with respect to a metropolitan or regional area which is under the jurisdiction for such planning purposes of a county, metropolitan, regional or joint planning body, except at the request or with the consent of the respective county, metropolitan, regional or joint planning body.

(8) Adopt such measures as may best be calculated to promote public interest in and understanding of the problems of planning and, to that end, may publish and distribute copies of any plan or any report and may employ such other means of publicity and education as shall give full effect to the provisions of sections 362.07 to 362.24;

(9) Perform the functions and carry out programs heretofore performed and carried out by the tourist bureau of the department of conservation, plan and con-

duct programs of information and publicity designed to attract tourists, visitors, and other interested persons from outside the state to this state, and in that connection encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state and work with representatives of the tourist and resort industry in carrying out its programs.

[1947 c 587 s 7; 1957 c 842 s 1]

**362.14 ADDITIONAL DUTIES.** Subdivision 1. **Investigate offenses against the provisions of certain designated sections; assist in enforcement.** The department shall investigate violations of the law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the act against unfair discrimination and competition (Minnesota Statutes, sections 325.02 to 325.07), the fair trade act (Minnesota Statutes, sections 325.08 to 325.13), the unlawful trade practices act (Minnesota Statutes, sections 325.141 to 325.148), the dairy industry unfair trade practices act (sections 362.31 to 362.39), the automobile dealer's anti-coercion act (Minnesota Statutes, sections 325.15 to 325.23), Minnesota Statutes, section 620.52 and other laws against false or fraudulent advertising, the antidiscrimination acts contained in Minnesota Statutes, sections 623.08 to 623.15, the antitrust act (Minnesota Statutes, section 623.01), and the act against monopolization of food products (Minnesota Statutes, section 623.19), and assist in the enforcement of those laws as in this section provided.

Subd. 2. **Commissioner to assist in discovery and punishment of illegal practices.** When the commissioner, from information in his possession, has reasonable ground to believe that any person, partnership, association, or corporation has within one year violated, or is about to violate, any of the laws of this state referred to in subdivision 1, he, his deputy, and the officers and employees and agents of the division of enforcement, shall have power to investigate those violations, or suspected violations, and to take such steps as are necessary to cause the arrest and prosecution of all persons, partnerships, associations, or corporations violating any of the statutes specifically mentioned in subdivision 1 or any other laws respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade.

Subd. 3. **Injunctive relief.** In addition to the penalties provided by law for violation of the laws referred to in subdivision 1, specifically and generally, where injunctive relief is not otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of those laws. Whenever it shall appear to the satisfaction of the commissioner that any of those laws is being violated, or is about to be violated, he shall be entitled, on behalf of the state, to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law.

Subd. 4. **Exception.** The provisions of this section shall not apply to any person, firm or corporation engaged in the insurance business and as such subject to Laws 1947, Chapter 129.

[1947 c 587 s 8; 1957 c 821 s 10]

**362.15 REPORTS AND RECOMMENDATIONS TO THE GOVERNOR.** The commissioner shall cause to be prepared and submitted to the governor and to the legislature at each regular session, and at each special session when so requested by the governor, a report of the activities of the department, together with such information and data in the possession of the department as the commissioner shall deem of value to the governor, the legislature, and the people of the state of Minnesota. Each such report may contain such recommendations and [for] legislation as the commissioner may deem necessary to give full effect to all the provisions of sections 362.07 to 362.24.

[1947 c 587 s 9]

**362.16 COOPERATION WITH OTHER AGENCIES, BOARDS, AND COMMISSIONS.** If requested by the governor and if the facilities are available, the department may provide office space, telephone, reception, stenographic, and book-keeping service to other state agencies, boards, and commissions whose functions are closely related to those of the department, such as the Tri-State Waters Commission, the Great Lakes-Saint Lawrence Tidewater Commission, and the Upper Mississippi and Saint Croix River Improvement Commission. The funds of those agencies, boards, and commissions shall be kept separate from those of the depart-

ment, and a reasonable charge may be made by the department for facilities furnished and services performed and funds transferred for the purpose of paying those charges.

[1947 c 587 s 10]

### **362.17 GRANTS FROM FEDERAL GOVERNMENT OR FROM INDIVIDUALS.**

The department is authorized to accept any grant of funds or property made by the United States or any department or agency thereof, or by any individual, for any or all of the purposes specified in sections 362.07 to 362.24, and shall expend said funds in accordance with the terms and conditions of the grant. The department is specifically empowered to act for the state and its political subdivisions as provided in Public Law 458 of the 78th Congress, cited as the War Mobilization and Reconversion Act of 1944, with respect to loans for planned services for public works programs of the state and its political subdivisions.

