

Trade Regulations

CHAPTER 325

REGULATION OF MANUFACTURES AND SALES

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DEFINITIONS

325.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2 to 7, for the purposes of sections 325.02 to 325.07, shall be given the meanings subjoined to them; the words, terms, and phrases defined in subdivisions 8 to 12, for the purposes of sections 325.08 to 325.13, shall be given the meanings subjoined to them; the words, terms, and phrases defined in subdivisions 13 and 14, for the purposes of sections 325.15 to 325.24, shall be given the meanings subjoined to them; the words, terms, and phrases defined in subdivisions 15 to 19, for the purposes of sections 325.25 to 325.33, shall be given the meanings subjoined to them; and the words, terms, and phrases defined in subdivisions 20 to 22, for the purposes of sections 325.34 to 325.37, shall be given the meanings subjoined to them.

Subd. 2. **Retailer.** The term "retailer" means any person, partnership, firm, corporation, or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of re-sale in any form.

Subd. 3. **Wholesaler.** The term "wholesaler" means any person, firm, or corporation, partnership, association, business trust, or any unincorporated organization, selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions, or the selling on the part of one wholesaler to another wholesaler.

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Subd. 4. Manufacturers or producers. Creameries, canneries, and other processors of agricultural products are defined to be manufacturers or producers and are not included within the meaning of the term "wholesaler."

Subd. 5. Cost. The term "cost," as applied to the wholesale or retail vendor, means:

(1) The actual current delivered invoice or replacement cost, whichever is lower, without deducting customary cash discounts, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business at that location by the vendor;

(2) Where a manufacturer publishes a list price and discounts, in determining such "cost" the manufacturer's published list price then currently in effect, less the published trade discount but without deducting the customary cash discount, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business by the vendor shall be prima facie evidence of "cost."

Subd. 6. Customary cash discounts. The term "customary cash discounts" means any allowance, not exceeding two per cent, whether a part of a larger discount or not, made to the wholesale or retail vendor, where the wholesale or retail vendor pays for merchandise within a limited or specified time.

Subd. 7. Cost of doing business or overhead expense. The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include, without limitation, the following items of expense: Labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising, and other fixed and incidental expenses.

The "cost of doing business" including, without limitation, these items of expenses incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of sections 325.02 to 325.07; or, in the event any retailer or wholesaler shall have been engaged in business within the state for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation thereof shall be prima facie evidence of "cost."

Subd. 8. Commodity. "Commodity" means any subject of commerce.

Subd. 9. Producer. "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor, or publisher.

Subd. 10. Wholesaler. "Wholesaler" means any person selling a commodity other than a producer or retailer.

Subd. 11. Retailer. "Retailer" means any person selling a commodity to consumers for use.

Subd. 12. Person. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or an unincorporated organization.

Subd. 13. Person. "Person" means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.

Subd. 14. Sell, sold, buy, and purchase. "Sell," "sold," "buy," and "purchase" include exchange, barter, gift, and offer of contract to sell or buy.

Subd. 15. Bedding. "Bedding" means any mattress, upholstered spring, comforter, pad, cushion, or pillow designed and made for use in sleeping or reclining purposes.

Subd. 16. Person. "Person" includes individuals, corporations, partnerships, joint stock companies, or other business associations who are manufacturers or dealers in bedding.

Subd. 17. New. "New" means any material or article that has not previously been used in the manufacture of bedding articles, or for any other purpose.

Subd. 18. Second-hand. The term "second-hand" means any material or article that has been previously used in the manufacture of bedding or for any other purpose.

Subd. 19. Shoddy. "Shoddy" means any material that has been spun into yarn, knit or woven into fabric and subsequently cut up, broken up, or ground up.

Subd. 20. Cotton duck or canvas. "Cotton duck" or "canvas" includes all cotton duck or canvas, whether single filling, double filling, army roll, or wide duck.

Subd. 21. **Yard.** The equivalent of 36 inches in length by 29 inches in width, or seven and one-fourth square feet, of cotton duck or canvas shall constitute a yard.

Subd. 22. **Ounce.** An "ounce" shall be one-sixteenth of a pound avoirdupois.

Subd. 23. **Trade discount.** The term "trade discount" means all discounts made to the wholesale or retail vendee other than the customary cash discount.

Subd. 24. **Sub-jobber.** The term "sub-jobber" means any person, partnership, firm, corporation or association other than a wholesaler or retailer, who or which buys any commodity, article, goods, wares, or merchandise from a wholesaler and sells such merchandise directly to retailers, thereby performing the selling and delivering functions of a wholesaler.

Subd. 25. **Vending machines operator.** The term "vending machines operator" means any person, partnership, firm, corporation or association who or which owns, services and supplies ten or more merchandise vending machines placed in various locations for dispensing such merchandise to consumers.

[1913 c 167 s 1, 2; 1929 c 358 s 1; 1937 c 116 s 2, 3; 1937 c 117 s 1; 1937 c 412 s 13; 1937 c 456 s 1; 1939 c 403 s 2; 1941 c 326 s 2; 1955 c 339 s 1-4] (3966, 3967, 3976-1, 3976-4,2, 3976-51, 3976-83)

THE ACT AGAINST UNFAIR DISCRIMINATION AND COMPETITION

325.02 APPLICATION. Section 325.03 shall apply only to the manufacture, production, or distribution of any commodity, article, goods, wares, or merchandise in general use or consumption. Sections 325.04 to 325.06 shall apply only to the selling, offering, or advertising for sale, giving away or offering or advertising the intent to give away of any commodity, article, goods, wares, or merchandise, in wholesale or retail trade.

[1937 c. 116 pt. 1 s. 1; 1937 c. 116 pt. 2 s. 1] (3976-37, 3976-40)

325.03 DISCRIMINATION UNLAWFUL. Any person, partnership, firm, or corporation, foreign or domestic, doing business in the state and engaged in the production, manufacture, or distribution of any printed or mimeograph matter, commodity, article, goods, wares, or merchandise in general use or consumption, who for the purpose or with the effect of injuring a competitor or destroying competition, shall discriminate between different sections, communities, or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price, or rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity, article, goods, wares, or merchandise in another section, community, or city, or any portion thereof, after making allowance for difference, if any, in the grade, quality, or quantity after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be guilty of unfair discrimination; provided, that sections 325.01 to 325.07 shall not prevent any person, firm, or corporation from, in good faith, meeting local competition within any one section, community or city. The inhibition hereof against 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 325.01 to 325.07.

[1937 c 116 pt 1 s 2; 1957 c 822 s 1; 1973 c 123 art 5 s 7] (3976-38)

325.04 SELLING BELOW COST FORBIDDEN. Any retailer, wholesaler, sub-jobber 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 325.48, subdivision 2.

Any retailer, wholesaler, sub-jobber 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 325.48, subdivision 2; provided, that nothing shall prevent differentials in prices in different localities which make only due allowances for

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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 325.01 to 325.07.

[1937 c 116 pt 2 s 2; 1939 c 403 s 1; 1941 c 326 s 1; 1957 c 822 s 2]. (3976-41)

NOTE: See section 325.48.

325.05 BANKRUPT SALES NOT TO BE CONSIDERED IN FIXING COSTS.

In establishing the cost of a given article, goods, wares, or merchandise to the vendor, the invoice cost of the article, goods, wares, or merchandise purchased at a forced, bankrupt, close-out, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of the sale of the article, goods, wares, or merchandise replaced through the ordinary channels of trade, unless the article, goods, wares, or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless the article, goods, wares, or merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, or close-out sale, or by means other than through the ordinary channels of trade, and the advertising shall state the conditions under which the goods were so purchased and the quantity of such merchandise to be sold or offered for sale.

[1937 c. 116 pt. 2 s. 4] (3976-43)

325.06 INAPPLICABLE SALES. The provisions of section 325.01, subdivisions 2 to 6, and sections 325.04 and 325.05 shall not apply to any sale made:

(1) In closing out in good faith the owner's stock, or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(3) By an officer acting under the orders of any court;

(4) 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 price of a retail competitor which is less than eight percent above the manufacturer's published list price less his published trade discounts where the manufacturer publishes a list price, or in the absence of such a list price less than eight percent above the actual current delivered invoice or replacement cost without deducting customary cash discounts plus the amount of any excise or sales tax shall be prima facie evidence that it is not a legal price, within the meaning of this section.

The price of a wholesale or sub-jobbing competitor to a retailer, which is less than two percent above the manufacturer's published list price less his published trade discounts where the manufacturer publishes a list price, or in the absence of such a list price less than two percent above the actual current delivered invoice or replacement cost without deducting customary cash discounts plus the amount of any excise or sales tax shall be prima facie evidence that it is not a legal price, within the meaning of this section.

Any retailer, wholesaler, sub-jobber or vending machines operator may request the attorney general to ascertain and disclose to him, the current manufacturer's published list price less published trade discounts on any commodity, article, goods, wares, or merchandise, and it shall then be the duty of the attorney general, within 48 hours of such request, to ascertain and disclose to the person making such request, the current manufacturer's published list price less published trade discounts.

Failure to make such request by any person before reducing his price on any commodity, article, goods, wares, or merchandise below his cost shall be prima facie evidence of not acting in good faith within the meaning of this paragraph.

[1937 c 116 pt 2 s 6; 1939 c 403 s 3; 1941 c 326 s 3; 1957 c 822 s 3; 1967 c 302 s 2] (3976-

325.07 REMEDIES CUMULATIVE. The remedies herein provided shall be cumulative to all other remedies provided by law.

[1937 c. 116 pt. 3 s. 3; 1939 c. 403 s. 6] (3976-48)

NOTE: See sections 325.48, 325.49, and 325.907.

325.075 SALES PRIMA FACIE EVIDENCE OF VIOLATION; DENIAL OF LEGAL OR EQUITABLE RELIEF. Any sale made by the retail vendor at less than eight percent above the manufacturer's published list price, less his published trade discounts, where the manufacturer publishes a list price; or, in the absence of such list price, at less than eight percent above the actual current delivered invoice or replacement cost, without deducting customary cash discounts, plus, in either case, the amount of any excise or sales tax imposed on such merchandise subsequent to the purchase thereof and prior to the resale thereof, for the purpose or with the effect of injuring a competitor or destroying competition, shall be prima facie evidence of the violation of sections 325.02 to 325.07.

No prosecution shall be had nor any action at law for damages or injunctive relief shall lie where the vendor sells at a price not less than 15 percent above the manufacturer's published list price, less his published trade discounts, where the manufacturer publishes a list price; or, in the absence of such a list price, at not less than 15 percent above the current delivered invoice or replacement cost, without deducting customary cash discounts, plus, in either case, the amount of any excise or sales tax imposed on such merchandise subsequent to the purchase thereof and prior to the resale thereof.

Any sale made by a wholesale vendor, or a sub-jobber to a retailer at less than two percent above the manufacturer's published list price, less his published trade discounts, where the manufacturer publishes a list price; or, in the absence of such a list price, at less than two percent above the actual current delivered invoice or replacement cost, without deducting customary cash discounts, plus, in either case, the amount of any excise or sales tax imposed on such merchandise subsequent to the purchase thereof and prior to the resale thereof, for the purpose or with the effect of injuring a competitor or destroying competition, shall be prima facie evidence of the violation of sections 325.02 to 325.07.

Any sale made by a wholesaler to another wholesaler, sub-jobber or vending machines operator at less than the manufacturer's published list price less his published trade discounts, where the manufacturer publishes a list price; or, in the absence of such a list price, at less than the actual current delivered invoice or replacement cost, without deducting customary cash discounts, plus, in either case, the amount of any excise or sales tax imposed on such merchandise subsequent to the purchase thereof and prior to the resale thereof, for the purpose or with the effect of injuring a competitor or destroying competition, shall be prima facie evidence of the violation of sections 325.02 to 325.07.

[1937 c 116 pt 2 s 3; 1937 c 456 s 1; 1937 c 403 s 2; 1941 c 126 s 2; 1955 c 339 s 5; 1957 c 822 s 4] (3976-42)

THE FAIR TRADE ACT

325.08 CERTAIN CONTRACTS NOT TO BE IN VIOLATION OF LAW. No contract relating to the sale or re-sale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity, and which commodity is in free and open competition with commodities of the same general class produced or distributed by others, shall be deemed in violation of any law of the state by reason of any of the following provisions which may be contained in such contract:

(1) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller;

(2) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller;

(3) That the seller will not sell such commodity:

(a) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will, in turn, agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

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(b) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

[1937 c 117 s 2] (3976-52)

325.09 VIOLATIONS. For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of sections 325.08 to 325.13, except to the extent authorized by the contract:

(1) The offering or giving of any article of value in connection with the sale of such commodity;

(2) The offering or the making of any concession of any kind, whether by the giving of coupons or otherwise, in connection with any such sale; or

(3) The sale or offering for sale of such commodity in combination with any other commodity—

Shall be deemed a violation of such resale price restriction, for which the remedies prescribed by section 325.12 shall be available.

[1937 c 117 s 3] (3976-53)

325.10 MINIMUM PRICES, BY WHOM FIXED. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of sections 325.08 to 325.13, by any person other than the owner of the trade-mark, brand, or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of the trade-mark, brand, or name.

[1937 c 117 s 4] (3976-54)

325.11 LIMITATIONS. No contract containing any of the provisions enumerated in section 325.08 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(1) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice, in writing, of his intention to close out such stock, and an opportunity to purchase such stock at the original invoice price;

(2) When the goods are altered, second-hand, damaged, defaced, or deteriorated, and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(3) By any officer acting under an order of court.

[1937 c 117 s 5] (3976-55)

325.12 UNFAIR COMPETITION. Wilfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of sections 325.08 to 325.13, whether the person so advertising, offering for sale, or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

[1937 c 117 s 6] (3976-56)

NOTE: "Nonsigner" provision held invalid, Remington Arms Co. v. G.E.M. 257 M. 562, 102 NW (2d) 528.

