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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 282

January 22, 2007

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to commerce; providing an exception for pharmaceutical products to a
1.3 law prohibiting sales below cost where competition exists; amending Minnesota
1.4 Statutes 2006, section 325D.04.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2006, section 325D.04, is amended to read:

1.7 **325D.04 SELLING BELOW COST FORBIDDEN.**

1.8 (a) Any retailer, wholesaler, subjobber, or vending machines operator engaged in
1.9 business within this state, who sells, offers for sale or advertises for sale, any commodity,
1.10 article, goods, wares, or merchandise at less than the cost thereof to such vendor, or gives,
1.11 offers to give, or advertises the intent to give away any commodity, article, goods, wares,
1.12 or merchandise for the purpose or with the effect of injuring a competitor or destroying
1.13 competition, shall be guilty of unfair discrimination; and, upon conviction, subject to the
1.14 penalty therefor provided in section 325D.071. This paragraph does not apply to two or
1.15 more competitors that price a pharmaceutical product within ten percent of the lowest of
1.16 the prices charged by these competitors, even if one or more of the prices is below cost.

1.17 (b) Any retailer, wholesaler, subjobber, or vending machines operator who sells
1.18 goods in any part of this state at prices lower than those exacted by the person elsewhere
1.19 in the state for like qualities and grades and where the effect of such lower prices may be
1.20 substantially to lessen competition or tend to create a monopoly in any line of business, or
1.21 to injure, destroy, or prevent competition with the person selling at such lower prices, shall
1.22 be guilty of unfair competition and subject to the penalties of section 325D.071; provided,
1.23 that nothing shall prevent differentials in prices in different localities which make only due
1.24 allowances for differences in "cost of doing business" or "overhead expense" and in costs

2.1 of delivery for such goods to different localities; nor differences in prices in an endeavor
2.2 made in good faith to meet the legal prices of a competitor selling the same commodity,
2.3 articles, goods, wares, or merchandise in the same locality or trade area.

2.4 (c) The inhibition against sales below cost or locality discrimination shall embrace
2.5 any scheme of special rebates, collateral contracts, or any device of any nature whereby
2.6 such discrimination is, in substance or fact, effected in violation of the spirit and intent
2.7 of sections 325D.01 to 325D.07.

2.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.