

50-503. Same; unlawful acts. It shall be unlawful for any person engaged in business as a wholesaler, processor, or distributor, individually or through or by affiliates, subsidiaries, associates, agents or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

(a) Except as provided further, furnish, give, rent, lease, or lend to a retail dealer any money, equipment, fixtures, ice cream cabinets or bulk milk dispensers, supplies, or other things having a real or substantial value, or any expendable supplies commonly provided in connection with sales of dairy products to the consumer, except that such person may sell dairy products. It shall be lawful to lend or rent ice cream cabinets, milk dispensers or milk coolers for periods of not to exceed 10 days in any one period of six consecutive months. The prohibition against leasing of equipment herein shall not apply to leases of retail outlets entirely owned by such wholesaler, processor, or distributor. This subsection shall not be construed to prohibit the furnishing of normal point-of-purchase advertising matter to retail dealers, but no outside advertising furnished shall advertise items other than dairy products of such wholesaler, processor, or distributor.

(b) Sell to any retail dealer or consumer any fixtures or equipment other than ice cream cabinets or bulk milk dispensers, or sell to any retail dealer or consumer any ice cream cabinets or bulk milk dispensers, except at a price not less than the manufacturer's original net list price after deducting an allowance for depreciation computed on a basis of 15% annually of such manufacturer's list price from the date of manufacture, and adding thereto as a proportionate cost of doing business a markup of 5% of the net price after such deduction for depreciation. If such deductions for depreciation after adding such 5% of the net, exceeds 90% of such manufacturer's list price, then in no event shall such sale price be less than 10% of such manufacturer's list price. Such sales shall be made either for cash or shall be evidenced by a valid conditional sales contract or note and mortgage specifically describing such equipment and reciting the indebtedness secured, and which contract or chattel mortgage shall be duly filed in the office of the appropriate register of deeds. The indebtedness secured thereby shall be payable and paid in monthly installments, each of which shall be not less than 1/30 of such total indebtedness, and the last payment shall mature on a date not later than 30 months from the date of such sale. All deferred payments shall carry interest of not less than 6% per annum. The recorded evidence of such indebtedness shall also recite the true amount of the cash payment, if any, made by the retail dealer or consumer, and the amount allowed for any fixture or equipment accepted by the wholesaler, processor or distributor as part payment. In no event shall such trade-in or exchange credit exceed the minimum amount for which such exchanged or traded-in equipment or fixture could be sold by a wholesaler, processor or distributor to a retail dealer or consumer under the terms of this act. The recorded evidence of such indebtedness shall also contain a provision accelerating, at the option of the seller, the entire unpaid balance, in the event of default in the payment of any monthly installment for a period of 30 days.

(c) Furnish or provide for the mechanical or electrical servicing of any fixtures or equipment used in connection with the sale or consumption of dairy products by a retail dealer or consumer.

(d) Fail, neglect, or refuse to remove, repossess or institute an appropriate replevin action to recover any fixture or equipment sold to any retail dealer or consumer under a conditional sales contract or secured by chattel mortgage as authorized by the provisions of this act, if such retail dealer or consumer has been in default of any payment for more than 90 days.

(e) Pay to or credit a retail dealer or pay for or on behalf of or for the benefit of a retail dealer for any advertising, display or distribution service, except that payment may be made for the actual newspaper space used to advertise the product of the manufacturer, wholesaler or distributor by the retailer on the basis of the actual cost of such space to the retail dealer.

(f) Pay or credit a retail dealer for the use of any floor space, shelf space or equipment within or at such person's place of business.

(g) Make, guarantee or procure another to guarantee any loan or the payment of any financial obligation of a retail dealer.

(h) Extend credit to a retail dealer beyond the normal periods of payment commonly prevailing in the business territory of the sale.

(i) Offer or give any bonus, premium, or compensation to a retail dealer, directly or indirectly, through or to an officer, employee, associate, relative or representative of a retail dealer.

(j) Sell, offer for sale, or contract to sell dairy products to any retail dealer on consignment, or with the privilege of return, or on any basis other than a bona fide sale, but this provision shall not preclude the practice of replacing dairy products which have become over-aged, spoiled or damaged.

(k) Use or employ any device or scheme to subsidize in any manner any retail dealer.

(l) Sell any products, unit or combination thereof, for less than cost to the wholesaler, processor or distributor at the point of delivery; or sell to any retail dealer any expendable supplies for less than cost to any such wholesaler, processor or distributor at the point of delivery plus a markup of 6% of such cost as a proportionate share of the cost of doing business; except a person may sell either such dairy products or expendable supplies at prices made in good faith to meet existing lawful competition. Competent evidence of the prevailing cost to other such wholesalers, processors, or distributors engaged in selling dairy products on the same market shall constitute prima facie evidence of the cost to any person charged with violation of this provision.

(m) Grant, either directly or indirectly, to any retail dealer any secret discount, make any rebate, or permit any deviation from the price at which such person furnishes dairy products of the same quality, brand and quantity to other retail dealers in the same city, unincorporated town, or immediate vicinity thereof, except that deviations from such prices may be given when made in good faith to meet existing lawful competition. Bids, deviating from such prices, made pursuant to invitations issued by federal institutions or installations, may be filed, and contracts entered into, and fulfilled, without being deemed in violation of the provisions of this subsection. The terms "made in good faith" and "lawful" as used in this and the preceding subsection means in conformity with and not in conflict with nor contrary to, any law of this state or of the United States of America.

(n) Permit any retail dealer to do for or on behalf of such wholesaler, processor or distributor any of the acts hereby made unlawful to be done.

History: L. 1957, ch. 309, § 3; L. 1991, ch. 157, § 1; July 1.