

CHAPTER 325D

RESTRAINT OF TRADE

325D.32 Definitions.

325D.33 Sales at less than cost; penalty.

325D.32 DEFINITIONS.*[For text of subs 1 to 8, see M.S.2004]*

Subd. 9. **Basic cost of cigarettes.** "Basic cost of cigarettes" means the gross invoice cost of cigarettes to the wholesaler or retailer plus the full face value of any stamps which may be required by any cigarette tax or fee act of this state, unless included by the manufacturer in the list price.

*[For text of subs 10 and 11, see M.S.2004]***History:** *1Sp2005 c 4 art 4 s 4***325D.33 SALES AT LESS THAN COST; PENALTY.***[For text of subs 1 to 4, see M.S.2004]*

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.

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 by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalty shall bear interest at the rate prescribed by section 270C.40, 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 by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalty shall bear interest at the rate prescribed by section 270C.40, 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 by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalties shall bear interest at the rate prescribed by section 270C.40, 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: 2005 c 151 art 2 s 17; art 9 s 21.