[1947 c 587 s 11]

**362.18 DEPARTMENT TO RECEIVE ASSISTANCE, INFORMATION, AND ADVICE FROM OTHER STATE DEPARTMENTS OR AGENCIES.** The governor may direct that assistance, information and advice be given the department in the performance of its duties and functions by any officer, agent, or employee of the state. The head of any other state department may assign temporarily to the department experts and employees of his department or may direct any division or agency under his supervision and control to make any special study or survey requested by the commissioner.

[1947 c 587 s 12]

**362.19 COOPERATION WITH UNIVERSITY OF MINNESOTA.** The commissioner shall at all times cooperate with the university of Minnesota and its departments and shall obtain from the university such assistance as it may be able to afford him in relation to research and promotion as will aid in carrying out the provisions of sections 362.07 to 362.24.

[1947 c 587 s 13]

**362.20 SALE OF PAMPHLETS AND PUBLICATIONS.** The commissioner shall have authority to sell, at their approximate cost to the state, such publications of the department as in his judgment should not be supplied gratis to those who wish to employ them in the conduct of their business.

[1947 c 587 s 14]

**362.21 TRANSFER OF RIGHTS, POWERS, AND DUTIES FROM MINNESOTA RESOURCES COMMISSION AND MINNESOTA TOURIST BUREAU.** All the rights, powers, and duties by law imposed by and vested in the Minnesota resources commission, and the Minnesota tourist bureau are hereby transferred to and imposed upon the department. The Minnesota resources commission, and the Minnesota tourist bureau shall transfer and deliver to the commissioner all contracts, books, maps, plans, papers, records, and property of every description within their jurisdiction or control, and shall also transfer to him any and all employees engaged in the functions, powers, and duties transferred. The commissioner is hereby authorized to take possession of said property, and shall take charge of said employees, and shall employ them in the respective functions, powers, and duties transferred as aforesaid and in other functions, powers, and duties provided in sections 362.07 to 362.24, without reduction of compensation, subject, however, to change or termination of employment or compensation as may be otherwise provided by law. Whenever the Minnesota resources commission or the Minnesota tourist bureau is referred to or designated in any contract or document, such reference and designation shall be deemed, after July 1, 1947, to mean and refer to the department of business research and development.

[1947 c 587 s 15]

**362.22 TRANSFER OF FUNDS.** The unexpended balance now remaining in the donors' survey of economic conditions funds shall be transferred to the credit of the department.

[1947 c 587 s 16]

**362.23 PERSONNEL.** The commissioner may hire such personnel as is necessary to carry on the functions of the department. The commissioner may appoint to serve at his pleasure a director of research, director of promotion, and a director of business and industrial development services, and may assign to them such duties as he desires.

[1947 c 587 s 18; 1953 c 754 s 5]

**362.231 CERTAIN POSITIONS ABOLISHED.** The positions of industrial development representative, economic research statistician and industrial consultant are hereby abolished.

[1953 c 754 s 6]

**362.24 TRANSFER OF APPROPRIATIONS.** All the appropriations made to the tourist bureau and the Minnesota resources commission whose functions are transferred to the department herein created are hereby transferred and appropriated to the department of business research and development

[1947 c 587 s 19]

**362.31 DEFINITIONS.** Subdivision 1. When used in sections 362.31 to 362.39 unless the context otherwise clearly required:

Subd. 2. "Selected dairy products" means "fluid milk products" as defined in Minnesota Statutes 1953, section 32.391, and "frozen foods" as defined in Minnesota Statutes 1953, section 31.01, subdivision 6, as amended by Laws 1955, Chapter 538, and cottage cheese. "Fluid milk products" and "frozen foods" shall have the meaning given them by the cited sections of Minnesota Statutes 1953, as amended by Laws 1955, Chapter 538.

Subd. 3. "Sell at retail", "sales at retail", and "retail sales" mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual course of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

Subd. 4. "Sell at wholesale", "sale at wholesale", and "wholesale sales" mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

Subd. 5. "Retailer" means any person engaged in the business of making sales of selected dairy products at retail within this state; provided that in the case of a person engaged in the business of making sales at both retail and wholesale such term shall apply only to the sales at retail made in the course of such business.

Subd. 6. "Wholesaler" means any person engaged in the business of making sales of selected dairy products at wholesale within this state; provided that, in the case of a person engaged in the business of making sales at both retail and wholesale such term shall apply only to the sales at wholesale made in the course of such business.

