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**Product Distribution Laws in Minnesota**  
**by**  
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The laws regulating product distribution relationships are found at both the state and federal level in the United States. The following summary relates only to the laws of the State of Minnesota.

**Franchise Laws.**

In Minnesota, as in most other states, the most restrictive and burdensome product distribution laws are those governing the franchisor/franchisee relationship.<sup>1</sup> While garden-variety manufacturer/distributor relationships are not typically intended to be covered by the franchise laws, these relationships can unintentionally cross the line into the franchise registration and disclosure regime.

Under Minnesota law, in order to find the existence of a franchise, the following conditions must be present:

1. The arrangement must include a license of the manufacturer's trademark;
2. The arrangement must include the existence of a marketing plan and/or "system" creating a "community of interest" between the manufacturer and the distributor (usually manifested by promises of training, use of manuals and other types of marketing and operational assistance); and
3. The arrangement must include a requirement for the payment of a franchise fee.

Typically, distributor arrangements escape franchise status by not requiring the payment of a franchise fee. However, caution is warranted given that case law has found a franchise fee to exist in many indirect forms, including training fees, security deposits, required purchases of

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<sup>1</sup> Franchise laws are codified in Chapter 80C of the Minnesota Statutes.

goods or services and required leases of real property or goods, etc.<sup>2</sup> One touchstone of the franchisor/franchisee relationship is the level of control the franchisor has over the operation of the franchisee's business. In a typical manufacturer/distributor relationship, the manufacturer exerts little or no control over the distributor's business operations, whereas in a franchisor/franchisee relationship the franchisor will tend to exercise more control over the franchisee in order to promote uniformity within its franchise system and to protect its trademarks.

If a franchise is found to exist, there are registration and disclosure requirements that must be met under both state and federal law. These requirements vary significantly from state to state. In addition, the franchise law provides restrictions on the termination of and/or refusal to renew a franchise. The early engagement of local counsel is crucial in order to avoid the many traps inherent in these laws.

### **Distributors.**

The distributor and/or dealer relationship is a general reference to the relationship between the manufacturer of goods and a buyer that sells the manufacturer's goods to other retailers or, in some cases, to the end user. The distributor relationship often includes very limited rights to use the manufacturer's trademarks and may include limited assistance in the area of advertising and marketing. Distributors may also have exclusive rights to certain territories. So long as there is no "franchise fee," the arrangement will not typically be found to constitute a franchise. Again, however, care must be exercised to avoid the finding of an indirect franchise fee in these arrangements.

There is no law of general application relating to so-called distributor relationships in Minnesota. There are, however, special industry laws that may contain restrictions on the termination of or the failure to renew the relationship, certain inventory repurchase obligations on the part of the manufacturer upon termination as well as other restrictions and/or requirements. There are a number of special laws in Minnesota governing distribution and/or dealer relationships in specified industries, including agricultural implement dealerships under Minn. Stat. §325E.05, motor vehicle dealerships under Minn. Stat. §80E.01 through §80E.18, beer distributors under Minn. Stat. §325B.01 through §325B.17, heavy equipment dealerships under Minn. Stat. §325E.068 to §325E.0684 and motor fuel franchises under Minn. Stat. §80C.145. Again, early consultation with local counsel is essential in order to properly structure the arrangement.

### **Sales Representatives.**

The termination of certain sales representatives is regulated in Minnesota under the Termination of Sales Representative Act of 1990, as codified at Minn. Stat. §325E.37. A "sales

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<sup>2</sup> See *Coyne's & Co. v. Enesco, LLC*, --- F.3d ---, 2009 WL 179088 (8th Cir. Jan. 23, 2009) (deferring to the district court's determination of whether minimum purchase requirements and product price mark-ups constitute indirect franchise fees).

representative” for the purposes of the statute is defined as “a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission.” Minn. Stat. §325E.37. The definition does not include a person who “1) is an employee of the principal, 2) places orders or purchases for the person’s own account for resale, 3) holds the goods on a consignment basis for the principal’s account for resale, or 4) distributes, sells or offers the goods, other than samples, to end users, not for resale.” Minn. Stat. §325E.37, Subd. 1(d). Sales representative agreements do not need to be in writing to be subject to the statute.

In general, Minnesota law restricts the termination of a sales representative except for “good cause” shown (generally defined as a material breach of the terms of the agreement between the manufacturer and the sales representative) and requires 90 days advance written notice stating the reasons for termination and a failure by the representative to correct the reasons stated in the notice of termination within 60 days of the representative’s receipt of the termination notice. In addition, a manufacturer cannot refuse to renew a sale representative agreement absent “good cause” without providing 90 days advance written notice prior to the expiration of the agreement.

The statute also provides for immediate termination for “good cause” as specifically delineated in the statute to include (1) the bankruptcy or insolvency of the sales representative, (2) the assignment for the benefit of creditors or other disposition of the assets of the sales representative’s business, (3) the voluntary abandonment of the business by the sales representative as determined by a totality of the circumstances, (4) the conviction or a plea of guilty or no contest to a charge of violating any law relating to the sales representative’s business, (5) any act of a sales representative which materially impairs the good will associated with the manufacturer’s, wholesaler’s, assembler’s or importer’s trademark, trade name, service mark, logo type or other commercial symbol, or (6) the failure to forward customer payments to the manufacturer, wholesaler, assembler or importer.

The statute also provides for the award of costs and attorney’s fees and requires the manufacturer to utilize arbitration for any disputes arising under the agreement between the parties. Thus, care must be exercised in structuring and, in particular, terminating, the relationship.

## APPENDIX

The Minnesota Office of the Revisor of Statutes provides online access resources and access to the Minnesota Statutes. Of particular interest, it categorizes the statutes by general and sub-topics. The following is a list of all subtopics and corresponding statutes under the general topics “Dealers and Merchants”; “Distributors”; “Franchises”; and “Salespersons”:

### ***DEALERS AND MERCHANTS***

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