

## CHAPTER 325D

### RESTRAINT OF TRADE

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#### **325D.30 MINNESOTA UNFAIR CIGARETTE SALES ACT; FINDINGS AND POLICY.**

The legislature finds that unfair, dishonest, and fraudulent business practices exist in transactions involving the sale of, or offer to sell, cigarettes in the wholesale and retail trades in this state and are demoralizing and disorganizing the said trades.

Offering for sale, or sale of cigarettes below cost in the wholesale and retail trade is declared by the legislature to have the intent or effect of injuring a competitor, destroying or lessening competition, and is deemed an unfair and deceptive business practice and an unfair method of competition.

Such practices affect collection of taxes and license fees imposed on persons engaged in the sale of cigarettes.

It is hereby declared to be the policy of the state of Minnesota and the purposes of sections 325D.30 to 325D.42 to protect the public by prohibiting such sales.

**History:** 1987 c 268 art 13 s 40

#### **325D.32 DEFINITIONS.**

*[For text of subs 1 to 3, see M.S.1986]*

Subd. 4. "Wholesaler" means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed to sell cigarettes by the state or any municipality, and where at all times a stock of cigarettes is available to retailers for resale, or any cigarette manufacturer or manufacturer's representative who sells to retailers or to other persons for resale, and any person defined as a "distributor" under section 297.01, subdivision 7. The term "wholesaler" shall also include a "subjobber" as defined by section 297.01, subdivision 14. This subdivision does not prohibit any person from engaging in business as a retailer as defined in subdivision 5.

*[For text of subs 5 to 9, see M.S.1986]*

Subd. 10. (a) "Cost to wholesaler" means the basic cost of the cigarettes, prior to deducting manufacturer's timely payment and stamping discounts and any other discounts or rebates, plus the cost of doing business by the wholesaler, as defined in sections 325D.30 to 325D.42.

(b) The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of the cigarettes, plus cartage to the retail outlet, if furnished or paid for by the wholesaler, in the absence of proof of a lesser or higher cost. Such cartage cost is presumed to be one-half of one percent of the basic cost of the cigarettes in the absence of proof of a lesser or higher cost.

Subd. 11. (a) "Cost of the retailer" means the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in sections 325D.30 to 325D.42.

(b) The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or a higher cost.

(c) If a retailer qualifies for the purchase of cigarettes at a manufacturer's price to wholesaler and ultimately sells the cigarettes at retail, the cost of doing business by the retailer with respect to the cigarettes shall be, in the absence of showing of a lesser or higher cost of doing business, the sum of the cost of doing business by the wholesaler, as defined in subdivision 10, paragraph (b), and the cost of doing business by the retailer, as defined in paragraph (b) of this subdivision.

Subd. 12. [Repealed, 1987 c 268 art 13 s 54]

*History: 1987 c 268 art 13 s 41-43*

### **325D.33 SALES AT LESS THAN COST; PENALTY.**

Subdivision 1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in sections 325D.30 to 325D.42 for the purpose or with the effect of injuring a competitor or destroying competition, or for a retailer to induce or to attempt to induce a wholesaler to violate the provisions of the Minnesota unfair cigarette sales act. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a misdemeanor.

Subd. 2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost as defined by sections 325D.30 to 325D.42 shall be prima facie evidence of a violation of sections 325D.30 to 325D.42 in civil cases.

Subd. 3. **Rebates or concessions.** It is unlawful for a wholesaler to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind in connection with the sale of cigarettes. For purposes of this chapter, the term "discount" is included in the definition of a rebate.

Subd. 4. **Wholesaler to preserve copies of invoices.** Every person who sells cigarettes to persons other than the ultimate consumer shall prepare for each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts and shall keep legible copies of them for one year from the date of sale.

Subd. 5. **Commissioner's refusal to license.** The commissioner may refuse to grant a cigarette distributor or subjobber license to any person who violates the provisions of sections 325D.30 to 325D.42, or any other law applicable to the sale of cigarettes, or any rule adopted by the commissioner for the enforcement or regulation of the sale of cigarettes.