Subd. 7. "Manufacturer" means any person doing business in this state engaged in the manufacturing or processing of a selected dairy product in his or its own plant for sale in this state, but shall not include a producer selling or delivering milk or cream to a distributor or manufacturer.

Subd. 8. "Distributor" means any person doing business in this state engaged in selling at wholesale to a retailer any selected dairy product manufactured or processed by such distributor, by a manufacturer, or by another distributor.

Subd. 9. "Producer" means any person who operates a dairy herd or herds producing milk or cream commercially and whose milk or cream is sold to, or received or handled by, a distributor or manufacturer. "Producer" includes any incorporated or unincorporated association of producers.

Subd. 10. "Person" means an individual, partnership, corporation, association, cooperative corporation or association.

Subd. 11. "Department" means the Department of Business Development.

Subd. 12. "Commissioner" means the Commissioner of Business Development.

Subd. 13. The singular shall include the plural and the plural the singular.

[1957 c 821 s 3]

**362.32 UNFAIR PRACTICES.** No manufacturer, distributor or wholesaler, either directly or indirectly, or through a subsidiary or affiliate corporation, or by any 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, threaten or do the trade practices or methods of doing business described in 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 re-sell 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 between 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 re-sale 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 362.35, subdivision 1-a or the placing of refrigeration facilities on the premises of a retailer in accordance with section 362.36, subd. 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.

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 days 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 ma-

terials 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 362.31 to 362.39.

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 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.

l. In connection with any sale to a 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 362.31 to 362.39.

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 362.31 to 362.39 or to defeat or evade any provision of sections 362.31 to 362.39 or any order, ruling or regulation issued by the Commissioner thereunder.

[1957 c 821 s 4]

**362.33 DEPARTMENT OF BUSINESS DEVELOPMENT, POWERS.** Subdivision 1. Sections 362.31 to 362.39 shall be administered by the department of business development.

Subd. 2. The department shall have all the powers and duties set forth in Minnesota Statutes, Section 362.14 to assist in the discovery, investigation and elimination of unfair trade practices set forth in sections 362.31 to 362.39.

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 362.31 to 362.39 and thereafter to promulgate rules or regulations for the elimination of any trade practice found to be contrary to the provisions of sections 362.31 to 362.39. 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.

Subd. 4. For the purpose of administering and enforcing the provisions of sections 362.31 to 362.39, each manufacturer subject to sections 362.31 to 362.39 shall



pay to the commissioner a fee of four mills (\$0.004) per cwt. on all milk processed or used in the manufacture of a selected dairy product sold in this state or manufactured in this state for sale therein except frozen foods on which the fee shall be one mill (\$0.001) on each gallon of frozen foods sold in this state or manufactured in this state for sale therein. Such fees shall be the maximum fees. The commissioner may fix such fees at a lesser amount and may adjust such fees from time to time whenever he finds that the cost of administering and enforcing the provisions of sections 362.31 to 362.39 can be defrayed with such below maximum fees. The fees thus computed shall be paid by the manufacturer to the commissioner on or before the 15th day of the month following the month in which such frozen foods were sold in this state or a selected dairy product manufactured in this state from such milk was sold therein. The amounts so received by the commissioner shall be deposited with the state treasurer and shall constitute a separate account to be known as the "Dairy Industry Unfair Trade Practices Account" which is hereby created, set aside and appropriated as a revolving fund to be used to defray the cost of administering and enforcing sections 362.31 to 362.39.

[1957 c 821 s 5]

**362.34 SCHEDULES OF PRICES.** Subdivision 1. Each manufacturer, wholesaler and distributor shall post for public inspection, and at all times keep posted in a prominent public place in his business office in each plant or place of business where a selected dairy product is sold or offered for sale to retailers, 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 posting 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 the savings in delivery costs to the seller and shall be uniform as 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. 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 post or 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 post and 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 for the purposes of sections 362.31 to 362.39 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 post and 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.

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 three (3) full business days before the new schedule becomes effective and until that time, the old schedule shall continue in force.

Subd. 3. A filing fee of one dollar shall be paid the commissioner for one or more price schedules filed simultaneously by the same manufacturer, wholesaler or distributor.