325.13 EXCEPTIONS. Sections 325.08 to 325.13 shall not apply to any contract or agreement between or among producers or distributors, or, except as provided in section 325.08, clause (3), between or among wholesalers or between or among retailers as to sale or resale prices.

[1937 c 117 s 7] (3976-57)

325.14 CITATION. Sections 325.08 to 325.14 may be known and cited as the fair trade act.

[1937 c 117 s 10] (3976-60)

THE UNLAWFUL TRADE PRACTICES ACT

325.141 UNLAWFUL TRADE PRACTICES. The Legislature of the State of Minnesota hereby finds: that the trade practices defined and prohibited by Laws 1943, Chapter 144, are detrimental to labor, destructive to employment, and injurious to the best interests of workingmen; that they mislead the consumer into believing that he is buying merchandise at prices substantially below regular retail prices, when in fact he is not; that they mislead the consumer as to the quality, ingredients and origin of merchandise purchased by him; that they deprive the

consumer of various customer services offered by regularly established and bona fide retail outlets without compensating advantage to the consumer; and that they constitute unfair and fraudulent competition and unsound and uneconomic methods of distribution. The Legislature, acting in the exercise of the police power of the state, declares that the public policy of the state requires, and that the general welfare of the state will be benefited by, the suppression of the trade practices hereinafter defined.

[1943 c. 144 s. 1]

325.142 DEFINITIONS. When used in sections 325.141 to 325.148:

(a) The term "person" includes any individual, firm, partnership, corporation or other organization, whether organized for profit or not.

(b) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employe.

(c) "Sale" or "sell" includes any sale, offer, or advertisement thereof or contract for the same.

(d) "Sale of merchandise at retail" includes any sale except (1) A sale for the purpose of re-sale or (2) a sale of a substantial quantity of merchandise for business use only.

[1943 c. 144 s. 2]

325.143 CERTAIN UNLAWFUL TRADE PRACTICES. It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to advertise, claim or imply that any sale or transfer of goods, wares, or merchandise is a sale or transfer at wholesale, unless such sale or transfer is made to a transferee for re-sale or is a sale of a substantial quantity of merchandise for business use only.

[1943 c. 144 s. 3]

325.144 RETAILERS NOT TO MISREPRESENT NATURE OF BUSINESS.

(1) No person engaged in the sale of merchandise at retail shall, in connection with such business, misrepresent the true nature of such business, either by use of the words manufacturer, wholesaler, broker, or any derivative thereof or synonym therefor, or otherwise.

(2) No person shall, in connection with the sale of merchandise at retail misrepresent, directly or indirectly, that the price at which such merchandise is sold is an approximately wholesale price, or is less than the usual retail price, either by the use of any such expression, or of any expression having a similar meaning, or otherwise misrepresent the true nature of such sale.

(3) No person shall, in connection with the sale of merchandise at retail, or in, or in connection with the use of, samples, catalogs, or other forms of advertising listing merchandise for sale at retail, display price tags or price quotations in any form showing prices which are fictitiously in excess of the actual prices at which such merchandise is regularly and customarily sold at retail by such person or by the person issuing such samples, catalogs, or other forms of advertising.

[1943 c. 144 s. 4]

325.145 QUALITY, MISREPRESENTED. No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.

[1943 c. 144 s. 5]

325.146 EMPLOYER NOT TO DISPOSE OF OTHER THAN OWN PRODUCTS.

No employer shall, directly or indirectly, by itself or through a subsidiary agency owned or controlled in whole or in part by such employer, sell, cause to be sold, or have in his possession or under his control for sale to his employes or to any other person, any merchandise not handled by such employer in the regular course of his business, nor shall any employer permit his name, his credit, or his premises to be used in connection with the sale or offer for sale of any such merchandise. This section shall not apply to purchases by an employer for the purpose of re-sale to his employes of such specialized equipment and paraphernalia as may be required for employes' safety and health, candy, chewing gum, tobacco, or meals consumed on the premises of such employer. The provisions of sections 325.141 to 325.148 shall not apply to any cooperative associations, duly established under the laws of the state of Minnesota, with respect to any merchandising transactions, which such cooperatives are authorized by their charters to conduct with their members.

[1943 c. 144 s. 6]

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325.147 VIOLATIONS; RESTRAINING ORDERS. Any person violating the provisions of sections 325.141 to 325.148 shall be deemed guilty of a misdemeanor. Each act prohibited by sections 325.141 to 325.148 shall constitute a separate violation and offense thereunder.

In addition to the penalties provided in sections 325.141 to 325.148 the courts of this state are hereby vested with jurisdiction to prevent and restrain violation of sections 325.141 to 325.148. Any person damaged or who is threatened with loss, damage, or injury by reason of a violation of sections 325.141 to 325.148 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 of sections 325.141 to 325.148 and for the amount of the actual damages to him, 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.

[1943 c. 144 ss. 7, 8]

325.148 APPLICATION. Nothing in sections 325.141 to 325.148 shall be deemed to prohibit the sale by an employer to his employees of his own products or property at any price.

[1943 c. 144 s. 9]

FUEL DELIVERY TICKETS

325.149 DELIVERY TICKETS TO ACCOMPANY EACH FUEL DELIVERY.

No person, firm, or corporation shall deliver any domestic heating fuel without such delivery being accompanied by a delivery ticket, on which shall be distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, the net quantity or quantities of fuel contained in the cart, wagon, vehicle or compartment thereof, bag, sack or container used in such deliveries when sold by weight; or the number of gallons or cubic feet that is being delivered when sold by measure, with the name of the purchaser thereof and the name of the dealer from whom purchased. The delivery ticket shall also clearly state the name, type, kind and grade of fuel being delivered. When the buyer carries away the purchase, a delivery ticket showing the actual amount delivered to the purchaser must be given to the purchaser at the time the sale is made.

Sales of wood for fuel direct from producer to consumer shall be exempt from the provisions of this section. This section shall not apply to deliveries in quantities of ten gallons or less.

Whoever violates any provision of this section is guilty of a misdemeanor.

[1943 c 328]

THE AUTOMOBILE DEALERS' ANTICOERCION ACT

325.15 MOTOR VEHICLES, MANUFACTURER FORBIDDEN TO FINANCE SALES. It shall be unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution of motor vehicles to sell, or enter into a contract to sell motor vehicles to any person who is engaged, or intends to engage, in the business of selling such motor vehicles at retail in this state, on the condition, or with the agreement or understanding, expressed or implied, that such person so engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons, or shall sell and assign the conditional sales contracts, chattel mortgages, or leases arising from the sale of motor vehicles, or any one or number thereof, only to a designated person or class of persons, when the effect of the condition, agreement, or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who is designated, by virtue of such condition, agreement, or understanding, to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages, or leases, and any such condition, agreement, or understanding is hereby declared to be void and against the public policy of this state.

[1937 c. 412 s. 1] (3976-71)

325.16 CERTAIN THREATS, STATEMENTS, OR PROMISES TO BE PRIMA FACIE EVIDENCE. Any threat, statement, or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor

vehicles, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons, or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons, shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 325.15.

[1937 c. 412 s. 2] (3976-72)

325.17 WHEN PRESUMPTION MAY BE PRIMA FACIE EVIDENCE. Any threat, statement, or promise, expressed or implied, made to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles in this state, or any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles, or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles in this state and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in such manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this state unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sale of motor vehicles, or any one or any number thereof, only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages, or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold, or intends to sell, the same on the condition or with the agreement or understanding prohibited in section 325.15.

[1937 c. 412 s. 3] (3976-73)

325.18 UNLAWFUL FOR MANUFACTURER TO GIVE SUBSIDIES. It shall be unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution of motor vehicles to pay or give or to contract to pay or give any thing of value or subsidy to any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles, or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within the state, or to discriminate in favor of or against any person, other than an automobile dealer or automobile distributor, engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within the state, if the effect of such payment or contract to pay or give any thing of value or subsidy or discrimination may be to lessen or eliminate competition or to create or tend to create a monopoly in the person or class of persons who receives such thing of value or subsidy, or who is benefited by such discrimination.

[1937 c. 412 s. 4] (3976-74)

325.19 UNLAWFUL TO RECEIVE SUBSIDIES. It shall be unlawful for any person, other than an automobile dealer or automobile distributor, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state, to accept or receive or contract or agree to accept or receive directly or indirectly any thing of value or subsidy or the benefit resulting from any discrimination, as set forth in section 325.18, from any person engaged, directly or indirectly, in the manufacture or wholesale distribution of motor vehicles if the effect of the acceptance or receipt of any such thing of value or subsidy or benefit may be to lessen or eliminate competition or to create or tend to create a monopoly

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in the person or class of persons who receives such thing of value or subsidy, or who is thus benefited by such discrimination.

[1937 c. 412 s. 5] (3976-75)

325.20 PERSONS RECEIVING SUBSIDIES FORBIDDEN TO ENGAGE IN FINANCE OF SALES. It shall be unlawful for any person, other than an automobile dealer or automobile distributor, who hereafter so accepts or receives, directly or indirectly, any thing of value or subsidy or the benefit resulting from any discrimination, as set forth in section 325.19, or hereafter so contracts, directly or indirectly, to receive any such thing of value or subsidy or benefit, to thereafter finance, or attempt to finance, the purchase or sale of any motor vehicle, or buy or attempt to buy any conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail in this state.

[1937 c. 412 s. 6] (3976-76)

325.21 PROCEEDINGS INSTITUTED. For a violation of any of the provisions of sections 325.15 to 325.23 by any corporation or association mentioned therein, it shall be the duty of the attorney general, or the county attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises, or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

[1937 c. 412 s. 7] (3976-77)

325.22 FOREIGN CORPORATIONS MAY BE PROHIBITED FROM DOING BUSINESS IN THE STATE. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises, or functions of a corporation in this state, violating any of the provisions of sections 325.15 to 325.23, is hereby denied the right to do and prohibited from doing any business in this state. It shall be the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

[1937 c. 412 s. 8] (3976-78)

325.23 PROVISIONS CUMULATIVE. The provisions of sections 325.15 to 325.23 shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

[1937 c 412 s 11] (3976-81)

NOTE: See sections 325.48 and 325.907.

325.235 CONTRACTS OR AGREEMENTS IN VIOLATION VOID. Any contract or agreement in violation of the provisions of sections 325.15 to 325.23 shall be absolutely void and shall not be enforceable either in law or equity.

[1937 c 412 s 10] (3976-80)

325.236 DAMAGES RECOVERABLE. In addition to the criminal and civil penalties provided in sections 325.15 to 325.23, any person who shall be injured in his business or property by any other person, corporation, association, or partnership, by reason of anything forbidden or declared to be unlawful by sections 325.15 to 325.23, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or where any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover two-fold the damages by him sustained and the costs of the suit. Whenever it shall appear to the court before which any proceedings under sections 325.15 to 325.23 may be pending, that the ends of justice require that other parties be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

[1937 c 412 s 12] (3976-82)

325.24 AUTOMOBILE DEALERS' ANTI-COERCION ACT. Sections 325.15 to 325.24 shall be known and cited as the automobile dealers' anti-coercion act.

[1937 c 412 s 14] (3976-84)

POWDERED ASBESTOS

325.244 BAN; PENALTY. Subdivision 1. No person, corporation, partnership, joint venture, firm or association shall use, sell, deliver or receive, or contract to use, sell, deliver or receive powdered asbestos, whether in its powdered form or

mixed with any other substance, and to be applied with a pressure sprayer, or in its molded form if asbestos dust will emanate from it due to handling, mixing or cutting, for purposes of constructing, remodeling or improving any building structure in this state.

Subd. 2. Any violation of the provisions of subdivision 1 shall constitute a misdemeanor.

[1973 c 742 s 1]

MATCHES

325.245 MANUFACTURE, STORAGE, OR SALE OF MATCHES. Subdivision 1. **Safety matches.** No person, association, or corporation shall manufacture, store, offer for sale, sell, or otherwise dispose of, or distribute, white phosphorous, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches," or any type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitable on an abrasive surface. No person, association, or corporation shall manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, matches which will ignite in a laboratory oven at a temperature of less than 200 degrees Fahrenheit when subjected in such laboratory oven to a gradually increasing heat and maintained at the before stated continuous temperature for a period of not less than eight hours, or blazer or so-called wind matches, whether of the so-called safety or strike-anywhere type.

Subd. 2. **Brands and trade-marks.** No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which such matches are sold, disposed of, or distributed.

Subd. 3. **How kept in retail stores.** Not more than one case of each brand of matches of any type or manufacture shall be opened at any one time in any retail store where matches are sold or otherwise disposed of; nor shall loose boxes, or paper-wrapped packages, of matches be kept on shelves or stored in retail stores at a height exceeding five feet from the floor.

Subd. 4. **Storage in warehouses.** All matches stored in warehouses, excepting manufacturer's warehouse at place of manufacture, which contain automatic sprinkler equipment, must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus, nor within a horizontal distance of 25 feet from any explosive material kept or stored on the same floor.

Subd. 5. **Boxes, how made.** All matches shall be packed in boxes or suitable packages, containing not more than 700 matches in any one box or package; provided, that when more than 300 matches are packed in any one box or package, the matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions; and all boxes containing 350 or more matches shall have placed over the matches a center holding or protecting strip, made of chip-board, not less than one and one-quarter inches wide, which shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

Subd. 6. **Containers or cases; number of boxes or packages; how marked.** All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case shall not exceed the following number:

Number of boxes	Numerical number of matches per box
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross Over 50 and under	100
25 gross Under	50

No shipping container or case constructed of fibre-board, corrugated fibre-board, or wood, nailed or wire-bound, containing matches, shall have a weight, including

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its contents, exceeding 75 pounds; and no lock-cornered wood case containing matches shall have a weight, including its contents, exceeding 85 pounds; nor shall any other article or commodity be packed with matches in any container or case; and all shipping containers or cases containing strike-anywhere matches shall have plainly marked on the outside thereof the words "strike-anywhere matches," and all shipping containers or cases containing "strike on box" matches shall have plainly marked on the outside thereof the words "strike on box matches."

