

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,  
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and  
amendatory, and notes showing repeals, together with annotations from the  
various courts, state and federal, and the opinions of the Attorney  
General, construing the constitution, statutes, charters  
and court rules of Minnesota together with digest  
of all common law decisions.



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potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar, containing one-half of one per centum or more of alcohol by volume. No fermented malt beverages shall be sold in this state after July 1st, 1937, unless sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) or more of the grain used in its manufacture consists of barley malt. (Mar. 8, 1937, c. 59, §1.)

**3965-17. Department of Agriculture to enforce act.**—The Department of Agriculture, Dairy and Food shall be charged with the enforcement of this Act, and is hereby authorized and directed to procure samples on the open market for chemical analysis. (Mar. 8, 1937, c. 59, §2.)

**3965-18. Violations a misdemeanor.**—Any violation of this act shall be a misdemeanor and punishable accordingly. (Mar. 8, 1937, c. 59, §3.)

**3965-19. Licenses for sale of non-intoxicating malt liquor—Holder of federal license.**—No license for the sale of non-intoxicating malt liquor, containing not more than 3.2% of alcohol by weight, shall be issued to any person who is also the owner and holder of, or to whom there is hereafter issued, a Federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to such person a license to sell intoxicat-

ing liquor pursuant to the laws of this state at such place; and the non-intoxicating malt liquor license of any person who is also the owner and holder of, or to whom there is hereafter issued, such Federal retail liquor dealer's special tax stamp, and who does not have a license to sell intoxicating liquors pursuant to the laws of this state for such place, shall be forthwith revoked by the governing body issuing the same, without notice and without a hearing on such revocation. (Act Apr. 4, 1939, c. 138, §1.)

3.2 per cent beer licenses may be summarily revoked without formal notice or hearing, where licensees have federal retail liquor dealers' special tax stamp, and board would be justified in requiring definite proof to show that stamp has been invalidated for remainder of their duration. Op. Atty. Gen. (217B-10), May 1, 1939.

Physical destruction of a federal retail liquor dealers special tax stamp by owner thereof does not make him eligible to obtain a 3.2 per cent beer license. Op. Atty. Gen. (217B-10), May 2, 1939.

**3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.**—Any person who sells non-intoxicating malt liquor, containing not more than 3.2 per cent alcohol by weight, while holding or exhibiting in his place of business a Federal retail liquor dealer's special tax stamp, without having an intoxicating liquor license under the laws of Minnesota, shall be guilty of a misdemeanor. (Apr. 4, 1939, c. 138, §2.)

## CHAPTER 21A

### Regulation of Manufactures and Sales

#### 3973 to 3976. [Repealed.]

Repealed by Laws 1929, c. 358, §12, post, §3976-12.

**3976-1. Definitions.**—That the term "bedding" as used in this act shall be construed to mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining purposes. The word "person" as used in this act shall be construed to impart the plural and the singular, as the case demands, and shall include, individuals, corporations, partnerships, joint-stock companies, or other business associations who are manufacturers or dealers in bedding. The word "new" as used in this act, shall mean any material or article that has not previously been used in the manufacture of bedding articles, or for any other purpose. The term "second hand" shall mean any material or article that has been previously used in the manufacture of bedding or for any other purpose. The word "shoddy" shall mean any material that has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up or ground up. (Act Apr. 24, 1929, c. 358, §1.)

The term "bedding," in view of the employment of the word "reclining" has reference to any article of furniture on which a person may sleep or recline, but it does not apply to a straight back chair and probably not to a rocking chair. Op. Atty. Gen., Apr. 2, 1930.

**3976-2. May not use second-hand material in certain cases.**—No person shall use in the making or remaking of any article of bedding as herein defined any material that has been used in any private or public hospital, or any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has so been used. This section shall not prevent the renovating of bedding used in any private or public hospital. (Act Apr. 24, 1929, c. 358, §2.)

**3976-3. Sale of bedding, etc., forbidden.**—No person shall sell, offer for sale, consign for sale, or have in his possession with intent to sell, or consign for sale any bedding used in a private or public hospital or any article of bedding that has been used by or about

any person having an infectious or contagious disease. (Act Apr. 24, 1929, c. 358, §3.)

**3976-4. Material must be renovated.**—No person shall remake or renovate any article of bedding unless all the material to be used in said remake or renovated bedding shall first be thoroughly sterilized and disinfected by the methods set out herein, or by any other approved sterilization method:

(a) Dry heat of a temperature of not less than 160 degrees centigrade temperature for not less than one hour. A thermometer for registering the temperature visible from the outside of the room shall be provided where dry heat is used.

(b) Live steam, with subsequent drying of the material over steam coils with a pressure of not less than 20 pounds of steam for 20 minutes. A gauge for registering steam pressure visible from the outside of the room shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is used.

(c) Formaldehyde and sulphur concurrently in a moist atmosphere for a period of not less than 10 hours. Formaldehyde gas shall be generated from the use of one pint of formaldehyde solution, 37% to each 1,000 cubic feet of air space, or through the use of any of the high class commercial fumigators which generate an equivalent quantity of gas. Sulphur shall be from the burning of three pounds of sulphur for each 1,000 cubic feet of air space. The moist atmosphere shall be produced by thorough sprinkling of the floor of the room with warm water just prior to the process of disinfection. The room shall be provided with a separate air inlet and also an exhaust connection, and shall be equipped with tight dampers or closure gates which can be operated from the outside of the room. Rooms for disinfection of bedding materials shall be made gas or steam tight. Shelving for loose bedding materials shall be of lattice or other open construction.