Subd. 4. All sales at wholesale of selected dairy products by the manufacturer, wholesaler or distributor shall be in accordance with the current posted and filed schedules except a sale made in good faith to meet a lawful competitive price or a lawful competitive condition. The burden of proving such good faith sale to meet lawful competition shall be upon the person making such sale. The manufacturer, wholesaler or distributor making such sale shall make a written report to the commissioner within five days from the date of such deviated sale upon such form and in such manner as shall be prescribed by the commissioner. Failure to file such report within the time stated shall be prima facie evidence of a violation of sections 362.31 to 362.39.

Subd. 5. Deviated sales of a selected dairy product may be made to the United States or the State of Minnesota or any agency, department, division or institution of either said state or the United States, or to any public institution supported in whole or in part by public funds, without any such sale or failure to report the same as specified above being a violation of sections 361.31 to 361.39.

Subd. 6. A manufacturer, wholesaler or distributor not having an established place of business in this state, before selling or delivering any selected dairy product in this state, shall post and keep posted in each vehicle or other place from which the selected dairy products of such manufacturer, wholesaler or distributor are sold, a copy of the current price schedule covering each class of selected dairy products offered for sale in this state and shall file its price schedules on such products with the commissioner as above specified and shall thereafter be governed by sections 362.31 to 362.39 on all sales or deliveries of its selected dairy products in this state.

[1957 c 821 s 6]

**362.35 UNFAIR PRACTICES BY WHOLESALERS, MANUFACTURERS OR DISTRIBUTORS.** To carry out the purpose of sections 362.31 to 362.39 and to restore fair, open and free competition for the trade and custom of the retailers of this state purchasing a selected dairy product for resale in this state, no manufacturer, wholesaler or distributor of selected dairy products doing business in this state shall sell or offer to sell to a retailer in this state purchasing any selected dairy product from such manufacturer, wholesaler or distributor any such furniture, trade fixtures or equipment except as follows:

a. No manufacturer, wholesaler or distributor shall sell any kind of furniture, trade fixtures or equipment at less than the cost thereof to such seller. Any sale made by such seller at less than 15 percent above such seller's actual current invoice or replacement cost, less depreciation in the case of used furniture, trade fixtures or equipment computed at the annual rate of 15 percent of the seller's cost, shall be prima facie evidence that such sale was made below such seller's cost. If the full purchase price of any item so sold the retailer is not paid the seller by the retailer within 40 days from the delivery of the item or items comprising such sale, the retailer shall pay within said 40 days not less than 10 percent of the purchase price of the items comprising such sale computed as above specified and shall give the seller a conditional sales contract or a promissory note secured by a chattel mortgage specifically describing each item comprising such sale and the seller, within ten days of the execution thereof, shall file such conditional sales contract or chattel mortgage as required by law for a valid enforceable secured debt. Such conditional sales contract or chattel mortgage shall specify (1) the cash payment made by the retailer to the seller or the value of the trade-in accepted by the seller to apply on the purchase price but such trade-in credit shall not exceed the depreciated value of the item or items representing such trade-in credit as carried on the business records of the purchaser, but if no such records are available then at an annual depreciation rate of 15 percent of the purchaser's cost, and (2) the amount of the unpaid purchase price shall be paid by the retailer in 60 equal monthly installments, bearing simple interest at six percent per annum with the last such installment of principal and interest maturing not later than 60 months from the execution of the conditional sales contract or chattel mortgage given the seller by the retailer.

b. The mechanical, electrical or other servicing of all items of furniture, trade fixtures or equipment sold a retailer by a manufacturer, wholesaler or distributor shall become and remain the sole responsibility of the retailer purchasing the same unless at the time of such sale, the seller and the retailer agree in writing that the seller is to provide such servicing, but such contract shall require the seller to charge the retailer for the servicing of any item the same price as is charged by third persons rendering such service in the area or community where the retailer is located. If any charge for such servicing (including the full cost of all repair and replacement parts) is not paid by the retailer to the seller within 40 days from the performance of the work, such failure shall be a violation of subparagraph (g) of section 362.32.