Subd. 7. Violations; penalties. Any person, association, or corporation violating any of the provisions of this section shall be fined, for the first offense, not less than \$5 nor more than \$25 and for each subsequent violation, not less than \$25.

[1913 c 99 s 1-4] (6019-6022)

BEDDING

325.25 USE OF SECOND-HAND MATERIAL FORBIDDEN IN CERTAIN CASES. No person shall use, in the making or remaking of any article of bedding, any material that has been used in any private or public hospital, or any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has so been used. This section shall not prevent the renovating of bedding used in any private or public hospital.

[1929 c. 358 s. 2] (3976-2)

325.26 SALE OF BEDDING. No person shall sell, offer for sale, consign for sale, or have in his possession with intent to sell, or consign for sale any bedding used in a private or public hospital or any article of bedding that has been used by or about any person having an infectious or contagious disease.

[1929 c. 358 s. 3] (3976-3)

325.27 MATERIAL MUST BE RENOVATED. No person shall remake or renovate any article of bedding unless all the material to be used in such remake or renovated bedding shall first be thoroughly sterilized and disinfected by the methods set out herein, or by any other approved sterilization method:

(1) Dry heat of a temperature of not less than 160 degrees centigrade temperature for not less than one hour. (A thermometer for registering the temperature visible from the outside of the room shall be provided where dry heat is used);

(2) Live steam, with subsequent drying of the material over steam coils with a pressure of not less than 20 pounds of steam for 20 minutes. (A gauge for registering steam pressure visible from the outside of the room shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is used);

(3) Formaldehyde and sulphur concurrently in a moist atmosphere for a period of not less than ten hours. Formaldehyde gas shall be generated from the use of one pint of formaldehyde solution, 37 percent to each 1,000 cubic feet of air space, or through the use of any of the high class commercial fumigators which generate an equivalent quantity of gas. Sulphur shall be from the burning of three pounds of sulphur for each 1,000 cubic feet of air space. The moist atmosphere shall be produced by thorough sprinkling of the floor of the room with warm water just prior to the process of disinfection.

The room shall be provided with a separate air inlet and also an exhaust connection, and shall be equipped with tight dampers or closure gates which can be operated from the outside of the room. Rooms for disinfection of bedding materials shall be made gas or steam tight. Shelving for loose bedding materials shall be of lattice or other open construction.

Solid shelves of a type to prevent passage of gas through the materials shall not be permitted.

[1929 c 358 s 4] (3976-4)

325.28 DEVICES MUST BE APPROVED. All devices and equipment, before being used as a process for sterilization and disinfection, shall be approved by the department of labor and industry, upon written application of the person desiring to use the same and, when so approved, a numbered permit for such use shall be issued to the applicant by the industrial commission. Such permit shall expire one year from the date thereof. Such system of sterilization and disinfection shall be kept in good condition and repair. Every person to whom a permit has been issued shall keep such permit conspicuously posted under glass near such sterilization or disinfection chamber. Refusal to display such permit in accordance with sections

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325.25 to 325.33 shall be sufficient reason to revoke the same. Nothing in sections 325.25 to 325.33 shall prevent any person engaged in the making or remaking, renovating, or sale of any article herein described which requires sterilizing and disinfecting under the provisions thereof from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit, with date of sterilization, shall be printed on the tag or label attached to the article, and a copy of such kept by the person doing such sterilization for reference.

[1929 c 358 s 5; Ex1967 c 1 s 6] (3976-5)

325.29 SUBJECT TO INSPECTION. Any place where bedding is made, remade, or renovated, or where materials for bedding are prepared, or any establishment where these articles are offered for sale, or are in possession of any person with intent to sell, deliver, lease, or to consign them to an establishment where sterilizing and disinfecting are performed, shall be subject to inspection by a duly appointed inspector for the department of labor and industry to ascertain whether the materials used or sold or the finished article enumerated conform to the requirements of sections 325.25 to 325.33. He shall have authority to open such bedding to examine the material used in the filling.

[1929 c 358 s 6; Ex1967 c 1 s 6] (3976-6)

325.30 SALES FORBIDDEN; EXCEPTIONS. No person shall sell, lease, offer to sell or lease, or deliver or consign for sale or lease, or have in his possession with intent to sell, lease, deliver, or consign for sale or lease, any bedding made, remade, or renovated in violation of sections 325.25 to 325.33 or any second-hand bedding unless since last used it has been thoroughly sterilized and disinfected by an approved method of sterilization.

[1929 c. 358 s. 7] (3976-7)

325.31 SHODDY MATERIAL TO BE LABELED. No person, by himself or his agents, servants, or employees, shall make or sell, or offer to sell, deliver, or consign for sale, or have in his possession with intent to sell, deliver, or consign for sale any bedding made of material that has theretofore been used as a container for or in contact with any animal or vegetable matter or any material defined as shoddy, unless the bedding shall be labeled as such, or any material that has theretofore been used unless the same shall have been cleaned and sterilized.

[1929 c. 358 s. 8] (3976-8)

325.32 BEDDING TO BE LABELED. No person shall make or remake, or sell, offer for sale, consign for sale, or have in his possession with intent to sell, offer for sale, or consign for sale any article of bedding unless the same is labeled as follows:

Upon each of such articles of bedding there shall be securely sewed upon the outside thereof a label made of muslin, linen, or other durable material not less than three by four and one-half inches in size, upon which shall be in plain print, in the English language, a description of the material used as filling of such article of bedding; and, if such material, or any portion thereof, shall not have been previously used, the words "manufactured of new material" shall appear upon the label, together with the name and address of the maker or vendor thereof. If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of second-hand material" or "remade of second-hand material," as the case may be, shall appear upon the label, together with the name and address of the maker or vendor thereof, and also a description of the material used in the filling of such article of bedding. On any article of bedding, not remade, but which has been previously used, the words "second-hand materials used in filling not known" shall appear upon the label, together with the name and address of the vendor thereof.

The statement required under this section shall be in form as follows:

"OFFICIAL STATEMENT

Materials used in filling
Made by

Vendor
Address

This article is made in compliance with an act of the State of Minnesota approved the day of, 1929."

The statement of compliance required in the foregoing official statement shall not

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be construed to imply that it is prohibited to state also that the article of bedding is made in compliance with any act or acts of other states.

The words "manufactured of new material," or "manufactured of second-hand material," or any article of bedding not remade, "second-hand materials used in filling not known," together with the description of the material used as filling of an article of bedding, shall be in letters not less than one-eighth of an inch in height. The statement of filling shall conform to rules regulating the manufacture and sale of bedding as approved by the department of labor and industry. No term or description likely to mislead shall be used on any label required by this regulation in the description of the material used in the filling of any article of bedding. The label shall be attached to each mattress, pad, or upholstered spring by sewing all four edges of the label.

Any person who shall remove, deface, alter, or who shall cause to be removed, defaced, or altered, any label or tag upon any article of bedding so labeled or tagged under the provisions of sections 325.25 to 325.33 shall be guilty of a violation thereof.

[1929 c 358 s 9; Ex1967 c 1 s 6; 1969 c 421 s 1] (3976-9)

NOTE: See section 325.48.

325.33 FEATHERS TO BE RENOVATED. Feathers used in making, remaking, or renovating new or second-hand bedding shall be thoroughly cured, sterilized, or disinfected.

[1929 c 358 s 10] (3976-10)

CANVAS

325.34 MANUFACTURE AND SALE OF COTTON DUCK OR CANVAS; STAMPS, BRANDS, AND MARKS. Any person, company, or corporation who shall manufacture for sale, or who may offer or expose for sale, any cotton duck or canvas or any article, other than clothing and wearing apparel, composed or made, in whole or in part, of cotton duck or canvas, shall distinctly and durably stamp, brand, or mark thereon the true and correct weight of such cotton duck or canvas, by ounces per yard, together with a description by name of any filler or other preparation placed in or on the cotton duck or canvas since its manufacture.

[1913 c. 167 s. 3] (3968)

325.35 CERTAIN SALES UNLAWFUL; MISSTATEMENTS FORBIDDEN. It shall be unlawful for any person or corporation, either individually or in any representative capacity, to carry for sale, sell, or endeavor to sell any cotton duck or canvas or any articles other than clothing and wearing apparel, composed or made, in whole or in part, of any cotton duck or canvas without having marked thereon the true and correct weight of the canvas or cotton duck, by ounces per yard, together with a description by name of any filler or other preparation placed in or on the cotton duck or canvas since its manufacture, or to misstate, misrepresent, or conceal the true weight of the canvas or cotton duck, by ounces per yard, or to misstate, misrepresent, or conceal the existence of any filler or other preparation placed in or on the cotton duck or canvas since its manufacture.

[1913 c. 167 s. 4] (3969)

325.36 CONCEALING OR MISSTATING SIZE UNLAWFUL. It shall be unlawful for any person or corporation, either individually or in representative capacity, selling, carrying for sale, or endeavoring to sell any awnings, paulins, wagon covers, tent, grain and hay covers, stable or tent tops, to misstate or misrepresent or conceal the true and correct size and dimensions thereof.

[1913 c. 167 s. 5] (3970)

325.37 UNLAWFUL TO DEFACE MARK. It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel, or remove any mark provided for by sections 325.34 to 325.37, or cause or permit the same to be done with intent to mislead, deceive, or to violate any of the provisions of sections 325.34 to 325.37.

[1913 c. 167 s. 6] (3971)

NOTE: See section 325.48.

WEARING APPAREL

325.375 FRAUD IN THE SALE OF WEARING APPAREL. Subdivision 1. **Fur constituent part.** Articles of wearing apparel of which fur is a constituent part shall not be sold or offered for sale at retail in the state under any false or deceptive name.

Subd. 2. **False and deceptive name.** For the purposes of this section, "false or deceptive name" means a name which implies that the fur which is a constituent

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part of the article is of substantially greater value than the fur which is actually used.

Subd. 3. **Identifying tag attached to garment.** The fur which is a constituent part of any article of wearing apparel sold or offered for sale at retail shall be identified by its true name, and its trade name, if any, upon a tag or ticket prominently attached or displayed on the garment and shall be identified further by its true name, and its tradename, if any contained on a sales slip or invoice delivered to the purchaser at the time of sale.

Subd. 4. **Violations and penalty.** Any person who violates any of the provisions of this section shall be guilty of a gross misdemeanor.

[1949 c 203 s 1, 2, 3, 4]

325.38 [Repealed, 1961 c 561 s 17]

HAZARDOUS TOYS

325.381 IMPORTATION, MANUFACTURE, SALE OR DISTRIBUTION OF HAZARDOUS ARTICLES. No person, firm, corporation, association or agent or employee thereof shall import, manufacture, sell, hold for sale or distribute a toy or other article intended for use by a child which presents an electrical, mechanical or thermal hazard or presents a hazard due to toxic, or flammable properties or properties able to produce asphyxiation or suffocation.

[1973 c 467 s 1]

325.382 DEFINITIONS. (a) "Child" means any person less than 14 years of age;

(b) A toy presents an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electrical shock or electrocution;

(c) A toy presents a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation or disassembly of the article;

(2) from propulsion of the article or any part or accessory thereof;

(3) from points or other protrusions, surfaces, edges, openings or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article or any part or accessory thereof may be aspirated or ingested;

(8) because of instability;

(9) from stuffing material which is not free of dangerous or harmful substances; or

(10) because of any other aspect of the article's design or manufacture.

(d) A toy presents a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(e) "Toxic" means able to produce personal injury or illness to a person through ingestion, inhalation or absorption through any body surface and can apply to any substance other than a radioactive substance.

(f) "Flammable" means having a flash point up to 80 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester. The flammability of solids and of the contents of self-pressurized containers shall be determined by methods generally recognized as applicable to the materials or containers and established by regulations issued by the director.

(g) A toy presents a hazard of asphyxiation or suffocation if, in normal use or when subject to reasonable foreseeable damage or abuse, its design, manufacture or storage presents a risk of personal injury or illness from interference with normal breathing.

(h) "Director" means the director of the consumer services section of the department of commerce.

(i) "Inspector" means an inspector of the consumer services section of the department of commerce.

[1973 c 467 s 2]

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325.383 BANNING OF HAZARDOUS ARTICLES; REGULATIONS. The director shall ban from sale or distribution any toy or other article intended for use by children that presents any of the hazards set out in section 325.381.

The director shall adopt the regulations necessary to carry out the intent of sections 325.381 to 325.391. Regulations shall insofar as practicable conform to the regulations relating to this subject found as Part 191 in the Code of Federal Regulations, Title 21.

[1973 c 467 s 3]

325.384 TESTING OF ARTICLES TO DETERMINE AND INSURE COMPLIANCE. The director or an authorized and qualified employee or inspector, may undertake or provide for testing of toys and other articles as he deems necessary to determine their safety and fitness for commerce in this state in compliance with the provisions of sections 325.381 to 325.391. The director may contract or otherwise arrange with any testing facility, public or private, for testing and reporting the results. The director may, by regulation, require that any toy or other article within the provisions of sections 325.381 to 325.391 be adequately tested by the consumer services section, a reputable testing facility, or the manufacturer or distributor of the article, and that the certified results of the test be filed with the director before the sale, distribution or other movement in commerce within this state of the toys or articles. The director may by regulation provide for penalties for the failure to provide test results.

[1973 c 467 s 4]

325.385 REPURCHASE OF BANNED ARTICLES. Subdivision 1. In the case of any article sold by its manufacturer, distributor, or dealer which has been banned, whether or not it was banned at the time of its sale, the article shall, in accordance with regulations of the director, be repurchased as follows:

(a) The manufacturer of the article shall repurchase it from the person to whom he sold it, and shall refund that person the purchase price paid for the article. If the manufacturer requires the return of the article in connection with the repurchase of it, the manufacturer shall also reimburse the person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(b) The distributor of any banned article shall repurchase it from the person to whom he sold it, and shall refund that person the purchase price paid for the article. If the distributor requires the return of the article in connection with his repurchase of it in accordance with this clause, the distributor shall reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(c) In the case of any banned article sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

[1973 c 467 s 5]

325.386 BANNED HAZARDOUS TOYS; PROHIBITIONS. No person shall sell, expose for sale, deliver, give away, have in his possession, or introduce or deliver for introduction into commerce any hazardous toy or article intended to be used by a child or banned hazardous toy or article intended to be used by a child.