Solid shelves of a type to prevent passage of gas through the materials shall not be permitted. (Act Apr. 24, 1929, c. 358, §4.)

**3976-5. Devices must be approved.**—All devices and equipment before being used as a process for sterilization and disinfection, shall be approved by the Industrial Commission of Minnesota, upon written application of the person desiring to use the same, and when so approved, a numbered permit for such use shall be issued to the applicant by the Industrial Commission of Minnesota. Such permit shall expire one year from date thereof. Such system of sterilization and disinfection shall be kept in good condition and repair. Every person to whom a permit has been issued shall keep such permit conspicuously posted under glass near such sterilization or disinfection chamber. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke the same. Nothing in this act shall prevent any person engaged in the making or remaking, renovating or sale of any article herein described which requires sterilizing and disinfecting under the provisions hereof, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit, with date of sterilization shall be printed on the tag or label attached to the article, and a copy of such kept by person doing such sterilization for reference. (Act Apr. 24, 1929, c. 358, §5.)

**3976-6. Subject to inspection.**—All places where bedding is made, remade, or renovated, or where materials for bedding are prepared, or establishment where said articles are offered for sale, or are in possession of any person with intent to sell, deliver, lease, or to consign them to an establishment where sterilizing and disinfecting is performed, shall be subject to inspection by duly appointed inspector for the Industrial Commission of Minnesota to ascertain whether the materials used or sold or the finished article enumerated, conform to the requirements of this act. Inspector shall have authority to open such bedding to examine the material used in filling. (Act Apr. 24, 1929, c. 358, §6.)

**3976-7. Sales forbidden—Exceptions.**—No person shall sell, lease, offer to sell or lease, or deliver or consign for sale or lease, or have in his possession with intent to sell, lease, deliver or consign for sale or lease, any bedding made, remade, or renovated in violation of this act; or any second-hand bedding unless since last used it has been thoroughly sterilized and disinfected by an approved method of sterilization. (Act Apr. 24, 1929, c. 358, §7.)

**3976-8. Same.**—No person, firm or corporation, by himself or his agents, servants or employees, shall make or sell, or offer to sell, deliver or consign for sale, or have in his or their possession with intent to sell, deliver or consign for sale any bedding made of material that has theretofore been used as a container for or in contact with any animal or vegetable matter or any material hereinbefore designated as shoddy, unless the bedding shall be labeled as such, or any material that has theretofore been used unless the same shall have been cleaned and sterilized. (Act Apr. 24, 1929, c. 358, §8.)

**3976-9. Must be labeled.**—No person shall make or remake, or sell, offer for sale, consign for sale, or have in his possession with intent to sell, offer for sale, or consign for sale any article of bedding as herein defined unless the same is labeled as follows:

Upon each of such articles of bedding there shall be securely sewed upon the outside thereof a muslin or linen label not less than three by four and one-half inches in size, upon which shall be in plain print, in the English language, a description of the material used as filling of such article of bedding; and if such material or any portion thereof shall not have been previously used, the words "manufactured of new material" shall appear upon said label, together with the name and address of the maker or vendor there-

of. If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of second hand material" or "remade of second hand material" as the case may be, shall appear upon said label, together with the name and address of the maker or vendor thereof, and also a description of the material used in the filling of such article of bedding. On any article of bedding, not remade, but which has been previously used, the words "second hand materials used in filling not known" shall appear upon said label, together with the name and address of the vendor thereof. The statement required under this section shall be in form as follows:

OFFICIAL STATEMENT

Materials used in filling.....  
 Made by .....  
 Vendor .....  
 Address .....

This article is made in compliance with an act of the State of Minnesota approved the.....day of.... 1929.

The statement of compliance required in the foregoing "official statement" shall not be construed to imply that it is prohibited to state also that the article of bedding is made in compliance with act or acts of other states.

The words "manufactured of new material" or "manufactured of second hand material" or any article of bedding not remade, "second hand materials used in filling not known" together with the description of the material used as filling of an article of bedding shall be in letters not less than one-eighth ( $\frac{1}{8}$ ) of an inch in height. Statement of filling shall conform to rules regulating the manufacture and sale of bedding as approved by the Industrial Commission of Minnesota. No term of description likely to mislead shall be used on any label required by this regulation, in the description of the material used in the filling of any article of bedding. The label shall be attached to each mattress, pad or upholstered spring by sewing all four edges of label.

Any person who shall remove, deface, alter or shall cause to be removed, defaced or altered any label or tag upon any article of bedding so labeled or tagged under the provisions of this act, shall be guilty of a violation thereof. (Act Apr. 24, 1929, c. 358, §9.)

A person running a second-hand store who removes tag bought from emergency relief administration violates this section. Op. Atty. Gen. (2701), June 17, 1935.

A firm could not purchase material for mattresses, springs, cotton ticking, etc., and then have a bedding manufacturer make mattresses at a stipulated price, and then simply label the mattresses as being manufactured for the firm, without naming the manufacturer, or vendor. Op. Atty. Gen. (2701), Oct. 14, 1938.

**3976-10. Feathers to be renovated.**—Feathers used in making, remaking, or renovating, new or second hand bedding shall be thoroughly cured, sterilized, or disinfected. (Act Apr. 24, 1929, c. 358, §10.)

**3976-11. Violation a misdemeanor.**—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100.00 nor less than \$25.00 or by imprisonment for not more than 90 days, nor less than 30 days, or by both such fine and imprisonment for each offense. (Act Apr. 24, 1929, c. 358, §11.)