[1957 c 821 s 7]

**362.36 CERTAIN ACTS OF WHOLESALERS, MANUFACTURERS OR DISTRIBUTORS FORBIDDEN.** Subdivision 1. To carry out the purpose of sections 362.31 to 362.39 and to restore free, open and fair competition among wholesalers, manufacturers and distributors for the trade and custom of retailers in this state

purchasing one or more selected dairy products at wholesale for resale to the consumer, and to eliminate trade practices that have the effect of restraining or destroying free competition in the sale of selected dairy products to such retailers:

a. If, at the time of the enactment of sections 362.31 to 362.39, a manufacturer, wholesaler or distributor of selected dairy products is furnishing a retailer free of charge or contrary to subparagraph (c) of subdivision (1) of section 362.32, with ice cream cabinets, bulk milk dispensers, coin operated vending machines or cooling equipment or similar equipment which are still in the possession or under the control of the retailer, the person furnishing the same free of charge shall within 18 months from the date of enactment, sell to the retailer all such items of equipment so furnished as the retailer may elect to purchase. The price of each item of such equipment so purchased by the retailer shall be the depreciated cost as carried on the business records of the seller or the depreciated value as determined by the formula set forth in section 362.35, subdivision 1-a, whichever is the greater price. The price thus determined shall be paid in cash or within the period and upon the terms and conditions specified in section 362.35, subdivision 1-a. If the retailer does not purchase all such items within said period of 18 months, the manufacturer, wholesaler or distributor originally furnishing the same shall properly repossess all items not so purchased and remove them from the premises of retailer; provided always that this provision shall not apply to or affect any bona fide written contract in force on the effective date of sections 362.31 to 362.39, which specifically describes each item of equipment to be furnished free of charge to the retailer, except that any provision of any such contract which, if performed, would constitute an unfair practice under sections 362.31 to 362.39 or result in unfair competition in the sale at retail of any selected dairy product shall not be enforceable by either party to the contract and if performance of any such provision of the contract is attempted, all civil remedies available under sections 362.31 to 362.39 or under any other applicable law can be asserted by any person claiming injury or threatened injury or damage by reason of the performance or threatened performance of such provision.

Subd. 2. Nothing in this section or in sections 362.31 to 362.39 shall be construed to prohibit or prevent a manufacturer, wholesaler or distributor from placing his refrigeration or storage facilities on the premises of any retailer and maintaining the same without payment or charge to the retailer so long as such refrigeration or storage facilities are used exclusively for the storage and preservation of selected dairy products manufactured or sold by the manufacturer, wholesaler or distributor furnishing such refrigeration or storage facilities and they are not used by the retailer or anyone else to sell or offer for sale at retail any of the selected dairy products stored or placed therein.

[1957 c 821 s 8]

**362.37 REDRESS FOR INJURIES.** Subdivision 1. Any person who shall be injured in his business or property by reason of anything forbidden by sections 362.31 to 362.39, or the commissioner in his own name or on behalf of any such person, shall be entitled to sue therefor in any court of competent jurisdiction and shall be entitled to recover threefold the damage by him sustained and the costs of suit, including a reasonable attorneys fee. Any person injured or who is threatened with injury or loss by reason of anything forbidden by sections 362.31 to 362.39, or the commissioner in his own name or on behalf of any such person, shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction without alleging or proving that an adequate remedy at law does not exist. Such injunctive relief shall not abridge or be in lieu of any other civil remedy provided in sections 362.31 to 362.39.

Subd. 2. Either the commissioner or any person entitled to bring suit under sections 362.31 to 362.39 may use both in tort and for injunctive relief and may recover for all loss, damage or injury arising from the continued violation to the time of trial or hearing of such suit.

Subd. 3. No violation of a provision of sections 362.31 to 362.39 shall be a crime in and of itself.

Subd. 4. Nothing in sections 362.31 to 362.39 will be construed to authorize or permit the commissioner or any person representing the commissioner to set, fix, or establish the producers', manufacturers', distributors', wholesalers' or retailers', price or prices on any of the "selected dairy products" mentioned in sections 362.31 to 362.39.

[1957 c 821 s 9]

**362.38 PUBLIC POLICY.** It is hereby declared to be the policy of the legislature, recognizing that "selected dairy products," as herein defined, are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing or selling such products and are important items of food essential to the health and welfare of the people of this state and that certain trade practices have developed within this state in the sale and distribution of such products which result in unfair competition and upset the orderly marketing of such products, causing financial loss to the producers in this state of the milk or cream used in "selected dairy products," to protect the health and welfare of our people and to preserve the traditional markets and outlets for our producers of such milk or cream and to restore the orderly marketing in this state of "selected dairy products" and to eliminate certain trade and marketing practices which are done with the intent of or have the effect of destroying, lessening or restraining competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or impairing or preventing fair competition in the sale of "selected dairy products." All of the provisions of sections 362.31 to 362.39 shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the above declaration of policy.

[1957 c 821 s 2]

**362.39 CITATION OF ACT.** Sections 362.31 to 362.39 shall be known as the "Dairy Industry Unfair Trade Practices Act."

[1957 c 821 s 1]