[1973 c 467 s 6]

325.387 SEIZURES. The director shall apply to the district court to seize toys presenting hazards when no other practical method to control the hazard exists. The attorney general shall represent the director in the district court.

[1973 c 467 s 7]

325.388 DIRECTOR'S RIGHT OF ACCESS TO PREMISES, RECORDS. For the purpose of administering the provisions of sections 325.381 to 325.391, the director and inspectors shall have access and entry at reasonable times to any premises in which toys or other articles within the provisions of sections 325.381 to 325.391 are held and shall have access to all records pertinent to the enforcement of sections 325.381 to 325.391.

[1973 c 467 s 8]

325.389 PENALTIES. Any person who violates any of the provisions of sections 325.381 to 325.391 shall be guilty of a misdemeanor.

[1973 c 467 s 9]

325.39 [Repealed, 1961 c 561 s 17]

325.391 CITATION. Sections 325.381 to 325.389 may be cited as the "Safe Toys Act".

[1973 c 467 s 10]

325.40 [Repealed, 1961 c 561 s 17]

IMITATION INDIAN-MADE GOODS

325.41 IMITATION INDIAN-MADE GOODS TO BE BRANDED. All goods, wares, and merchandise known as moccasins, bead work, birchbark baskets, deer-skin work, grass rugs, sweet grass baskets, and other goods which are manufactured or produced in imitation of genuine American Indian-made goods, wares, or merchandise shall be branded, labeled, or marked, as hereinafter provided, before being exposed for sale and shall not be exposed or sold without such brand, label, or mark thereon. For purposes of this section, Indian-made goods are those made exclusively by persons who are of at least one-quarter Indian blood or who are listed on the rolls of the United States Bureau of Indian Affairs as Indians.

[1937 c 196 s 1; 1973 c 151 s 1] (3976-61)

325.42 BRAND. The brand, label, or mark required by section 325.41 shall be the words "not Indian-made" and shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public, and shall be the size and style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it, but when such branding or marking is impossible a label shall be used and attached thereto.

[1937 c 196 s 2; 1973 c 151 s 2] (3976-62)

325.43 GOODS NOT TO BE SOLD WITHOUT BRAND. No person shall sell, offer for sale, or have in possession for the purpose of sale, imitation goods, wares, or merchandise described in section 325.41 without the brand, label, or mark required by sections 325.41 and 325.42 being placed thereon or attached thereto, or remove, conceal, or deface such brand, label, or mark.

[1937 c. 196 s. 3] (3976-63)

NOTE: See section 325.48.

325.431 REMEDIES. Any person injured by a violation of sections 325.41 to 325.43 may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

[1973 c 151 s 4]

PRISON-MADE GOODS

325.44 PRISON-MADE GOODS ARE SUBJECT TO LAWS OF STATE. All goods, wares, and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institutions, transported into the state and remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in the state, be subject to the operation and effect of the laws of the state, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the state, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

[1935 c. 267 s. 1] (3976-21)

325.45 PRISON-MADE GOODS MUST BE MARKED. All goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institutions in this or any other state, shall be branded, labeled, or marked, as herein provided, before being exposed for sale, and shall not be so exposed or sold without such brand, label, or mark thereon.

[1935 c. 268 s. 1] (3976-31)

325.46 "PRISON MADE" TO BE PLACED ON PRISON-MADE GOODS. The brand, label, or mark required by section 325.45 shall contain, at the head or top thereof, the words "prison made," followed by the name of the penal or reformatory institution in which it was manufactured, produced, or mined, in plain English lettering of the style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, a label shall be used and attached. Such brand, mark, or label shall

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be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public and also be placed outside of its box, crate, or covering.

[1935 c. 268 s. 2; 1939 c. 57] (3976-32)

325.47 SALE OF UNMARKED GOODS FORBIDDEN. No person shall sell, offer for sale, or have in possession for the purpose of sale, goods, wares, or merchandise described in section 325.45 without the brand, label, or mark required by section 325.45 being placed thereon or attached thereto, or remove, conceal, or deface such brand, label, or mark.

[1935 c. 268 s. 3] (3976-33)

NOTE: See section 325.48.

PENALTIES; INJUNCTIVE RELIEF

325.48 VIOLATIONS; PENALTIES. Subdivision 1. **Gross misdemeanors.**

(1) Any person who shall violate any of the provisions of sections 325.15 to 325.23, or any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by sections 325.15 to 325.23, any employee, agent, or officer of any such person who shall participate, in any manner, in making, executing, enforcing, performing, or in urging, aiding, or abetting in the performance of any such contract, condition, agreement, or understanding and any person who shall pay or give or contract to pay or give any thing or service of value prohibited by sections 325.15 to 325.23, and any person who shall receive or accept or contract to receive or accept any thing or service of value prohibited by sections 325.15 to 325.23 shall be deemed guilty of a gross misdemeanor; and, upon conviction thereof, punished by a fine not exceeding \$500; or be imprisoned in a county jail for not exceeding six months, or by both such fine and imprisonment. Each day's violation of any such provision shall constitute a separate offense.

The words "person," "employee," "agent," or "officer," as used in this section, shall not be construed to mean or apply to any person who is engaged, or intends to engage, in the business of selling motor vehicles at retail in this state, nor to the employee, agent, or officer of any person who is engaged, or intends to engage, in the business of selling motor vehicles at retail in this state.

(2) Any person violating any of the provisions of sections 325.25 to 325.33 shall be guilty of a gross misdemeanor; and, upon conviction thereof, punished by a fine of not more than \$100 nor less than \$25 or by imprisonment for not more than 90 nor less than 30 days or by both such fine and imprisonment, for each offense.

Subd. 2. **Misdemeanors.** (1) Any person, firm, or corporation, whether as principal, agent, officer, or director, for himself, or itself, or for another person, firm, or corporation, wilfully violating the provisions of sections 325.03, 325.04, 325.05, and 325.075 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 325.03, 325.04, 325.05, and 325.075, knowingly assists or aids directly or indirectly in such violation shall be responsible therefor equally with the person, firm, or corporation for whom or which he acts.

(2) Any person, company, or corporation violating any of the provisions of sections 325.34 to 325.37 shall be deemed guilty of a misdemeanor; and, upon conviction thereof, for the first offense, punished by a fine of not less than \$25 nor more than \$50 and for each subsequent offense by a fine of not less than \$50 nor more than \$100.

(3) Any person who violates the provisions of sections 325.45 to 325.47 shall be guilty of a misdemeanor.

[1913 c 167 s 7; 1929 c 300 s 4; 1929 c 358 s 11; 1935 c 268 s 4; 1937 c 116 part 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] (3972, 3976-11, 3976-17, 3976-34, 3976-46, 3976-64, 3976-79)

325.49 INJUNCTIVE RELIEF. In addition to the penalties provided in section 325.48, subdivision 2, clause (1), the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of sections 325.02 to 325.07. 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 to him, 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 325.02 to 325.07, 325.48, 325.49, and 325.075, 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 him may tend to criminate him or subject him 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 he 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.

[1937 c. 116 pt. 3 s. 2; 1939 c. 403 s. 5; 1941 c. 326 s. 5] (3976-47)

325.50 [Renumbered 325.235]

325.51 [Renumbered 325.236]

325.52 [Renumbered 325.075]

LICENSED PREMISES; REVOCATION OF LICENSE FOR OPERATING GAMBLING DEVICES

325.53 DEFINITIONS. Subdivision 1. For the purposes of sections 325.53 to 325.62, unless a different meaning is indicated by the context, the words, terms, and phrases defined in this section shall have the meanings given them.

Subd. 2. "Gambling devices" means slot machines, roulette wheels, punchboards, number jars and pin ball machines which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash.

Subd. 3. "Person" means an individual, a copartnership, an association, a corporation, or any other entity or organization.

Subd. 4. "Municipality" means any county, city or town.

Subd. 5. "License" includes permits of every kind, nature and description issued pursuant to any statute or ordinance for the carrying on of any business, trade, vocation, commercial enterprise or undertaking.

Subd. 6. "Licensee" means any person to whom a license of any kind is issued, but does not include a common carrier transporting, or a public warehouseman storing, any gambling device for hire, or a manufacturer or distributor of such devices keeping the same only for the purpose of sale or distribution to others or repairing of same.

Subd. 7. "Licensed business" means any business, trade, vocation, commercial enterprise, or undertaking for which a license is issued.

Subd. 8. "Licensed premises" means the place or building, or the room in a building, designated in the license as the place where the licensed business is to be carried on, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated or used in connection with the buildings where the licensed business is carried on. If no place is described in any license, then "licensed premises" means the building or place where the licensed business is carried on under such license.

Subd. 9. "Issuing authority" and "authority issuing the license" mean and include the officer, board, bureau, department, commission, or agency of the state, or of any of its municipalities, by whom any license is issued and include the councils and governing bodies of all municipalities.

[1947 c 586 s 1; 1973 c 123 art 5 s 7]

325.54 GAMBLING DEVICE; POSSESSION OF. Subdivision 1. **Intentional possession; wilful keeping.** The intentional possession or wilful keeping of a gambling device upon any licensed premises is cause for the revocation of any license under which the licensed business is carried on upon the premises where the gambling device is found.

Subd. 2. **Revocation of licenses.** All licenses under which any licensed business is permitted to be carried on upon the licensed premises shall be revoked if the

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intentional possession or wilful keeping of any such gambling devices upon the licensed premises is established, notwithstanding that it may not be made to appear that such devices have actually been used or operated for the purpose of gambling.

[1947 c 586 s 2]

325.55 ISSUING AUTHORITY TO REVOKE. The proceedings for revocation shall be had before the issuing authority, which shall have power to revoke the license or licenses involved, as hereinafter provided.

[1947 c 586 s 3]

325.56 PEACE OFFICERS TO OBSERVE AND INSPECT PREMISES. Every sheriff, deputy sheriff, constable, marshal, policeman, police officer, and peace officer shall observe and inspect the premises where occupations are carried on under license and ascertain whether gambling devices are present thereon and immediately report the finding thereof to the authority or authorities issuing the license or licenses applicable to the premises in question.

[1947 c 586 s 4]

325.57 PROCEEDINGS BEFORE ISSUING AUTHORITY; ORDER TO SHOW CAUSE. Upon the receipt of such information from any of the peace officers referred to in section 325.56, if any issuing authority is of the opinion that cause exists for the revocation of any such license, then that authority shall issue an order to show cause directed to the licensee of the premises, stating the ground upon which the proceeding is based and requiring him to appear and show cause at a time and place, within the county in which the licensed premises are located, not less than ten days after the date of the order, why his license should not be revoked. That order to show cause shall be served upon the licensee in the manner prescribed by law for the service of summons in a civil action, or by registered mail, not less than eight days before the date fixed for the hearing thereof. A copy of the order shall forthwith be mailed to the owner of the premises, as shown by the records in the office of the register of deeds, at his last known post-office address. A copy of the order shall at the same time be mailed to any other issuing authority, of which the authority issuing the order to show cause has knowledge, by which other license to that licensee may have been issued, and any such other authority may participate in the revocation proceedings after notifying the licensee and the officer or authority holding the hearing of its intention so to do on or before the date of hearing, and after the hearing take such action as it could have taken had it instituted the revocation proceedings in the first instance.

[1947 c 586 s 5]

325.58 REVOCATION OF LICENSE. Subdivision 1. **Revocation; stay; appeal.** If, upon the hearing of the order to show cause, it appears that the licensee intentionally possessed or wilfully kept upon his licensed premises any gambling device, then the license or licenses under which the licensed business is operated on the licensed premises, shall be revoked. The order of revocation shall not be enforced during the period allowed by section 325.62 for taking an appeal.

Subd. 2. **Limitation as to issuance of new license on premises.** No new license or licenses for the same business upon the same premises shall be issued for the period of one year thereafter, except as hereinafter provided.

[1947 c 586 s 6]

325.59 DUTIES OF COUNTY ATTORNEY. The county attorney of the county in which the hearing is held shall attend the hearing, interrogate the witnesses, and advise the issuing authority. He shall also appear for the issuing authority on any appeal taken pursuant to the provisions of section 325.62.

[1947 c 586 s 7]

325.60 WITNESSES. The issuing authority may issue subpoenas and compel the attendance of witnesses at any hearing. Witnesses duly subpoenaed and attending any such hearing shall be paid fees and mileage by the issuing authority equal to the fees and mileage paid witnesses in the district court.

[1947 c 586 s 8]

325.61 PROPERTY OWNERS LIABILITY. When a license is revoked under the provisions of sections 325.53 to 325.62, the owner of the premises upon which any licensed business has been operated shall not be penalized by reason thereof

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unless it is established that he had knowledge of the existence of the gambling devices resulting in license revocation.

[1947 c 586 s 9]

325.62 APPEAL TO DISTRICT COURT; STAY; CONTINUANCE UNDER BOND; HEARING UPON ONE YEAR LIMITATION ON PREMISES. Any licensee, or any owner of licensed premises, aggrieved by an order of an issuing authority revoking any license may appeal from that order to the district court of the county in which the licensee resides by serving a notice of his appeal upon the issuing authority or the clerk thereof. The notice of appeal shall state that the person appealing takes an appeal to that district court from the order revoking the license or licenses, describing them and identifying the order appealed from. This notice shall be served within 15 days from the date of service of the order appealed from, and the same, with proof of service thereof, shall be filed with the clerk of the district court of the proper county. The appeal shall stand for trial at the next term of the district court following the filing of the notice of appeal, without the service of any notice of trial, and shall be tried in the district court de novo. The trial shall be by jury if the appellant shall so demand. The licensee may continue to operate the licensed business or businesses until the final disposition of such appeal. If the district court upon the appeal shall determine that any license involved in the appeal should be revoked, it may, nevertheless, in its discretion permit the continuance of the licensed business under a bond in the amount and in the form and containing the conditions prescribed by the court. The district court on the appeal, or in a separate proceeding, may permit the issuance of a new license to a different licensee before the expiration of the period of one year specified in section 325.58, subdivision 2, upon such terms and conditions imposed by the court as will insure that no gambling device shall thereafter be maintained upon the licensed premises.

