

## CHAPTER 325D

### RESTRAINT OF TRADE

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#### 325D.04 SELLING BELOW COST FORBIDDEN.

Any retailer, wholesaler, subjobber or vending machines operator engaged in business within this state, who sells, offers for sale or advertises for sale, any commodity, article, goods, wares, or merchandise at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares, or merchandise for the purpose or with the effect of injuring a competitor or destroying competition, shall be guilty of unfair discrimination; and, upon conviction, subject to the penalty therefor provided in section 325D.071.

Any retailer, wholesaler, subjobber or vending machines operator who sells goods in any part of this state at prices lower than those exacted by the person elsewhere in the state for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy, or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of section 325D.071; provided, that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in prices in an endeavor made in good faith to meet the legal prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area.

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

**History:** (3976-41) 1937 c 116 pt 2 s 2; 1939 c 403 s 1; 1941 c 326 s 1; 1957 c 822 s 2; 1987 c 384 art 2 s 1

#### 325D.071 VIOLATIONS; PENALTIES.

Any person, firm, or corporation, whether as principal, agent, officer, or director, for itself, or for another person, firm, or corporation, willfully violating the provisions of sections 325D.03, 325D.04, and 325D.05 shall be guilty of a misdemeanor.

Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person violating the provisions of sections 325D.03, 325D.04, and 325D.05, knowingly assists or aids directly or indirectly in such violation shall be equally responsible therefor.

**History:** (3976-17, 3976-46, 3976-79) 1929 c 300 s 4; 1937 c 116 pt 3 s 1; 1937 c 196 s 4; 1937 c 412 s 9; 1939 c 403 s 4; 1941 c 326 s 4; 1961 c 561 s 10; 1973 c 151 s 3; 1984 c 628 art 3 s 11; 1986 c 444; 1996 c 305 art 1 s 71

#### 325D.072 INJUNCTIVE RELIEF.

In addition to the penalties provided in section 325D.071, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of sections 325D.02 to 325D.07. Any person, partnership, corporation, or association damaged, or who is threatened with loss or injury, by reason of a violation of these sections shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation thereof and for the amount of the actual damages, if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents in any case or proceedings instituted or brought under the provisions of sections 325D.02 to 325D.072, or in obedience to a subpoena, in any such case or proceedings, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to criminate or subject the person to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify, or produce evidence, documentary or otherwise, in any such case or proceedings, or in obedience to a subpoena, in any such case or proceedings.

**History:** (3976-47) 1937 c 116 pt 3 s 2; 1939 c 403 s 5; 1941 c 326 s 5; 1986 c 444; 1996 c 305 art 1 s 72

### 325D.32 DEFINITIONS.

*[For text of subs 1 to 3, see M.S.1996]*

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 297F.01, subdivision 6. The term "wholesaler" shall also include a "subjobber" as defined by section 297F.01, subdivision 19. 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 11, see M.S.1996]*

**History:** 1997 c 106 art 2 s 5

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

*[For text of subs 1 and 2, see M.S.1996]*

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. For purposes of this subdivision, the term "wholesaler" does not include a manufacturer or manufacturer's representative.

*[For text of subs 4 to 8, see M.S.1996]*

**History:** 1997 c 231 art 16 s 12

### 325D.415 CIGARETTE DISTRIBUTOR FEES.

A cigarette distributor as defined in section 297F.01, subdivision 6, shall pay to the commissioner an annual fee as follows:

(1) a fee of \$2,500 is due from those distributors whose annual cigarette tax collections exceed \$2,000,000; and

(2) a fee of \$1,200 is due from those distributors whose annual cigarette tax collections are \$2,000,000 or less.

The annual fee must be paid by December 31 of each year. If the fee is not paid when due, the commissioner shall revoke or refuse to issue or renew the license under chapter 297. The annual fee must be deposited into the general fund.

**History:** 1997 c 106 art 2 s 6

**325D.69** Subdivision 1. MS 1986 [Repealed, 1987 c 384 art 2 s 113]

Subd. 2. MS 1996 [Renumbered 325D.071]

**325D.70** MS 1996 [Renumbered 325D.072]