**3976-12. Law repealed.**—Chapter 490, General Laws 1913 [§§3973 to 3976], and all acts or parts of acts inconsistent herewith hereby are repealed. (Act Apr. 24, 1929, c. 358, §12.)

**3976-13. [Mason's 1934 Supp.] [Repealed.]**  
 Repealed by Act Apr. 24, 1935, c. 268, §5, effective Sept. 1, 1935, post, §§3976-35, 3976-36.

**3976-14. Sale of fireworks forbidden—Exceptions.**—No person, firm, copartnership or corporation shall sell, offer for sale, or have in possession for the purpose of sale any fireworks within the limits of any town, any part of which is within fifteen miles of the corporate limits of any city of the first class, without first having obtained a license to sell fireworks from the town board of such town. (Act Apr. 23, 1929, c. 300, §1.)

Town board cannot act arbitrarily or unreasonably in granting or refusing licenses. Op. Atty. Gen., June 7, 1929.

Relates only to towns and not villages or other incorporated municipalities. Op. Atty. Gen., June 26, 1929.

**3976-15. Town Board may grant licenses.**—The town board of any town described in Section 1 is authorized to license any person, firm, co-partnership or corporation in such town and to impose a license fee therefor of not less than \$10.00 nor more than \$25.00, which shall be uniform in any such town during any calendar year. (Act Apr. 23, 1929, c. 300, §2.)

**3976-16. Application—Fee.**—Any person, firm, co-partnership or corporation desiring such license shall make application therefor to the town clerk, which application shall be in writing and shall contain a description of the premises where applicant proposes to sell such fireworks. Such application shall be accompanied by the license fee which shall be returned in case the board fails to grant such license. Such license permit shall be in writing, signed by the chairman of such board and attested by the clerk, and shall be limited to the premises named in the application and publicly displayed on such premises, and shall be for a period of one year from the date thereof. A town clerk shall submit any such application to the town board within ten days after he receives it. (Act Apr. 23, 1929, c. 300, §3.)

**3976-17. Violation is a misdemeanor.**—Any person, firm, co-partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 23, 1929, c. 300, §4.)

**3976-21. Prison made goods to be subject to laws of state.**—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal and/or reformatory institutions transported into the State of Minnesota, and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in the State of Minnesota, be subject to the operation and effect of the laws of the State of Minnesota, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the State of Minnesota, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise. (Act Apr. 24, 1935, c. 267, §1.)

**3976-22. Effective September 1, 1935.**—This act shall take effect and be in force from and after September 1, 1935. (Act Apr. 24, 1935, c. 267, §2.)

**3976-31. Prison made goods must be marked.**—That all goods, wares and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal and/or reformatory institutions in this or any other state shall be branded, labeled or marked as hereinafter provided before being exposed for sale, and shall not be so exposed or sold without such brand, label or mark thereon. (Act Apr. 24, 1935, c. 268, §1.)

**3976-32. Must contain the words "Prison made."**—The brand, label or mark required by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-31, shall contain at the head or top thereof the words "Prison Made" followed by the name of the

penal or reformatory institution in which it was manufactured, produced, or mined in plain English lettering of the style known as great primer roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, a label shall be used and attached. Such brand, mark or label shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and also shall be placed outside of its box, crate or covering. (Act Apr. 24, 1935, c. 268, §2; Mar. 8, 1939, c. 57.)

**3976-33. Sale of unmarked goods forbidden.**—That no person shall sell, offer for sale, or have in possession for the purpose of sale, goods, wares or merchandise described in Section 1 of this Act without the brand, label or mark required by this Act being placed thereon or attached thereto, or remove, conceal or deface such brand, label or mark. (Act Apr. 24, 1935, c. 268, §3.)

**3976-34. Violation a misdemeanor.**—Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor. (Act Apr. 24, 1935, c. 268, §4.)

**3976-35. Law repealed.**—Chapter 138 of the Laws of Minnesota for 1929 is hereby repealed. (Act Apr. 24, 1935, c. 268, §5.)

**3976-36. Effective September 1, 1935.**—This Act shall take effect and be in force from and after September 1, 1935. (Act Apr. 24, 1935, c. 268, §6.)

## UNFAIR TRADE PRACTICES

### PART ONE

**3976-37. Application of Act.**—The following sections of this act, constituting Part One thereof shall apply only to the manufacture, production or distribution of any commodity, article, goods, wares or merchandise in general use or consumption. (Mar. 30, 1937, c. 116, Pt. 1, §1.)

Part 1 of the Minnesota Fair Trade Act held valid and enforceable though parts two and three are invalid. Great Atlantic & Pacific Tea Co. v. E., (DC-Minn), 23F Supp70.

Act is intended as an aid to a greater degree of economic security and social order. Lichtenman v. L., 204M 75, 282NW689. See Dun. Dig. 8434, 9953.

Wholesaler as defined in Part 2 of this act also comes within provisions of Part 1 as a distributor. Op. Atty. Gen. (681h), May 21, 1937.

Constitutionality of Fair Trade Act in proposed H. F. No. 664, introduced in 1939 legislature, discussed and suggestions made. Op. Atty. Gen. (86a), March 8, 1939.