[1947 c 586 s 10]

AGRICULTURAL IMPLEMENT DEALERSHIPS

325.63 AGRICULTURAL IMPLEMENT DEALERSHIPS; RETURN OF STOCK. If a franchised agricultural machinery or implement dealership is discontinued for economic reasons, the firm, company, or person issuing the franchise to the dealer shall purchase all listed parts in the dealer's stock purchased originally from firm, company, or person issuing franchise at a price agreeable to the franchised dealer and such firm, company, or person.

[1959 c 398 s 1]

325.635 REPURCHASE OF FARM MACHINERY, IMPLEMENTS, ATTACHMENTS AND PARTS UPON TERMINATION OF CONTRACT. Subdivision 1. **Obligation to repurchase.** Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written contract, sales agreement or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments or repair parts to maintain a stock of parts or complete or whole machines, or attachments, and thereafter the written contract, sales agreement or security agreement is terminated, cancelled or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to 100 percent of the net cost of all current unused complete farm implements, machinery and attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer or distributor within the 24 months immediately preceding notification by either party of intent to cancel or discontinue the contract, including transportation charges which have been paid by the retailer, or invoiced to retailer's account by the wholesaler, manufacturer or distributor and 80 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the wholesaler, manufacturer or distributor on the date of cancellation or discontinuance of the contract, which parts had previously been purchased by the retailer from the wholesaler, manufacturer, or distributor and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer or distributor. The wholesaler, manufacturer, or distributor

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shall also pay the retailer or credit to his account a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer or distributor elects to perform inventorying, packing and loading of the parts itself. Upon the payment or allowance of credit to the retailer's account of the sum required by this subdivision, the title to the farm implements, farm machinery, attachments or repair parts shall pass to the manufacturer, wholesaler or distributor making the payment or allowing the credit and the manufacturer, wholesaler or distributor shall be entitled to the possession of the farm implements, machinery, attachments or repair parts. However, this section shall not in any way affect any security interest which the wholesaler, manufacturer or distributor may have in the inventory of the retailer.

Subd. 2. Provisions of contract supplemented. The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of farm implements, machinery, attachments and repair parts. The retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments and repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a manufacturer, wholesaler or distributor to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law.

Subd. 3. Death of dealer; repurchase from heirs. In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements, machinery, attachments or repair parts therefor, the manufacturer, wholesaler or distributor shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the retail dealership, it shall be deemed a cancellation or discontinuance of the contract by the retailer under the provisions of subdivision 1.

Subd. 4. Failure to pay sums specified on cancellation of contracts; liability. In the event that any manufacturer, wholesaler, or distributor of farm implements, machinery, attachments and repair parts, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler or distributor, fails or refuses to make payment to the dealer or his heir or heirs as required by this section, the manufacturer, wholesaler or distributor shall be liable in a civil action to be brought by the retailer or his heir or heirs for (a) 100 percent of the net cost of the farm implements, machinery and attachments, (b) transportation charges which have been paid by the retailer, (c) 80 percent of the current net price of repair parts, and (d) five percent for handling, packing and loading, if applicable.

Subd. 5. Exceptions. This section shall not require the repurchase from a retailer of a repair part where the retailer previously has failed to return the repair part to the wholesaler, manufacturer or distributor after being offered a reasonable opportunity to return the repair part at a price not less than 80 percent of the net price of the repair part as listed in the then current price list or catalog. This section shall not require the repurchase from a retailer of repair parts which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries; repair parts in broken or damaged packages; single repair parts priced as a set of two or more items; and repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

Subd. 6. Definition. For the purposes of this section "farm implements" mean every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways.

[1974 c 158 s 1 subd 1-6]

325.637 REGULATIONS. Any customer deposit required before commencement of service by a privately or publicly owned water, gas, telephone, cable television, electric light, heat, or power company shall be subject to the following:

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(a) Upon termination of service with all bills paid, the deposit shall be returned to the customer within 45 days, less any deductions made in accordance with paragraph (c).

(b) Interest shall be paid on deposits in excess of \$20 at the rate of six percent per year. The company may, at its option, pay the interest at intervals it chooses but at least annually, by direct payment, or as a credit on bills.

(c) At the time the deposit is made the company shall furnish the customer with a written receipt specifying the conditions, if any, the deposit will be diminished upon return.

(d) Advance payments or pre-payments shall not be construed as being a deposit.

[1974 c 424 s 1]

THE MINNESOTA UNFAIR CIGARETTE SALES ACT

325.64 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.64 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 distributors, wholesalers, retailers, and 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 325.64 to 325.76 to protect the public by prohibiting such sales.

[1967 c 600 s 1]

325.65 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.65 CITATION. Sections 325.64 to 325.76 shall be known as the "Minnesota Unfair Cigarette Sales Act."

[1967 c 600 s 2]

325.66 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.66 DEFINITIONS. Subdivision 1. For the purpose of sections 325.64 to 325.76, the words, terms and phrases defined in this section have the meanings ascribed to them except where the context clearly indicates a different meaning.

Subd. 2. "Cigarettes" means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Subd. 3. "Person" means and includes any individual, firm, trade association, company, partnership, nonprofit corporation, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

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.

Subd. 5. "Retailer" means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

Subd. 6. "Sale" and "sell" mean and include any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution in any manner or by any means whatsoever.

Subd. 7. "Sell at wholesale", "sale at wholesale" and "wholesale sales" mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

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Subd. 8. "Sell at retail", "sale at retail", and "retail sales" mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

Subd. 9. "Basic cost of cigarettes" means whichever of the two following amounts is lower, namely (1) the gross invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (2) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, plus the full face value of any stamps which may be required by any cigarette tax act of this state, unless included by the manufacturer in his list price.

Subd. 10. (1) "Cost to wholesaler" means the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in sections 325.64 to 325.76.

(2) The cost of doing business by the wholesaler is presumed to be four percentum of the basic cost of said 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, except that the cost of doing business by the wholesaler is two percent of the basic cost of said cigarettes, when such cigarettes are sold to a wholesaler, in the absence of proof of a lesser or a 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. (1) "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 325.64 to 325.76.

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

(3) If any retailer in connection with his purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of a lesser or a higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that he shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as defined in subdivision 10(2).

Subd. 12. "Subjobber" means any person who buys stamped cigarettes and sells them to persons other than ultimate consumers, and any licensed distributor who delivers to and sells or distributes stamped cigarettes from a place of business other than that for which he has obtained his distributor's license; who does not use a distributor's license for any plan or scheme to circumvent the Minnesota unfair cigarette sales act or any other law relating to the sale of cigarettes, who does not use such subjobber's license for the principal purpose of selling cigarettes to retail cigarette licensees in which such subjobber has an ownership interest, and who sells at least 75 percent of his total cigarette volume to retail outlets in which the subjobber has no more than a ten percent ownership interest, directly or indirectly, and who sells to at least 25 retail customers. Notwithstanding the foregoing, "subjobber" shall also mean any person who is a vending machine operator. A vending machine operator is any person whose principal business is operating, or owning and leasing to operators, machines for the vending of merchandise or service.

[1967 c 600 s 3; 1969 c 759 s 1; 1971 c 371 s 1, 2; 1973 c 607 s 1]

325.67 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.67 SALES AT LESS THAN COST; PENALTY. Subdivision 1. It shall be unlawful for any wholesaler, subjobber or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler, subjobber or retailer, as the case may be, as defined in sections 325.64 to 325.76 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 or subjobber to violate the provisions of the Minnesota unfair cigarette sales act. Any wholesaler, subjobber 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, subjobber or retailer at less than cost to him as defined by sections 325.64 to 325.76 shall be prima facie evidence of a violation of sections 325.64 to 325.76 in civil cases.

[1967 c 600 s 4; 1969 c 759 s 2; 1971 c 371 s 3; 1973 c 607 s 2]

325.68 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.68 COMBINATION SALES. In all offers for sale or sales involving cigarettes and any other item at a combined price and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever, and which are not given by the wholesaler or retailer with all sales made by him in the ordinary course of his trade or business, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in such transactions, except that if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in section 325.66, subdivision 9.

[1967 c 600 s 5]

325.69 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.69 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 his selling price to the latter, the cost of doing business to the wholesaler, as defined by section 325.66, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section.

[1967 c 600 s 6; 1969 c 759 s 3]

325.70 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.70 SALES EXCEPTIONS. The provisions of sections 325.64 to 325.76 shall not apply to a sale at wholesale or a sale at retail made (a) in an isolated transaction; (b) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes offered for sale, or to be sold; (c) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.

[1967 c 600 s 7]

325.71 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.71 TRANSACTIONS PERMITTED TO MEET LAWFUL COMPETITION. Subdivision 1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by sections 325.64 to 325.76. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in sections 325.64 to 325.76. The price of cigarettes offered for sale, or sold under the exceptions specified in section 325.70 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

Subd. 2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 325.72, subdivision 2.

[1967 c 600 s 8]

325.72 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.72 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 section 325.64 to 325.76 purchased 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, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

Subd. 2. **Cost survey.** Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of sections 325.64 to 325.76 is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the

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cost survey shall be deemed competent evidence in any action or proceeding under sections 325.64 to 325.76 to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance, or other expenses.

[1967 c 600 s 9]

325.73 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.73 SALES OUTSIDE ORDINARY CHANNELS OF BUSINESS; EFFECT.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, including purchases from the wholesale distributors who do not have their principal place of business within the state of Minnesota.

[1967 c 600 s 10]

325.74 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.74 REMEDIES; SALES OF GOVERNMENT AGENCIES. Subdivision 1.

The chairman of the commerce commission, any corporation, partnership, trade association, or any person or persons who would suffer injury from any threatened violation of sections 325.64 to 325.76 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 by him.

Subd. 2. All state, municipal and other governmental agencies shall be governed by the Minnesota Unfair Cigarette Sales Act, and no such agency of government shall accept any bid offer which is below the "cost to wholesaler" as defined by section 325.66, subdivision 10(1) nor shall sell such cigarettes at a cost less than provided for in section 325.66, subdivision 11.

[1967 c 302 s 2; 1967 c 600 s 11; 1969 c 759 s 4; 1973 c 607 s 3]

325.75 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.75 COMMERCE COMMISSION CHAIRMAN; POWERS AND DUTIES.

Subdivision 1. The chairman of the commerce commission may adopt rules and regulations for the enforcement of sections 325.64 to 325.76 and he is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as he shall deem necessary and it shall be permissible to use such cost survey as provided in section 325.71, subdivision 2 and section 325.72, subdivision 2.

Subd. 2. (1) For purposes of investigating alleged violations of the unfair cigarette sales act, the chairman of the commerce commission or an employee or agent thereof shall have the power to conduct investigations, hold hearings, and to examine, or cause to be examined, any books, papers, records, or memoranda relevant to conducting such an investigation, examination, or hearing, whether such books, papers, records, or memoranda are the property of or in possession of the wholesaler or retailer or any other person or corporation. He shall further have power to issue a subpoena to require the attendance at a hearing or investigation of any wholesaler, subjobber, retailer, or other person having knowledge or information in the premises to compel production of books, papers, records, or memoranda by the person so required to attend; to take testimony on matters material to such investigation and to administer oaths or affirmations.

(2) No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records, or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, before the chairman of the commerce commission

or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(3) Every hearing conducted under sections 325.64 to 325.76 shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by registered mail to the last known address of the licensee or other person involved in the hearing, and service shall be complete upon mailing. After every hearing, the chairman of the commerce commission shall make his findings and his order in writing. The findings and order shall be filed in the office of the chairman, and a copy sent by mail or otherwise to the person to whom the notice was directed.

(4) Said chairman may, upon notice and after hearing, suspend or revoke any permit issued under the cigarette tax provisions and the rules and regulations of the commissioner of revenue promulgated thereunder, for failure of the permit holder to comply with any provisions of this unfair cigarette sales act or any rule or regulation adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than 15 days from the date of suspension or revocation for the first violation of this act; not less than 45 days from the date of suspension or revocation for the second violation of this act; all subsequent violations shall be punishable by suspension or revocation of a permit for a period of not less than 45 days and not more than one year; and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation. Notice of the suspension or revocation shall be given by the chairman of the commerce commission to the commissioner of revenue. The commissioner of revenue may refuse to grant a cigarette wholesaler or subjobber license to any person who violates the provisions of sections 325.67 to 325.75, or any other act applicable to the sale of cigarettes, or any rule or regulation promulgated or adopted by the commissioner of revenue or the chairman of the commerce commission for the enforcement or regulation of the sale of cigarettes.

Subd. 3. Any person aggrieved by the decision order or finding of the chairman of the commerce commission relative to suspending or revoking any such permit may appeal therefrom to the district court in the same manner and subject to the same procedure as is provided by law.

Subd. 4. Each cigarette wholesaler as defined herein, and subjobber as defined in section 297.01, subdivision 14, shall pay the respective amounts of \$100 and \$43.75, in one sum yearly after January 1, 1972 and \$50 and \$21.88, respectively, in one sum for the period from July 1, 1971 to December 31, 1971. Such amounts shall be collected by the commissioner of revenue, deposited forthwith in the state treasury and credited to the general fund.