Subd. 6. **Violations.** If the commissioner determines that a distributor is violating any provision of this chapter, the commissioner must give the distributor a written warning explaining the violation and an explanation of what must be done to comply with this chapter. Within ten days of issuance of the warning, the distributor must notify the commissioner that the distributor has complied with the commissioner's recommendation or request that the commissioner set the issue for a hearing pursuant to chapter 14. If a hearing is requested, the hearing shall be scheduled within 20 days of the request and the recommendation of the administrative law judge shall be issued within five working days of the close of the hearing. The commissioner's final determination shall be issued within five working days of the receipt of the administrative law judge's recommendation. If the commissioner's final determination is adverse to the distributor and the distributor does not comply within ten days of receipt of the commissioner's final determination, the commissioner may order the distributor to immediately cease the stamping of cigarettes. As soon as practicable after the order, the commissioner must remove the meter and any unapplied cigarette stamps from the premises of the distributor.

If within ten days of issuance of the written warning the distributor has not complied with the commissioner's recommendation or requested a hearing, the commissioner may order the distributor to immediately cease the stamping of cigarettes and remove the meter and unapplied stamps from the distributor's premises.

If, within any 12-month period, the commissioner has issued three written warn-

ings to any distributor, even if the distributor has complied within ten days, the commissioner shall notify the distributor of the commissioner's intent to revoke the distributor's license for a continuing course of conduct contrary to this chapter. For purposes of this paragraph, a written warning that was ultimately resolved by removal of the warning by the commissioner is not deemed to be a warning. The commissioner must notify the distributor of the date and time of a hearing pursuant to chapter 14 at least 20 days before the hearing is held. The hearing must provide an opportunity for the distributor to show cause why the license should not be revoked. If the commissioner revokes a distributor's license, the commissioner shall not issue a new license to that distributor for 180 days.

**Subd. 7. Penalties.** Any retailer purchasing cigarettes for less than the legal price may be assessed a penalty in the full amount of the difference between the actual purchase price and the legal price under this chapter. This penalty may be collected under the authorities given the commissioner in chapters 270 and 297, and the penalty shall bear interest at the rate prescribed by section 270.75, subdivision 5. All cigarettes purchased for less than the legal price may be confiscated and disposed of at the discretion of the commissioner pursuant to any laws of the state.

**History:** 1987 c 268 art 13 s 44-50

### **325D.35 SALES BY A WHOLESALER TO A WHOLESALER.**

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in the selling price to the latter, the cost of doing business to the wholesaler, as defined by section 325D.32, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section. For the purposes of this section, any sale of cigarettes to a wholesaler that will be placed in the inventory to be sold at retail, must include in the selling price the cost of doing business as defined by section 325D.32.

**History:** 1987 c 268 art 13 s 51

### **325D.38 ADMISSIBLE EVIDENCE.**

**Subdivision 1. Cost to wholesalers and retailers.** In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of sections 325D.30 to 325D.42 purchased or sold the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase or sale.

*[For text of subd 2, see M.S.1986]*

**History:** 1987 c 268 art 13 s 52

### **325D.40 REMEDIES; SALES OF GOVERNMENT AGENCIES.**

**Subdivision 1.** Any person who would suffer injury from any threatened violation of sections 325D.30 to 325D.42 may maintain an action to enjoin such actual or threatened violation and proof of actual damages need not be alleged or proved in cases of threatened violation. If a violation or threatened violation of the Minnesota unfair cigarette sales act shall be established, the court shall enjoin such violator or threatened violator, and, in addition thereto, the court shall assess in favor of the plaintiff and against defendant the injuries of the suit including reasonable attorneys fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and cost of suit including reasonable attorneys fees, shall be entitled to recover from defendant the actual damages sustained.

*[For text of subd 2, see M.S.1986]*

**History:** 1987 c 268 art 13 s 53

**325D.41** [Repealed, 1987 c 268 art 13 s 54]

**325D.69 VIOLATIONS; PENALTIES.**

Subdivision 1. [Repealed, 1987 c 384 art 2 s 113]

*[For text of subd 2, see M.S.1986]*