**3976-38. Discrimination unlawful.**—Any person, partnership, firm or corporation, foreign or domestic, doing business in the State of Minnesota, and engaged in the production, manufacture, distribution of any printed or mimeograph matter, commodity, article, goods, wares or merchandise in general use or consumption, that intentionally, for the purpose of destroying the competition of any regular established dealer in such commodity, article, goods, wares or merchandise, or to prevent the competition of any person, firm or corporation who or which, in good faith, intends and attempts to become such dealer, shall discriminate between different sections, communities or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price or rate in one section, community or city or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity, article, goods, wares or merchandise in another section, community or city, or any portion thereof, after making allowance for difference, if any, in the grade, quality or quantity after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be guilty of unfair discrimination, provided that this act shall not prevent any person, firm or corporation from in good faith, meeting local competition within any

one section, community, village or city. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereof. (Mar. 30, 1937, c. 116, Pt. 1, §2.)

It is possible that a prima facie case of a violation would be established by showing that a sale was made at less than 10% above current delivered invoice price without reference to cash discount allowed on invoice, and thus require person complained against to rebut case by showing that he had taken advantage of cash discount. Op. Atty. Gen. (681h), May 21, 1937.

**3976-39. Law repealed.**—Chapter 413 of the Laws of 1921, being Sections 10464-7, inclusive, of Mason's Minnesota Statutes, 1927, are hereby repealed. (Mar. 30, 1937, c. 116, Pt. 1, §3.)

#### PART TWO

**3976-40. Application of Act.**—The following sections of this act constituting Part Two thereof shall apply only to the selling, offering or advertising for sale, giving away or offering or advertising the intent to give away of any commodity, article, goods, wares or merchandise, in wholesale or retail trade. (Mar. 30, 1937, c. 116, Pt. 2, §1.)

Part 2 of this act (§§3976-40 to 3976-45), held invalid in its entirety because of unconstitutionality of the provisions thereof essential to its enforcement. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Wholesaler as defined in Part 2 of this act also comes within provisions of Part 1 as a distributor. Op. Atty. Gen. (681h), May 21, 1937.

**3976-41. Certain acts to be unfair discrimination.**—Any retailer or wholesaler, engaged in business within this state, which sells, offers for sale or advertises for sale, any commodity, article, goods, wares or merchandise, at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares or merchandise, for the purpose or with the effect of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction shall be subject to the penalty therefor provided herein.

Any retailer or wholesaler who sells goods in any part of the state of Minnesota at prices lower than those exacted by said person elsewhere in the state of Minnesota for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in price made in good faith to meet local competition or any other person in such locality.

The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereto." (Act Mar. 30, 1937, c. 116, Pt. 2, §2; Apr. 22, 1939, c. 403, §1.)

**Editorial note.**—The title of Act Apr. 22, 1939, cited, does not include §3976-46 in the enumeration of sections amended. It also purports to repeal Laws 1937, chapters 116 and 456, but the body of the act does not respond to that declared intent, except inferentially in section 6, set out below as §3976-48. This may invalidate the entire act.

Preamble of Act Apr. 22, 1939, c. 403, cited above, recites:

Whereas, the practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce; and

Whereas, such practice causes commercial dislocations, misleads the consumer, works back to the prejudice of and against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy; and

Whereas, bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and non-payment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

The second paragraph of this section held invalid as arbitrary and discriminating unfairly between merchants owning one store and merchants owning stores in more than one locality. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Proof of intent to injure competitors or destroy competition is essential. Op. Atty. Gen. (681h), May 21, 1937.

Granting undue allowance on trade in merchandise constitutes violation if it results in cutting prices below minimum allowed. Id.

Giving of trading stamps is in effect giving of a discount but their use does not necessarily constitute violation. Id.

Giving away of a glass with each bottle of ginger ale would not be unlawful unless vendor received less than cost of ginger ale when adding thereto cost of glass and cost of doing business. Op. Atty. Gen. (681f-3), May 26, 1937.

Business man operating one cash and carry store and an ordinary credit store in same city may sell same article at different prices if effect of sales is not to injure competition or to create a monopoly. Op. Atty. Gen. (681g-3), Sept. 28, 1937.

Merchants plan to sell a \$5.00 trade card carrying a concealed number entitling owner to additional credits of from 20 cents to \$5.00 to be paid out in cash or trade might constitute a violation of this section, but there must be proof that result is to sell merchandise for less than 10% over cost. Op. Atty. Gen. (510c-4), August 14, 1939.

**3976-42. Definitions.**—The term "retailer" as used herein shall mean any person, partnership, firm, corporation or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of resale in any form.

The term "wholesaler" as used herein shall mean any person, firm or corporation, partnership, association, business trust, or any unincorporated organization, selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions or the selling on the part of one wholesaler to another wholesaler, creameries, canneries and other processors of agricultural products are defined to be manufacturers or producers and not included within the meaning of the term "wholesaler" as defined in this act.

The term "cost" as applied to the wholesaler or retail vendor shall mean:

1. The actual current delivered invoice or replacement cost whichever is lower plus the cost of doing business at said location by said vendor;

2. Where a manufacturer publishes a list price and discounts, in determining such "cost" said manufacturer's published list price and discounts then currently in effect plus the cost of doing business by said vendor shall be prima facie evidence of "cost".

The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense:

Labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising, and other fixed and incidental expenses.

The "cost of doing business," including without limitation the aforesaid items of expense, incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of this act, or in the event that any retailer or wholesaler shall have been engaged in business within the State for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation of this act shall be prima facie evidence of "cost" as herein defined.

Any sale made by the retail vendor at less than 10 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 10 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act

Provided, however, that no prosecution shall be had or any action at law for damages or injunctive relief shall lie where the vendor sells at a price not less than 15 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price or in the absence of such a list price, at not less than 15 per cent above the current delivered invoice or replacement cost.