[1967 c 302 s 2; 1967 c 600 s 12; 1969 c 399 s 1; 1969 c 759 s 5, 6; 1971 c 235 s 1; 1971 c 371 s 4; 1973 c 582 s 3; 1973 c 607 s 4-6]

325.76 M.S. 1965 [Repealed, 1967 c 600 s 15]

325.76 PARTIAL UNCONSTITUTIONALITY. The provisions of sections 325.64 to 325.76 shall be deemed to be severable and if for any reason any provisions shall be determined to be unconstitutional or invalid, such determination shall not be held to affect any other provisions hereof. And no such determination shall be deemed to invalidate or render ineffectual any of the other provisions of sections 325.64 to 325.76.

[1967 c 600 s 14]

CIGARETTE VENDING MACHINES

325.765 CIGARETTE VENDING MACHINES, NOTICE RELATING TO SALES. Subdivision 1. In a conspicuous place on each cigarette vending machine in use within the state, there shall be posted, and kept in easily legible form and repair, by the owner, lessee, or person having control thereof, a warning to persons under 18 years of age which shall be printed in bold type letters each of which shall be at least one half inch high and which shall read as follows:

"Any Person Under 18 Years of Age Is Forbidden By Law To Purchase Cigarettes From This Machine."

Subd. 2. Any owner, any lessee, and any person having control of any cigarette

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vending machine which does not bear the warning required by this section shall be guilty of a misdemeanor.

[1963 c 545 s 1]

MOTOR FUEL, DISPLAY OF SALE PRICE

325.77 MOTOR FUEL; DISPLAY OF OCTANE RATING AND SALE PRICE.

Subdivision 1. The legislature finds that the wording, arrangement, and accumulation of signs advertising the quality and the price per gallon of motor fuel and located at or near places of business for the retail sale of motor fuel, in a confusing, exaggerated, deceptive, misleading, or otherwise fraudulent manner, is detrimental to the public interest.

Subd. 2. For the purposes of this section:

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, or public or private corporation;

"Motor fuel" means liquefied petroleum gas or any other volatile and inflammable liquid or substance produced, blended or compounded for, or suitable and practicable for, operating internal combustion engines furnishing power to operate a motor vehicle.

Subd. 3. It shall be unlawful for any person to offer to sell at retail and dispense or to sell at retail and dispense motor fuel into fuel supply tanks of motor vehicles unless there is continuously and publicly posted and displayed on each pump or other dispensing device the minimum octane rating and the retail price per gallon including all federal and state tax of the motor fuel dispensed therefrom:

(1) On the computer mechanism of the dispensing device, which shall state the minimum octane rating and the price per gallon including all federal and state tax and the total price of the quantity delivered, or

(2) On a separate sign not less than seven inches in height and eight inches in width and not larger than 12 inches in height and width attached to the dispensing device, which shall state clearly and legibly in figures the minimum octane rating and in figures and fractions of uniform size and prominence the total price per gallon including the per gallon amount of all tax to be collected in connection with the sale.

Subd. 4. Any signs or devices stating or relating to the minimum octane rating or to the retail price of motor fuel or designed and calculated to cause the public to believe that they state or relate to the minimum octane rating or the retail price of motor fuel posted or displayed on or about premises where motor fuel is sold at retail or on property adjacent thereto and within view of any public highway, road, or street shall clearly and legibly state in figures the minimum octane rating and in figures and fractions of uniform size and prominence the total price per gallon, including the per gallon amount of all tax to be collected in connection with the sale. Nothing contained in this section shall be deemed to prohibit any separate signs or decals posted or displayed on or about premises where motor fuel is sold at retail relating to premiums, trading stamps or other promotional devices, or the per gallon amount of tax imposed upon the sale of motor fuel, provided any sign pertaining to price of merchandise other than motor fuel clearly and legibly states in letters of the same size as the figures and fractions stating such price the name or designation of such merchandise.

Subd. 4a. For the purposes of this section, octane rating shall be determined in the manner described in the American Society for Testing and Materials (ASTM) "Standard Specification for Gasoline", D439-71 or such other manner as prescribed by the director of consumer services by regulations, adopted pursuant to the administrative procedures act. Such regulations shall only be promulgated to place Laws 1973, Chapter 687 in accordance with regulations promulgated by a federal agency.

Subd. 5. It shall be the duty of the county attorney to receive complaints of violations of this section and to prosecute the complaints if on the basis of the facts so reported and of any additional investigation he may initiate, he shall be satisfied that a violation of this section has been committed.

Subd. 6. Any person who violates any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed \$50 or imprisoned for a term of 15 days.

Subd. 7. The invalidity of any provision or application of this section shall not

affect the remaining provisions or other applications of this section, but the same shall continue in full force and effect.

Subd. 8. Except as provided in Laws 1963, Chapter 748, Section 8 nothing in this section shall be construed as repealing any other law or part thereof, but the remedies herein provided shall be cumulative to all other remedies provided by law.

[1963 c 748 s 1-7, 9; 1973 c 687 s 1-4]

UNIFORM DECEPTIVE TRADE PRACTICES ACT

325.771 DEFINITIONS. Subdivision 1. As used in sections 325.771 to 325.776, unless the context otherwise requires, the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Article" means a product as distinguished from its trademark, label, or distinctive dress in packaging.

Subd. 3. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

Subd. 4. "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

Subd. 5. "Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement.

Subd. 6. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

Subd. 7. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

Subd. 8. "Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

[1973 c 216 s 1]

325.772 DECEPTIVE TRADE PRACTICES. Subdivision 1. A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupation, he:

- (1) passes off goods or services as those of another;
- (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparages the goods, services, or business of another by false or misleading representation of fact;
- (9) advertises goods or services with intent not to sell them as advertised;
- (10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or
- (12) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Subd. 2. In order to prevail in an action under sections 325.771 to 325.776, a

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complainant need not prove competition between the parties or actual confusion or misunderstanding.

Subd. 3. This section does not affect unfair, deceptive, or misleading trade practices otherwise actionable at common law or under other statutes of this state.

[1973 c 216 s 2]

325.773 REMEDIES. Subdivision 1. A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

Subd. 2. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action which he knew to be groundless, or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive.

Subd. 3. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

[1973 c 216 s 3]

325.774 APPLICATION. Subdivision 1. Sections 325.771 to 325.776 do not apply to:

(1) conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(2) publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material; or

(3) actions or appeals pending on July 1, 1973.

Subd. 2. Section 325.772, subdivision 1, clauses (2) and (3) do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before July 1, 1973, if the use was in good faith and is otherwise lawful except for sections 325.771 to 325.776.

[1973 c 216 s 4]

325.775 UNIFORMITY OF APPLICATION AND CONSTRUCTION. Sections 325.771 to 325.776 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 325.771 to 325.776 among those states which enact it.

[1973 c 216 s 5]

325.776 CITATION. Sections 325.771 to 325.776 may be cited as the uniform deceptive trade practices act.

[1973 c 216 s 6]

PREVENTION OF CONSUMER FRAUD

325.78 PREVENTION OF CONSUMER FRAUD; DEFINITIONS. Subdivision 1. The following words and terms where used in sections 325.78 to 325.80 shall have the meanings ascribed to them in this section.

Subd. 2. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services.

Subd. 3. "Person" means any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.

Subd. 4. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

[1963 c 842 s 1]

325.79 UNLAWFUL PRACTICES. Subdivision 1. **Fraud, misrepresentation, deceptive practices.** The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any

merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

Subd. 2. **Referral and chain referral selling prohibited.** (1) With respect to any sale or lease the seller or lessor may not give or offer a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease.

(2) (a) With respect to any sale or lease, it shall be illegal for any seller or lessor to operate or attempt to operate any plans or operations for the disposal or distribution of property or franchise or both whereby a participant gives or agrees to give a valuable consideration for the chance to receive something of value for inducing one or more additional persons to give a valuable consideration in order to participate in the plan or operation, or for the chance to receive something of value when a person induced by the participant induces a new participant to give such valuable consideration including such plans known as chain referrals, pyramid sales, or multi-level sales distributorships.

(b) The phrase "something of value" as used in paragraph (a) above, does not mean or include payment based upon sales made to persons who are not purchasing in order to participate in the prohibited plan or operation.

(3) If a buyer or lessee is induced by a violation of this subdivision to enter into a sale or lease, the agreement is unenforceable and the buyer or lessee at his option, may rescind the agreement with the seller or lessor and, upon tendering the property received, or what remains of it, obtain full or in the case of remains, a proportional restitution of all sums paid, or retain the goods delivered and the benefit of any services performed without any further obligation to pay for them.

(4) With respect to a sale or lease in violation of this section an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

(5) In a sale or lease in violation of this section, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section.

(6) Any person who violates any provision of this subdivision shall be guilty of a gross misdemeanor.

Subd. 3. **Advertising media excluded.** Nothing herein contained shall apply to the owner or publisher of newspapers, magazines, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement.

Subd. 4. **Solicitation of money for merchandise not ordered or services not performed.** The act, use, or employment by any person of any solicitation for payment of money by another by any statement or invoice, or any writing that could reasonably be interpreted as a statement or invoice, for merchandise not yet ordered or for services not yet performed and not yet ordered, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

[1963 c 842 s 2; 1969 c 739 s 1; 1969 c 1100 s 1; 1971 c 391 s 1; 1973 c 454 s 1]

325.80 REMEDIES. Subdivision 1. **Injunction.** The attorney general or any county attorney may institute a civil action in the name of the state in the district court for an injunction prohibiting any violation of sections 325.78 to 325.80. The court, upon proper proof that defendant has engaged in a practice made enjoined by section 325.79, may enjoin the future commission of such practice. It shall be no defense to such an action that the state may have adequate remedies at law.

Subd. 2. **Service of process.** Service of process shall be as in any other civil suit, except that where a defendant in such action is a natural person or firm residing outside the state, or is a foreign corporation, service of process may also be

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made by personal service outside the state, or in the manner provided by section 303.13, subdivision 1(3), or in such manner as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not defendant is doing business in Minnesota regularly or habitually.

[1963 c 842 s 3; 1967 c 302 s 2]

NOTE: As to section of consumer services in the department of commerce, see sections 45.15 and 45.16.

COMBINATIONS IN RESTRAINT OF TRADE

325.8011 CITATION. Sections 325.8011 to 325.8028 may be cited as the Minnesota Antitrust Law of 1971.

[1971 c 865 s 1]

325.8012 DEFINITIONS. Subdivision 1. Unless a different meaning is clearly indicated by the context, for the purposes of sections 325.8011 to 325.8028, the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Commodity" means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or any other tangible or intangible property, real, personal, or mixed, for use, consumption, enjoyment, or resale.

Subd. 3. "Service" means any kind of activity performed in whole or in part for financial gain.

Subd. 4. "Contract, combination, or conspiracy" means any agreement, arrangement, collusion, or understanding. "Contract" includes a purchase, a contract to purchase, a sale, a contract to sell, a lease, a contract to lease, a license, or a contract to license. "Combination" includes a trust, common selling or purchasing agent, pool, or holding company.

Subd. 5. "Person" means any individual, corporation, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

Subd. 6. "Trade or commerce" means any economic activity of any type whatsoever involving any commodity or service whatsoever.

[1971 c 865 s 2]

325.8013 UNREASONABLE RESTRAINT OF TRADE OR COMMERCE. A contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce is unlawful.

[1971 c 865 s 3]

325.8014 ESTABLISHMENT, MAINTENANCE, OR USE OF MONOPOLY POWER. The establishment, maintenance, or use of, or any attempt to establish, maintain, or use monopoly power over any part of trade or commerce by any person or persons for the purpose of affecting competition or controlling, fixing, or maintaining prices is unlawful.

[1971 c 865 s 4]

325.8015 PRICE FIXING; PRODUCTION CONTROL; ALLOCATION OF MARKETS; COLLUSIVE BIDDING; AND CONCERTED REFUSALS TO DEAL. Without limiting section 325.8013, the following shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) A contract, combination, or conspiracy between two or more persons in competition:

(a) for the purpose or with the effect of affecting, fixing, controlling or maintaining the market price, rate, or fee of any commodity or service;

(b) affecting, fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of affecting, fixing, controlling, or maintaining the market price, rate, or fee of the commodity or service; or

(c) allocating or dividing customers or markets, functional or geographical, for any commodity or service.

(2) A contract, combination, or conspiracy between two or more persons whereby, in the letting of any public contract, (a) the price quotation of any bid is fixed or controlled, (b) one or more persons refrains from the submission of a bid, or (c) competition is in any other manner restrained.

(3) A contract, combination, or conspiracy between two or more persons refusing to deal with another person, except a refusal to deal by associations, trading boards, or exchanges when predicated upon a failure to comply with rules of membership.

[1971 c 865 s 5]

325.8016 SCOPE OF ACT. Sections 325.8011 to 325.8028 apply to:

(a) any contract, combination, or conspiracy when any part thereof was created, formed, or entered into in this state; and

(b) any contract, combination, or conspiracy, wherever created, formed, or entered into; any establishment, maintenance, or use of monopoly power; and any attempt to establish, maintain, or use monopoly power; whenever any of the foregoing affects the trade or commerce of this state.

[1971 c 865 s 6]

325.8017 EXEMPTIONS. Subdivision 1. Nothing contained in sections 325.8011 to 325.8028, shall be construed to forbid the existence or operation of labor, electrical, agricultural, or horticultural organizations instituted for the purpose of mutual help, and not conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the provisions of sections 325.8011 to 325.8028, when lawfully carrying out the legitimate objects hereof.

Subd. 2. Nothing contained in sections 325.8011 to 325.8028, shall apply to actions or arrangements otherwise permitted, or regulated by any regulatory body or officer acting under statutory authority of this state or the United States.

Subd. 3. Nothing in sections 325.8011 to 325.8028, shall apply to agreements among employers or agreements among labor unions made for the purpose of furthering the position of any of the agreeing employers or agreeing unions in the course of the collective bargaining process.

[1971 c 865 s 7]

325.8018 PENALTIES FOR VIOLATION. Subdivision 1. Any person who is found to have violated sections 325.8011 to 325.8028, shall be subject to a civil penalty of not more than \$50,000. Any person who fails to comply with a final judgment or decree rendered by a court of this state issued for a violation of sections 325.8011 to 325.8028, shall be subject to a civil penalty of not more than \$100,000.

