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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

March 1, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Health and Human Services

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.

1.15 (b) Paragraph (a) does not apply to two or more competitors that price a prescription
1.16 drug within ten percent of the lowest of the prices charged by these competitors, even if
1.17 one or more of the prices is below cost, but only with respect to sales made in: (1) a
1.18 statutory or home rule charter city that has a population of at least 50,000 individuals as
1.19 measured by the most recent decennial census conducted by the United States Bureau of
1.20 the Census; or (2) the metropolitan area, as defined in section 473.121, subdivision 2. This
1.21 paragraph expires one year after the day following its final enactment.

1.22 (c) Any retailer, wholesaler, subjobber, or vending machines operator who sells
1.23 goods in any part of this state at prices lower than those exacted by the person elsewhere
1.24 in the state for like qualities and grades and where the effect of such lower prices may be

2.1 substantially to lessen competition or tend to create a monopoly in any line of business, or
2.2 to injure, destroy, or prevent competition with the person selling at such lower prices, shall
2.3 be guilty of unfair competition and subject to the penalties of section 325D.071; provided,
2.4 that nothing shall prevent differentials in prices in different localities which make only due
2.5 allowances for differences in "cost of doing business" or "overhead expense" and in costs
2.6 of delivery for such goods to different localities; nor differences in prices in an endeavor
2.7 made in good faith to meet the legal prices of a competitor selling the same commodity,
2.8 articles, goods, wares, or merchandise in the same locality or trade area.

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

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