Any sale made by a wholesale vendor at less than 2 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 2 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act. (Mar. 30, 1937, c. 116, Pt. 2, §3; Apr. 26, 1937, c. 456, §1; Apr. 22, 1939, c. 403, §2.)

**Explanatory note.**—The title and enacting clause of Act Apr. 26, 1937, c. 456, purports to amend "Laws 1937, c. 116, section 3." The latter act is divided into three separate parts, and each part has its own series of numbered sections. The amendatory act does not designate the "part" in which the section sought to be amended appears. This may or may not be important, in view of the fact that the text of the section sought to be amended is set out in the amendatory act.

The third paragraph of this section held invalid as arbitrary and discriminatory in defining "cost" as something which may or may not be what merchant paid for his goods. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

The fourth paragraph of this section, in failing to give effect to merchant's current selling cost, held arbitrary, discriminatory, and not reasonably related to avowed purpose of the legislation. *Id.*

The sixth paragraph of this section held invalid because of the presumption of guilt raised thereby. *Id.*

Act applies to an intrastate transaction of a wholesaler who may also be engaged in interstate commerce subject to Robinson-Patman Act. *Op. Atty. Gen.* (681h), May 21, 1937.

It was not intention by use of language "not for resale in any form" to exclude from "retailers" persons who sell building materials to a contractor, made to sandwich maker, canvas to fabricator of awnings, etc. *Id.*

Cost of doing business may be determined by dividing total of various items by total purchase price cost of articles sold during preceding calendar year. *Id.*

A distributor of merchandise who performs function of both wholesaler and retailer should not be allowed to use wholesale published list price as a base for his retail price, and must recognize wholesale loss which actually exists and mark his goods accordingly in establishing both wholesale and retail basic cost price. *Id.*

Cost of doing business by department store relates to operation of business as a whole, and store cannot figure different cost for different departments, but act does not require that operator of department store sell same article at same price in all departments, if all such sales are above cost. *Id.*

There is no requirement that in figuring labor cost there must be included value to retailer of his own service and the service required rendered by members of his immediate family, who received no designated salary, but it is different if members of immediate family are paid a salary either directly or indirectly. *Id.*

Even where particular trade or industry in a certain locality has an established cost survey which shows that cost of doing business for such trade or industry in the locality is 18%, a person covered by such cost survey may nevertheless sell at 15% over his base price without being subject to penalty. *Id.*

Purchase of hardware by municipality at cost, plus 10%, would not be unlawful unless dealer's cost of doing business exceeded 10%, though a sale at less than 15% above cost is prima facie unlawful. *Op. Atty. Gen.* (681q-1), Aug. 20, 1937.

Usual and ordinary "cash discounts" are not to be taken into consideration in determining the base cost of given commodity and such discounts are not to be included in term "published discounts". *Op. Atty. Gen.* (681), Sept. 2, 1939.

**3976-43. Bankrupt sales not to be considered in fixing costs.**—In establishing the cost of a given article, goods, wares or merchandise to the vendor, the invoice cost of said article, goods, wares or merchandise purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article, goods, wares or merchandise replaced through the ordinary channels of trade, unless said article, goods, wares or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless said article, goods, wares or merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale. (Mar. 30, 1937, c. 116, Pt. 2, §4.)

**3976-44. Cost surveys may be deemed competent evidence. [Repealed.]**

Repealed Apr. 22, 1939, c. 403, §7.  
Consisted of Act Mar. 30, 1937, c. 116, Pt. 2, §5.

Even where particular trade or industry in a certain locality has an established cost survey which shows that cost of doing business for such trade or industry in the locality is 18%, a person covered by such cost survey may nevertheless sell at 15% over his base price without being subject to penalty. *Op. Atty. Gen.* (681h), May 21, 1937.

It is not purpose of act to penalize efficient merchant, and if a merchant can prove that his cost of doing business is less than cost established by cost survey, he is not required to sell at the cost survey figure. *Id.*

Before a cost survey will be accepted by a court as prima facie evidence of cost of a particular dealer, it will be necessary to show that such survey is generally accepted as truly representing cost of doing business for such trade or industry in such locality or vicinity. *Id.*

Proof of intent to injure competitors or destroy competition is essential. *Id.*

**3976-45. Exceptions.**—The provisions of Sections 3976-41, 3976-42, and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927, of this act shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the local prices of a competitor as herein defined selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area. (Mar. 30, 1937, c. 116, Pt. 2, §6; Apr. 22, 1939, c. 403, §3.)

If person complained against has knowledge that price of particular item has been raised by competitor to proper level, he cannot justify his own sale below cost on ground that sales were made in good faith to meet competition. *Op. Atty. Gen.* (681h), May 21, 1937.

If dealer's legal price is \$2, and his competitor's legal price, owing to lower cost, is \$1.70, dealer can sell at \$1.85 and still claim he sold at less than his legal price to meet competition. *Id.*

Words "meet the local prices" will not be construed as permitting sales by a competitor at prices less than those he is endeavoring to meet. *Id.*

PART THREE

**3976-46. Violations—Penalties.**—Any person, firm or corporation, whether as principal, agent, officer, or director for himself, or itself, or for another person, firm or corporation, wilfully violating the provisions of Sections 3976-41, 3976-42, 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927, shall, upon conviction thereof, be fined not less than

\$200.00, nor more than \$1,000 for each offense; or, in default of the payment of such fine, by imprisonment in the county jail for not less than three months nor more than one year.

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of Sections 3976-41, 3976-42 and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927 knowingly assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts. (Act Mar. 30, 1937, c. 116, Pt. 3, §1; Apr. 22, 1939, c. 403, §4.)