Subd. 2. Any person who is found to have willfully committed any of the acts enumerated in section 325.8015 shall be guilty of a felony and subject to a fine of not more than \$50,000 or imprisonment in the state penitentiary for not more than five years, or both.

[1971 c 865 s 8]

325.8019 DAMAGES. Any person, any governmental body, or the state of Minnesota or any of its subdivisions or agencies, injured by a violation of sections 325.8011 to 325.8028, shall recover three times the actual damages sustained, together with costs and disbursements, including reasonable attorneys' fees.

[1971 c 865 s 9]

325.8020 INJUNCTIVE RELIEF. In addition to other remedies provided by sections 325.8011 to 325.8028, the courts of this state shall have jurisdiction to grant such temporary, interlocutory, or permanent injunctive relief as is necessary to prevent and restrain violations of sections 325.8011 to 325.8028. Applications for such relief shall be made in accordance with the rules of the court to which application for relief is made and according to the manner prescribed by law.

[1971 c 865 s 10]

325.8021 AUTHORITY OF THE ATTORNEY GENERAL. The attorney general may investigate any alleged violation of sections 325.8011 to 325.8028 and if he has reasonable cause to believe that a violation is imminent, is occurring or has occurred, he may institute on behalf of the state of Minnesota, any of its departments and agencies, or any of its political subdivisions a court action seeking appropriate relief. The investigatory authority of the attorney general under sections 325.8011 to 325.8028 shall include, but not be limited to, the authority provided for in section 325.907.

[1971 c 865 s 11; 1974 c 524 s 1]

325.8022 FORFEITURE OF CHARTER RIGHTS AND PRIVILEGE TO DO BUSINESS. Subdivision 1. Upon the failure of any person to comply with the terms of a final judgment or decree rendered by a court of this state issued for a violation of the provisions of sections 325.8011 to 325.8028, or to comply with a

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consent settlement approved by a court of this state concerning an alleged violation of sections 325.8011 to 325.8028, the attorney general may apply to the court:

(a) for the forfeiture of any charter rights, franchise privileges or powers of such corporation held by such person under the laws of this state;

(b) for dissolution, if the person is a corporation or limited partnership organized under the laws of this state; or

(c) for the suspension of the privilege to conduct business within this state.

The court, after giving due consideration to the public interest and to relevant competitive and economic circumstances, may grant so much of the requested relief as is deemed appropriate. A dissolution shall be conducted in accordance with the procedures specified by law for either voluntary or judicial dissolution of the particular type of corporation, association, firm or partnership.

Subd. 2. If any corporation, association, partnership, or limited partnership shall be dissolved or have its privilege to transact business in this state suspended or revoked as provided in subdivision 1, no assignee, transferee, or successor-in-interest of such corporation, association, partnership, or limited partnership, shall be permitted to incorporate or to transact business in this state without first applying to the court for and receiving an order permitting incorporation or transaction of business. No order shall be granted unless the applicant proves to the satisfaction of the court that it will conduct its affairs in accordance with the provisions of sections 325.8011 to 325.8028.

[1971 c 865 s 12]

325.8023 ACTS OF OFFICERS, DIRECTORS, REPRESENTATIVES, OR AGENTS ACTING WITHIN THE SCOPE OF THEIR AUTHORITY.

1. A corporation, association, firm, partnership, or limited partnership is liable for the acts of its officers, directors, representatives, or agents acting within the scope of their authority, whether they are acting on their own behalf and for their own benefit, or acting for the corporation, association, firm, partnership, or limited partnership in their representative capacity. Proof of the acts of any such officer, director, representative, or agent shall be received as prima facie proof of the acts of the corporation, association, firm, partnership, or limited partnership itself.

Subd. 2. When a corporation, association, firm, partnership, or limited partnership violates sections 325.8011 to 325.8028, such violation shall be deemed to be that of the individual directors, members, officers, managers, employees, or agents of the corporation, association, firm, partnership, or limited partnership who knowingly authorized, ordered, aided, abetted, or advised in the commission of any of the acts constituting in whole or in part the violation, whether the individuals acted on their own behalf and for their own benefit, or for the corporation, association, firm, partnership, or limited partnership and in their representative capacity.

The individuals, in their capacity as individuals, are subject to the provisions of sections 325.8011 to 325.8028, and may be joined, if subject to personal jurisdiction, as additional parties defendant in the proceedings against the corporation, association, firm, partnership, or limited partnership.

[1971 c 865 s 13]

325.8024 JUDGMENT IN FAVOR OF STATE AS PRIMA FACIE EVIDENCE.

A final judgment or decree rendered in any civil or criminal proceeding under sections 325.8011 to 325.8028 brought by or on behalf of the state of Minnesota, any of its departments or agencies, or any of its political subdivisions, to the effect that a defendant has violated sections 325.8011 to 325.8028, shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said sections as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, that this section shall not apply to consent judgments or decrees entered before any testimony has been taken.

[1971 c 865 s 14]

325.8025 NOTIFICATION OF CIVIL ACTION. Upon commencement of any civil action by a person, other than the attorney general, for violation of sections 325.8011 to 325.8028, the clerk of the court shall mail a copy of the complaint to the attorney general.

[1971 c 865 s 15]

325.8026 STATUTE OF LIMITATIONS. Subdivision 1. An action under sections 325.8011 to 325.8028, shall be forever barred unless commenced within four

years of the date upon which the cause of action arose. No cause of action barred under existing law on June 8, 1971 shall be revived by sections 325.8011 to 325.8028. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of the violation.

Subd. 2. If any proceeding is commenced under sections 325.8011 to 325.8028, by the attorney general on behalf of the state of Minnesota, its departments or agencies, or its political subdivisions, the running of the statute of limitations in respect of every right of action arising under sections 325.8011 to 325.8028, and based in whole or in part on any matter complained of in the aforementioned proceeding shall be suspended during the pendency thereof and for one year thereafter. If the running of the statute of limitations is suspended, the action shall be forever barred unless commenced within the greater of either the period of suspension or four years after the date upon which the cause of action arose.

[1971 c 865 s 16]

325.8027 VENUE. Actions or proceedings brought by the state or any private party for violations of the provisions of sections 325.8011 to 325.8028, may be brought in the district court in and for the county where the offense or any part thereof is committed, or where any of the defendants reside or is found, or where any agent of any defendant resides or is found, or where any defendant, corporation, association, firm, partnership, or limited partnership does business.

[1971 c 865 s 17]

325.8028 ACTION NOT BARRED AS AFFECTING OR INVOLVING INTER-STATE OR FOREIGN COMMERCE. No action under sections 325.8011 to 325.8028 shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

[1971 c 865 s 18]

325.81 [Repealed, 1971 c 865 s 19]

FUEL INFORMATION REPORT

325.811 COMMERCE; FUEL INFORMATION REPORT; DEFINITIONS. Subdivision 1. **Words, terms and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of this section and section 325.812 shall have the meanings given them.

Subd. 2. **Supplier.** "Supplier" means any person engaged in the business of importing, storing, or generating energy sources in Minnesota. This definition shall not apply to distributors, jobbers, or dealers of petroleum products.

Subd. 3. **Energy.** "Energy supplies", or "energy sources" means gasoline, fuel oil, natural gas, propane, coal, special fuels, and electricity.

[1973 c 697 s 1]

325.812 INFORMATION. Subdivision 1. The governor may require or, with the assistance of the attorney general, subpoena from any supplier or energy source any information pertaining to the supply and distribution of energy sources to be used within the state. The information shall be furnished within the times specified by the governor.

Subd. 2. For the six-month periods beginning on April 1 and October 1 of each year, each such energy supplier shall file a statement which indicates any anticipated change in quantity of energy sources which he will supply for that six-month period. The statement shall be filed at least six months prior to the beginning of any reporting period. If at any time subsequent to filing the statement, the supplier receives any additional information affecting the accuracy of the statement, he shall amend the statement within 15 days of receiving the information. Included in the statement shall be an explanation of the causes for the changes in distribution patterns.

[1973 c 697 s 2]

PETROLEUM; DISCRIMINATION BETWEEN LOCALITIES PROHIBITED

325.82 PETROLEUM. Subdivision 1. **Discrimination between localities.** Any person, firm, company, association, or corporation, foreign or domestic, doing business in this state and engaged in the production, manufacture, or distribution of petroleum or any of its products that shall intentionally, or otherwise, for the purpose of destroying the business of a competitor or creating a monopoly in any locality, discriminate between different sections, communities, or cities of this

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state, by selling such commodity at a lower rate in one section, community, or city than is charged for such commodity by such party in another section, community, or city after making due allowance for the difference, if any, in the test or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

Subd. 2. **Penalty.** Any person, firm, company, association, or corporation violating any of the provisions of subdivision 1, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual found guilty of violation thereof, shall be guilty of a gross misdemeanor, and shall be fined not more than \$5,000, or be imprisoned in the county jail for not to exceed one year, or both.

Subd. 3. **Contracts void; recovery.** All contracts or agreements made in violation of any provisions of subdivisions 1 and 2 shall be void and any money or property paid or transferred for any such commodity under any such agreement shall be paid back within ten days after demand therefor, and on failure to so repay, then the purchasers may recover back, in a civil action, any such money or property, together with reasonable attorneys' fees not less than \$25.

Subd. 4. **Duty of county attorney.** It shall be the duty of the county attorneys in their counties, and the attorney general, to enforce the provisions of subdivisions 1 to 3 by appropriate actions in courts of competent jurisdictions.

Subd. 5. **Duty of secretary of state.** If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of subdivisions 1 to 8, it shall be the duty of the secretary of state to refer the matter to the attorney general, who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

Subd. 6. **Revocation of permit.** If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of subdivisions 1 to 8, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

Subd. 7. **Continuance in business; ouster.** If after the revocation of its permit, such corporation or any other corporation (not having a permit and found guilty of having violated any of the provisions of subdivisions 1 to 8) shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the State of Minnesota, to oust such corporation from all business of every kind and character in the state.

Subd. 8. **Remedies cumulative.** Nothing in subdivisions 1 to 8 shall be construed as repealing any other act, or part of an act, but the remedies herein provided shall be cumulative to all other remedies by law.

[1907 c 269 s 1-8] (10474-10481)

ODOMETERS

325.821 TAMPERING WITH ODOMETERS; DEFINITIONS. Subdivision 1. For the purposes of sections 325.821 to 325.824, the terms defined in this section have the meanings given them.

Subd. 2. "Owner" means a person, other than a secured party, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

Subd. 3. "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks, except snowmobiles and other devices designed and used primarily for the transportation of persons over natural terrain, snow, or ice propelled by wheels, skis, tracks, runners, or whatever other means.

Subd. 4. "Person" means an individual, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

[1973 c 264 s 1]

325.822 PROHIBITED ACTS. Subdivision 1. No person shall knowingly, tamper with, adjust, alter, change, set back, disconnect or, with intent to defraud, fail to connect the odometer of any motor vehicle, or cause any of the foregoing to

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occur to an odometer of a motor vehicle, so as to reflect a lower mileage than has actually been driven by the motor vehicle.

Subd. 2. No person shall with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected or nonfunctional.

Subd. 3. No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage.

Subd. 4. No person shall sell or offer for sale any motor vehicle with knowledge that the mileage registered on the odometer has been altered so as to reflect a lower mileage than has actually been driven by the motor vehicle without disclosing such fact to prospective purchasers.

Subd. 5. No person shall conspire with any other person to violate this section or section 325.823.

Subd. 6. Nothing in this section shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a written notice shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. No person shall remove or alter such a notice so affixed.

[1973 c 264 s 2]

325.823 TRANSFER OF MOTOR VEHICLE; MILEAGE DISCLOSURE. No person shall transfer a motor vehicle without disclosing in writing to the transferee the true mileage registered on the odometer reading or that the actual mileage is unknown if the odometer reading is known by the transferor to be different from the true mileage. The registrar of motor vehicles shall adopt, pursuant to the administrative procedure act, rules not inconsistent with sections 325.821 to 325.824 or Title IV of the Federal Motor Vehicle Information and Cost Savings Act or any rules promulgated thereunder prescribing the manner in which such written disclosure shall be made. No transferor shall violate any rules adopted under this section or knowingly give a false statement to a transferee in making any disclosure required by such rules.

[1973 c 264 s 3]

325.824 PENALTIES; REMEDIES. Subdivision 1. Any person who is found to have violated sections 325.821 to 325.824 shall be guilty of a gross misdemeanor.

Subd. 2. In addition to the penalties provided in subdivision 1, any person who is found to have violated sections 325.821 to 325.824 shall be subject to the penalties provided in section 325.907.

Subd. 3. Any person injured by a violation of sections 325.821 to 325.824 shall recover the actual damages sustained together with costs and disbursements, including a reasonable attorney's fee, provided that the court in its discretion may increase the award of damages to an amount not to exceed three times the actual damages sustained or \$1,500, whichever is greater.

[1973 c 264 s 4]

MONOPOLIZATION OF FOOD PRODUCTS

325.83 MONOPOLIZATION OF FOOD PRODUCTS. Subdivision 1. **Declared a criminal conspiracy.** Any combination of persons, either as individuals or as members or officials of any corporation, to monopolize the markets for food products in this state or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy.

Subd. 2. **Penalty.** Any person found guilty of violating any provision of this section shall be punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for a period not to exceed 90 days.

