

## CHAPTER 325D

### RESTRAINT OF TRADE

325D.33 Sales at less than cost; penalty.  
 325D.37 Transactions permitted to meet lawful competition.

325D.371 Publication of cigarette prices.

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

*[For text of subds 1 to 6, see M.S.1992]*

Subd. 7. [Repealed, 1993 c 375 art 17 s 27]

Subd. 8. **Penalties.** (a) A retailer who sells cigarettes for less than a legal retail price may be assessed a penalty in the full amount of three times the difference between the actual selling price and a legal price under sections 325D.30 to 325D.42. 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.

(b) A wholesaler who sells cigarettes for less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual selling price and the legal price under sections 325D.30 to 325D.42. 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.

(c) A retailer who engages in a plan, scheme, or device with a wholesaler to purchase cigarettes at a price which the retailer knows to be less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual purchase price and the legal price under sections 325D.30 to 325D.42. A retailer that coerces or requires a wholesaler to sell cigarettes at a price which the retailer knows to be less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual purchase price and the legal price. These penalties may be collected under the authorities given the commissioner in chapters 270 and 297, and the penalties shall bear interest at the rate prescribed by section 270.75, subdivision 5.

For purposes of this subdivision, a retailer is presumed to know that a purchase price is less than a legal price if any of the following have been done:

- (1) the commissioner has published the legal price in the Minnesota State Register;
- (2) the commissioner has provided written notice to the retailer of the legal price;
- (3) the commissioner has provided written notice to the retailer that the retailer is purchasing cigarettes for less than a legal price;
- (4) the commissioner has issued a written order to the retailer to cease and desist from purchases of cigarettes for less than a legal price; or
- (5) there is evidence that the retailer has knowledge of, or has participated in, efforts to disguise or misrepresent the actual purchase price as equal to or more than a legal price, when it is actually less than a legal price.

In any proceeding arising under this subdivision, the commissioner shall have the burden of providing by a reasonable preponderance of the evidence that the facts necessary to establish the presumption set forth in this section exist, or that the retailer had knowledge that a purchase price was less than the legal price.

(d) The commissioner may not assess penalties against any wholesaler, retailer, or combination of wholesaler and retailer, which are greater than three times the difference between the actual price and the legal price under sections 325D.30 to 325D.42.

**History:** 1993 c 375 art 17 s 13

**325D.37 TRANSACTIONS PERMITTED TO MEET LAWFUL COMPETITION.**

*[For text of subds 1 and 2, see M.S.1992]*

Subd. 3. Before selling cigarettes at a price set in good faith to meet competition, a wholesaler shall notify the commissioner in writing that it intends to meet a competitor's legal price. A wholesaler filing the notice shall be allowed to meet the competitor's price unless within seven days of receipt of the notice, the commissioner informs the wholesaler that the competitor's price is an illegal price.

**History:** 1993 c 375 art 17 s 14

**325D.371 PUBLICATION OF CIGARETTE PRICES.**

The commissioner shall publish in the State Register the presumed legal prices of all cigarettes as calculated pursuant to section 325D.32, subdivision 10. The prices must be published within one month of each recomputation, but not less than once each year.

**History:** 1993 c 375 art 17 s 15