**Editorial note.**—Act Apr. 22, 1939, c. 403, cited, does not, in its title, include this section in the enumeration of the sections to be amended.

The second and third paragraphs of this section when read together held invalid as declaring individual presumptively guilty of crime. *Great Atlantic & Pacific Tea Co. v. E.*, (DC-Minn), 23FSupp70.

Department of agriculture, dairy and food has no duty to perform in connection with enforcement of this act. Op. Atty. Gen. (681f-3), May 26, 1937.

**3976-47. Remedies—Injunction at suit of persons injured—Damages—Remedy at law—Privilege of party as witness.**—(a) In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of this act. Any person, partnership, corporation or association damaged or who is threatened with loss or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this act and for the amount of the actual damages to him if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(b) A party to the record of any civil action or proceeding, instituted or brought in pursuance of the provisions of this act, may be required to testify under the provisions of Mason's Minnesota Statutes of 1927, Section 9816; provided, however, that no information so obtained may be used against the party as the basis for a criminal prosecution under the provisions of this act or any other criminal statute. (Mar. 30, 1937, c. 116, Pt. 3, §2; Apr. 22, 1939, c. 403, §5.)

**3976-48. Remedies cumulative.**—Nothing in this act shall be construed as repealing any act other than Laws 1921, Chapter 413, and such parts of Laws 1937, Chapter 116, as amended by Laws 1937, Chapter 456, as are inconsistent herewith, but the remedies herein provided shall be cumulative to all other remedies provided by law. (Act Mar. 30, 1937, c. 116, Pt. 3, §3; Apr. 22, 1939, c. 403, §6.)

**3976-49. Provisions severable.**—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid such decision shall not affect the validity of the other provisions of this act. (Mar. 30, 1937, c. 116, Pt. 3, §4.)

#### MINIMUM RESALE PRICES—FAIR TRADE ACT

**3976-51. Definitions.**—The following terms, as used in this Act, are hereby defined as follows:

(A) 'Commodity' means any subject of commerce.

(B) 'Producer' means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(C) 'Wholesaler' means any person selling a commodity other than a producer or retailer.

(D) 'Retailer' means any person selling a commodity to consumers for use.

(E) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. (Mar. 30, 1937, c. 117, §1.)

Constitutionality of Fair Trade Act in proposed H. F. No. 664, introduced in 1939 legislature, discussed and suggestions made. Op. Atty. Gen. (86a), March 8, 1939.

**3976-52. Certain contracts not to be in violation of law.**—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the State of Minnesota by reason of any of the following provisions which may be contained in such contract:

(A) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(B) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(C) That the seller will not sell such commodity:

(1) to any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) to any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. (Mar. 30, 1937, c. 117, §2.)

Act applies to "on sale" of Intoxicating Liquors. Op. Atty. Gen. (681-x), Nov. 4, 1937.

**3976-53. What are violations.**—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this Act (except to the extent authorized by the said contract):

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by Section 6 of this Act shall be available. (Mar. 30, 1937, c. 117, §3.)

Practice of retailer in giving away coupons when value of coupons results in a sale of articles below retail price stipulated in contract is a violation of this section. Op. Atty. Gen., (681f-3), July 11, 1938.

**3976-54. Who may fix minimum prices.**—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this Act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. (Mar. 30, 1937, c. 117, §4.)

**3976-55. Application of Act.**—No contract containing any of the provisions enumerated in Section 2 of this Act shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(A) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;



(B) When the goods are altered, second-hand, damaged, defaced or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(C) By any officer acting under an order of court. (Mar. 30, 1937, c. 117, §5.)

**3976-56. Unfair competition.**—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this Act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. (Mar. 30, 1937, c. 117, §6.)

**3976-57. Application of Act.**—This Act shall not apply to any contract or agreement between or among producers or distributors or, except as provided in Section 2, Subdivision (C) of this Act between or among wholesalers or between or among retailers as to sale or resale prices. (Mar. 30, 1937, c. 116, §7.)

**3976-58. Provisions severable.**—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Mar. 30, 1937, c. 117, §8.)

**3976-59. Inconsistent Acts repealed.**—All Acts or parts of Acts inconsistent herewith are hereby repealed to the extent of such inconsistency. (Mar. 30, 1937, c. 117, §9.)

**3976-60. To be known as "Fair Trade Act."**—This Act may be known and cited as the "Fair Trade Act". (Mar. 30, 1937, c. 117, §10.)

Sec. 11 of Act Mar. 30, 1937, cited, provides that the Act shall take effect from its passage.

#### INDIAN MANUFACTURES

**3976-61. Imitation Indian made goods to be branded.**—That all goods, wares and merchandise known as moccasins, bead work, birch-bark baskets, deer skin work, grass rugs, sweet grass baskets and other goods which are manufactured or produced in imitation of genuine Minnesota Indian hand made goods, wares or merchandise shall be branded, labeled or marked, as hereinafter provided, before being exposed for sale and shall not be exposed or sold without such brand, label or mark thereon. (Apr. 12, 1937, c. 196, §1.)

**3976-62. Brand.**—The brand, label or mark required by Section 1, hereof, shall be the words "Imitation Indian Made" and shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and shall be the size and style known as great primer roman capitals. Such brand or mark, if the article will permit, shall be placed upon it, but when such branding or marking is impossible a label shall be used and attached thereto. (Apr. 12, 1937, c. 196, §2.)

**3976-63. Goods not to be sold without brand.**—That no person shall sell, offer for sale, or have in possession for the purpose of sale, imitation goods, wares or merchandise described in Section 1, of this act without the brand, label or mark required by this act being placed thereon or attached thereto, or remove, conceal or deface such brand, label or mark. (Apr. 12, 1937, c. 196, §3.)

**3976-64. Violation a misdemeanor.**—Any person who violates the provisions of this Act shall be guilty of a misdemeanor. (Apr. 12, 1937, c. 196, §4.)

Sec. 5 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

#### AUTOMOBILE DEALERS ANTI COERCION ACT

**3976-71. Manufacturers not to control financing of motor vehicles.**—It shall be unlawful for any person who is engaged, either directly or indirectly, in the manufacture or wholesale distribution of motor vehicles to sell or enter into a contract to sell motor vehicles to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this State, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages or leases, and any such condition, agreement or understanding is hereby declared to be void and against the public policy of this State. (Apr. 24, 1937, c. 412, §1.)

Sale of used cars regulated. Laws 1939, c. 284. See §§2684-9 to 2684-13.

**3976-72. Acts to be prima facie evidence.**—Any threat, statement or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this State by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in Section 1 of this Act. (Apr. 24, 1937, c. 412, §2.)

**3976-73. Same.**—Any threat, statement or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this State by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this State, and/or any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this State, and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in such manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this State unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sale of motor



vehicles or any one or any number thereof only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in Section 1 of this Act. (Apr. 24, 1937, c. 412, §3.)

**3976-74. What are unlawful acts.**—It shall be unlawful for any person who is engaged directly or indirectly in the manufacture or wholesale distribution of motor vehicles to pay or give or to contract to pay or give any thing of value or subsidy to any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State or to discriminate in favor of or against any person, other than an automobile dealer or automobile distributor, engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State, if the effect of such payment or contract to pay or give any thing of value or subsidy or discrimination may be to lessen or eliminate competition or to create or tend to create a monopoly in the person or class of persons who receive such thing of value or subsidy or who are benefited by such discrimination. (Apr. 24, 1937, c. 412, §4.)

**3976-75. Same.**—It shall be unlawful for any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this State to accept or receive or contract or agree to accept or receive either directly or indirectly any thing of value or subsidy or the benefit resulting from any discrimination as set forth in Section 4 of this Act from any person engaged directly or indirectly in the manufacture or wholesale distribution of motor vehicles if the effect of the acceptance or receipt of any such thing of value or subsidy or benefit may be to lessen or eliminate competition or to create or tend to create a monopoly in the person or class of persons who receives such thing of value or subsidy or who are thus benefited by such discrimination. (Apr. 24, 1937, c. 412, §5.)

**3976-76. Same.**—It shall be unlawful for any person other than an automobile dealer or automobile distributor who hereinafter so accepts or receives either directly or indirectly any thing of value or subsidy or the benefit resulting from any discrimination as set forth in Section 5 of this Act or hereafter so contracts either directly or indirectly to receive any such thing of value or subsidy or benefit to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail in this State. (Apr. 24, 1937, c. 412, §6.)

**3976-77. Attorney general to institute suit.**—For a violation of any of the provisions of this Act by any corporation or association mentioned herein, it shall be the duty of the Attorney General or the District Attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised

by such corporation or association, and for the dissolution of the same under the general statutes of the State. (Apr. 24, 1937, c. 412, §7.)

**3976-78. Foreign corporations may be prohibited from doing business in the state.**—Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this Act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings by injunction or otherwise. The Secretary of State shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this State. (Apr. 24, 1937, c. 412, §8.)

**3976-79. Violation a misdemeanor.**—Any person who shall violate any of the provisions of this Act, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this Act, any employee, agent or officer of any such person who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement of understanding and any person who shall pay or give or contract to pay or give any thing or service of value prohibited by this Act, and any person who shall receive or accept or contract to receive or accept any thing or service of value prohibited by this Act, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) or be imprisoned in a county jail not exceeding six months, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense. The words "person", "employee", "agent" or "officer" as used in this Section shall not be construed to mean or apply to any person who is engaged or intends to engage in the business of selling motor vehicles at retail in this State, nor the employee, agent or officer of any person who is engaged or intends to engage in the business of selling motor vehicles at retail in this State. (Apr. 24, 1937, c. 412, §9.)

**3976-80. Contracts or agreements in violation of act void.**—Any contract or agreement in violation of the provisions of this Act, shall be absolutely void and shall not be enforceable either in law or equity. (Apr. 24, 1937, c. 412, §10.)

**3976-81. Provisions cumulative.**—The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State. (Apr. 24, 1937, c. 412, §11.)

**3976-82. May recover in civil action.**—In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover two-fold the damages by him sustained and the costs of suit. Whenever it shall appear to the court before which any proceedings under this Act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not. (Apr. 24, 1937, c. 412, §12.)

**3976-83. Definitions.**—(a) The term "person", as used in this Act, means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

(b) The terms "sell", "sold", "buy", and "purchase", as used in this Act, include exchange, barter, gift, and offer of contract to sell or buy. (Apr. 24, 1937, c. 412, §13.)

**3976-84. Automobile dealers' anti-coercion act.**—This Act shall be known and shall be cited as "Automobile Dealers' Anti-coercion Act." (Apr. 24, 1937, c. 412, §14.)

**3976-85. Provisions severable.**—If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Apr. 24, 1937, c. 412, §15.)

Sec. 16 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

## CHAPTER 21B

### Regulation of Sale of Stocks, Bonds and Other Securities, Etc.

**3977-3980. [Repealed, except as to pending proceedings.]**

For purposes of limitation cause of action based on violation of §§3977 to 4000 accrued when the sale was made. *Burzinski v. K.*, 192M335, 256NW233. See Dun. Dig. 1125a, 5605.

Where mortgage note in which participation certificate was issued was secured by a real estate mortgage and was not for more than 70% of the fair value of property mortgaged, act did not apply. *Id.* See Dun. Dig. 1125a. Annotations under §3980.

Where a purchaser of stock from corporation which has not complied with the Blue Sky Law may recover the money paid, he cannot defend a suit brought by the receiver of the corporation to enforce the stockholders' liability, and it is immaterial that a certificate of stock has not been issued to him. 181M327, 232NW523. See Dun. Dig. 2061.

**3982 to 3996. [Repealed, except as to pending proceedings.]**

Annotations under §3985.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

Annotations under §3991.

2 (9).

A co-operative association which is authorized by its articles to sell stock to "any co-operative" is not exempt from provisions of securities' act relating to registration of stock. *Op. Atty. Gen.*, Dec. 8, 1933.

Annotations under §3994.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

**3996-1. Definitions.**—

(4) "Broker" shall mean and include every person who engages, or professes to engage, either for all or part of his time, directly or through an agent, in the business of accepting and executing buy and sell orders for securities of which he is not the issuer, or owner. (As amended Apr. 22, 1933, c. 408, §1.)

(6) "Agent" shall mean and include every person, other than a broker or dealer employed, appointed, or authorized, by an issuer, dealer or broker to sell securities. The term "agent" shall not include the partners of a partnership or officers of a corporation or association licensed as a broker, or dealer, or for whom securities are registered; provided that the term "officers" as used in this paragraph shall not include the directors of a corporation. (As amended Apr. 22, 1933, c. 408, §2.)

(9) "Dealer" shall mean and include every person who engages or professes to engage in selling directly or through an agent in the course of continued and successive sales any securities of which he is not the issuer for another, or who purchases and acquires for himself or another any securities of which he is not the issuer for the purpose of reselling the same to others, and of buying, selling or otherwise dealing or trading in (such) securities for him-

self or for another. (Added by Act Apr. 22, 1933, c. 408, §3.)

Act Apr. 22, 1933, c. 408, §1, amends the title of Laws 1927, c. 66, to read as follows: An Act to Protect Investors (as hereinafter defined) by Regulating Sales and Purchases and Attempted Sales and Purchases within the State of Minnesota, of Stocks, Bonds, Notes, Debentures, Commercial Paper, Evidences of Indebtedness, Investment Contracts, Interests in or under Profit Sharing or Participating Agreements or Schemes, and Interests in Trusts or Pretended Trusts; all hereinafter called Securities; by defining Words, Phrases, and Terms used in this Act; by fixing the Scope of the Regulation in this Act provided and prescribing the Conditions under which Securities may be sold, bartered, or exchanged or offered therefor; by providing for enforcement of this Act through Public Agencies and otherwise; by providing for Receivership of Assets of Persons selling Securities; by providing for the services of the Bureau of Criminal Apprehension in connection with Enforcement of this Act and prescribing its Duties in relation thereto; by providing for Advancement upon the Court Calendar of certain cases arising under this Act; by defining and prohibiting Schemes or Artifices to Defraud in connection with the Sale of Securities within the State of Minnesota; And by prescribing and imposing Penalties for Violation of or Non-compliance with this Act.

The title to Laws 1933, c. 408, is as follows: "An act to amend the title of Chapter 66, Laws of 1927, and Mason's Minnesota Statutes of 1927, section 3996-1, subdivisions (4) and (6), section 3996-2, as amended by Laws 1931, chapter 404, section 3996-3, subdivisions (5) and (7), section 3996-5, section 3996-6, section 3996-7, section 3996-9, section 3996-10, section 3996-11, section 3996-15, section 3996-17, and section 3996-19, relating to the regulation of sales and purchases, and attempted sales and purchases, within the State of Minnesota of stocks, bonds, notes and other securities and agreements."

Some of the parts of the act amended are not included in this enumeration.

*Streissguth v. C.*, 198M17, 268NW638; note under §3996-11.

This act is constitutional, and it is not invalid on the ground that its subject is not expressed in its title. *Northwest Bancorporation v. B.* (USDC-Minn), 6FSupp 704; aff'd 292US606, 54SCR775, 54SCR720. See Dun. Dig. 8920.

The fundamental purpose of the Blue Sky Law is to prevent fraud. *Shepard v. C.* (DC-Minn), 24FSupp682.

Title of this act satisfies requirement of Const., Art. 4, §27, 171M191, 213NW904.

Chapter applies to sales of securities by the owner thereof as well as to sales by his representatives. 171 M191, 213NW904.

The act [§§3996-1 to 3996-28] is within the regulatory power of the legislature. 172M277, 215NW177.

Contract evidencing a sale of an interest in an invention was a "security," and not being registered, the sale was unlawful. 172M277, 215NW177.

Purpose of blue sky law is to prevent fraud in sale and disposition of securities within state. *Zochrisson v. R.*, 200M383, 274NW536. See Dun. Dig. 1125a.

A mere land contract or conveyance is not within law even though a number of parties join in venture by purchase of undivided interests and later form a corporation to hold the land, but if purchase of undivided interests in land is only incident to right to a beneficial interest in profits to be derived from an enterprise carried on upon whole tract, then sale of interest is investment within law. *Busch v. N.*, 202M290, 278NW34. See Dun. Dig. 1125a.

Where corporation amended its articles of incorporation so as to reduce par value of stock from \$100 per