[1917 c 381 s 1, 2] (10485, 10486)

SALES OF GOLD AND SILVER

325.84 FRAUDULENT SALE OF GOLD AND SILVER; PENALTY. Subdivi-

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sion 1. **False stamping of articles of gold or silver.** Any person, firm, corporation, or association, who or which make for sale any article of merchandise made, in whole or in part, of gold or any alloy of gold, having stamped, branded, engraved or printed thereon, or upon any card, tag, or label attached thereto, or upon any box, package, or wrapper, in which such article is encased or enclosed any mark, indicating or designed or intended to indicate, that the gold or alloy of gold of such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the actual fineness of such gold or alloy, in the case of flatware and watch cases be not less by more than three 1,000ths parts, and, in the case of all other articles, be not less by more than one-half karat than the fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article or upon any cards, tags, or labels attached thereto, or upon any box, package, or wrapper in which such article is encased or enclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; provided, that in any test for the ascertainment of the fineness of the gold or its alloy in any such article, according to the foregoing standards, the part of the gold or its alloy taken for the test analysis or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of the article; provided, further, and in addition to the foregoing tests and standards, that the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section, except watch cases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article (all such gold, alloy, and solders being assayed as one piece) shall not be less by more than one karat than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed.

Subd. 2. **Standards; improper stamping; penalties.** Any person, firm, corporation, or association, who or which makes for sale any article of merchandise made, in whole or in part, of silver or any alloy of silver, and having marked, stamped, branded, engraved, or printed thereon, or upon any card, tag, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed, the words "sterling silver" or "sterling," or any colorable imitation thereof, unless 925-1,000ths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; provided, that in case of all such articles there shall be allowed divergence of fineness of four-1,000ths parts from this standard.

Any person, firm, corporation, or association, who or which makes for sale any article of merchandise made, in whole or in part, of silver, or of any alloy of silver, and having marked, stamped, branded, engraved, or imprinted thereon or upon any card, tag, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless 900-1,000ths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; provided, that in the case of all such articles there shall be allowed a divergence in fineness of four-1,000ths parts from this standard.

Any person, firm, corporation, or association, who or which makes for sale any article of merchandise made, in whole or in part, of silver, or of any alloy of silver, and having stamped, branded, engraved, or imprinted thereon or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper, in which the article is encased or enclosed, any mark or word, other than the word "sterling" or the word "coin," indicating or designed or intended to indicate that the silver or alloy of silver, in the article, is of greater degree of fineness or quality of such silver or alloy, unless the actual fineness of silver or alloy of silver of which the article is composed be not less than four-1,000ths parts than the actual fineness indicated by the mark or word, other than the word "sterling" or "coin," stamped, branded, engraved, or imprinted upon any part of the article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

In any test for the ascertainment of the fineness of any such article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay, shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article. In addition to the foregoing test and standards that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article (all such silver alloy or solder being assayed as one piece) shall not be less by more than ten ten-thousandths parts than the fineness indicated according to the foregoing standards by the mark stamped, branded, engraved, or imprinted upon the article, or upon any card, tag, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed.

Subd. 3. Gold plate; false stamping; penalty. Any person, firm, corporation, or association, who or which makes for sale any article of merchandise made, in whole or in part, of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering, or sheet of gold or of any alloy of gold, and which article is known in the market as "rolled gold plate," "gold plate," "gold filled," or "gold electro plate," or by any similar designation, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed, any word or mark usually employed to indicate the fineness of gold, unless the word be accompanied by other words plainly indicating that the article, or some part thereof, is made of rolled gold plate, or gold plate, or gold electro plate, or is gold filled, as the case may be, is guilty of a misdemeanor.

Subd. 4. Silver plate; false stamping; penalty. Any person, firm, corporation, or association, who or which makes for sale any article of merchandise made, in whole or in part, of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver, or of any alloy of silver, and which article is known in the market as "silver plate" or "silver electro plate," or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which the article is encased or enclosed, the word "sterling," or the word "coin," either alone or in conjunction with any other words or marks, is guilty of a misdemeanor.

Subd. 5. Violations; punishment. Every person, firm, corporation, or association guilty of a violation of subdivisions 1 to 4, and every officer, manager, director, or managing agent of any such person, firm, corporation, or association directly participating in such violation or consenting thereto, shall be punished by a fine of not more than \$500, or by imprisonment for not more than three months, or by both, at the discretion of the court; provided, that if the person charged with violation of subdivisions 1 to 4 shall prove that the article concerning which the charge is made was manufactured prior to the first day of July, 1907, then the charge shall be dismissed.

Subd. 6. Selling falsely stamped articles; penalty. Every person, firm, corporation, or association who, with intent to deceive, shall sell any article, falsely branded or marked, contrary to the provisions of subdivisions 1 to 5, knowing the same to be so falsely marked or branded, shall be guilty of a misdemeanor.

[1907 c 467 s 1-6] (10352-10357)

RECORDED MATERIALS

325.841 UNLAWFUL TRANSFER OF SOUNDS; SALES. Unless exempt under section 325.843, it is unlawful for any person, firm, partnership, corporation, or association knowingly to (a) for commercial purposes transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded onto any other phonograph record, disc, wire, tape, film, or article; or (b) sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution or circulation, or cause to be sold, distributed or circulated, offered for sale, distribution or circulation, or possessed for sale, distribution or circulation, any article, or device on which sounds have been transferred, without the consent of the person who

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owns the master phonograph record, master disc, master tape, or other device or article from which the sounds are derived.

[1973 c 579 s 1]

325.842 IDENTITY OF TRANSFEROR. It is unlawful for any person, firm, partnership, corporation or association to sell, distribute, circulate, offer for sale, distribution or circulation, or possess for the purpose of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless such phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

[1973 c 579 s 2]

325.843 EXEMPTIONS. Sections 325.841 to 325.844 do not apply to any person who transfers or causes to be transferred any such sounds (a) intended for or in connection with radio or television broadcast transmission or related uses, (b) for archival purposes, (c) for library purposes, (d) for educational purposes, or (e) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

[1973 c 579 s 3]

325.844 VIOLATIONS; PUNISHMENT. Violation of sections 325.841 to 325.844 is a felony and is punishable upon conviction by a fine of not more than \$25,000 for the first offense, and not more than \$100,000 for a subsequent offense; or by imprisonment for not more than three years for a subsequent offense, or both fine and imprisonment.

[1973 c 579 s 4]

PURCHASES OR SALES OF WIRE AND CABLE

325.85 DEALERS IN WIRE AND CABLE; RECORDS AND REPORTS.

Subdivision 1. Every person, firm or corporation, including an agent, employee or representative thereof, engaging in the business of buying and selling wire and cable commonly and customarily used by communication and electric utilities shall keep a record, in the English language, legibly written in ink or typewriting, at the time of each purchase or acquisition, an accurate account or description, including the weight if customarily purchased by weight, of such wire and cable commonly and customarily used by communication and electric utilities purchased or acquired, the date, time and place of the receipt of the same, the name and address of the person selling or delivering the same and the number of the driver's license of such person. Such record, as well as such wire and cable commonly and customarily used by communication and electric utilities purchased or received, shall at all reasonable times be open to the inspection of any sheriff or deputy sheriff of the county, or of any policeman or constable in any incorporated city or statutory city, in which such business may be carried on. Such person shall not be required to furnish or keep such record of any property purchased from merchants, manufacturers or wholesale dealers, having an established place of business, or of any goods purchased at open sale from any bankrupt stock, but a bill of sale or other evidence of open or legitimate purchase of such property shall be obtained and kept by such person which must be shown upon demand to the sheriff or deputy sheriff of the county, or to any policeman or constable in any incorporated city or statutory city, in which such business may be carried on. The provisions of this subdivision and of subdivision 2 shall not apply to or include any person, firm or corporation engaged exclusively in the business of buying or selling motor vehicles, new or used, paper or wood products, rags or furniture, secondhand machinery.

Subd. 2. It shall be the duty of every such person, firm or corporation defined in subdivision 1 hereof, to make out and to deliver or mail to the office of the sheriff of the county in which business is conducted, not later than the second business day of each week, a legible and correct copy of the record required in subdivision 1 of the entries during the preceding week. In the event such person, firm or corporation has not made any purchases or acquisitions required to be recorded under subdivision 1 hereof during the preceding week no report need be submitted to the sheriff under this subdivision.

Subd. 3. Records required to be maintained by subdivision 1 hereof shall be retained by the person making them for a period of three years.

[1907 c 228 s 1; 1957 c 960 s 1; 1973 c 123 art 5 s 7] (10225)

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325.86 PENALTY. Any person violating the provisions of section 325.85 shall be guilty of a gross misdemeanor.

[1907 c 228 s 2] (10226)

SALES OF BLIND-MADE ARTICLES OR PRODUCTS

325.87 MISREPRESENTATION OF BLIND-MADE ARTICLES OR PRODUCTS FORIBDDEN. Subdivision 1. No person shall sell or offer for sale on either wholesale or retail levels within the state of Minnesota, any article or product which is said or represented to have been "blind-made" or with a connotation or an association with blindness unless such article or product shall have been made, processed, or repaired within the limits of the following specifications:

(a) Blind labor shall mean such work which has been expended by individuals whose central visual acuity does not exceed 20/200 in the better eye, with correcting lenses, or whose visual acuity is greater than 20/200 but with a limitation in the field of vision, such that the widest diameter of the visual field subtends an angle no greater than 20° as determined by an eye specialist.

(b) A "blind-made" article or product shall mean that at least 75 percent of the hours of direct labor expended in the preparation, processing, packaging, or improvement of an article or product, excluding the supervision, inspection, administration, or shipping, shall have been performed by a person or persons whose visual acuity falls within the definition of blindness described above.

Subd. 2. Any article or product which is sold or offered for sale in this state as a blind-made product shall include in its labeling the name of its manufacturer.

Subd. 3. Any person, firm, or agency that willfully violates any provision of this section shall be guilty of a misdemeanor.

[1957 c 544 s 1-3]

ADVERTISEMENTS

325.88 DEFINITIONS. Subdivision 1. For the purposes of sections 325.88 to 325.90 the terms defined in this section have the meanings given them.

Subd. 2. "Advertising device" means any billboard, sign, notice, poster, display emblem or similar item located out of doors which is intended to be viewed by the public from a highway or street and includes any structure used for the display of any such outdoor advertising device.

Subd. 3. "Business of outdoor advertising" means the business conducted for direct profit through rentals, or other compensation received from the erection or maintenance of advertising devices.

Subd. 4. "Person" means an individual, partnership, firm, association, or corporation.

[1965 c 531 s 1]

325.89 FURNISHING OF SPACE; EXCEPTIONS. Subdivision 1. It is unlawful for any person engaged in the business of outdoor advertising to directly or indirectly discriminate on the basis of race, color, creed or political affiliation in the furnishing of advertising or advertising service or space for advertisements on advertising devices. This shall not be construed as making mandatory the assignment of space immediately adjacent to previously leased space for the promotion of conflicting services or ideas.

Subd. 2. The person engaged in the business of outdoor advertising does not have to accept a request for advertising space from any person not willing to pay the prescribed rates or charges and the advertising of any material prohibited by law.

[1965 c 531 s 2]

325.90 VIOLATIONS. Any person violating the provisions of sections 325.88 to 325.90 is guilty of a misdemeanor.

[1965 c 531 s 3]

325.905 FALSE STATEMENT IN ADVERTISEMENT. Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, dissemi-

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nated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

The duty of a strict observance and enforcement of this law and prosecution for any violation thereof is hereby expressly imposed upon the attorney general, and it shall be the duty of the county attorney of any county wherein a violation of this section shall have occurred, upon complaint being made to him, to prosecute any person violating any of the provisions of this section.

[1913 c 51 s 1; 1915 c 309 s 1, 2; 1953 c 438 s 1; 1967 c 302 s 2] (10390, 10391)

ATTORNEY GENERAL; OTHER CONSUMER REMEDIES

325.907 ADDITIONAL DUTIES OF THE ATTORNEY GENERAL. Subdivision

1. **Investigate offenses against the provisions of certain designated sections; assist in enforcement.** The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the act against unfair discrimination and competition (sections 325.02 to 325.075), the fair trade act (sections 325.08 to 325.14), the unlawful trade practices act (sections 325.141 to 325.148), the automobile dealer's antioercion act (sections 325.15 to 325.24), the antitrust act (sections 325.8011 to 325.8028), section 325.905 and other laws against false or fraudulent advertising, the antidiscrimination acts contained in section 325.82, the act against monopolization of food products (section 325.83), and the prevention of consumer fraud act (sections 325.78 to 325.80) and assist in the enforcement of those laws as in this section provided.

Subd. 2. **Attorney general to assist in discovery and punishment of illegal practices.** When the attorney general, from information in his possession, has reasonable ground to believe that any person has violated, or is about to violate, any of the laws of this state referred to in subdivision 1, he shall have power to investigate those violations, or suspected violations, and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes specifically mentioned in subdivision 1 or any other laws respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade. In connection with investigation under this section the attorney general upon specifying the nature of the violation or suspected violation may obtain discovery from any person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the pending investigation, in accordance with the provisions of this subdivision. The discovery may be obtained without commencement of a civil action and without leave of court, except as expressly required by the provisions of subdivision 2a. The applicable protective provisions of rules 26.02, 30.02, 30.04 and 31.04 of the rules of civil procedure for the district courts shall apply to any discovery procedures instituted pursuant to this section. The attorney general or any person to whom discovery is directed may apply to and obtain leave of the district court in order to reduce or extend the time requirements of this subdivision, and upon a showing of good cause the district court shall order such a reduction or extension. In order to obtain discovery, the attorney general may:

(a) Serve written interrogatories on any person. Within 20 days after service of interrogatories, separate written answers and objections to each interrogatory shall be mailed to the attorney general.

(b) Upon reasonable written notice of no less than 15 days, require any person to produce for inspection and copying any documents, papers, books, accounts, letters, photographs, objects, or tangible things which are in his possession, custody, or control.

(c) Upon reasonable written notice of no less than 15 days, take the testimony of any person by deposition as to any fact or opinion relevant to the subject matter involved in the pending investigation.

For the purposes of this subdivision the term "person" has the meaning specified in section 325.78.

Subd. 2a. **Failure to comply.** If any person fails or refuses to answer interrogatories, to produce materials, or to be examined under oath, as required by the provisions of subdivision 2, the attorney general may give notice that he will apply to a district court, and the court, on a showing by the attorney general of cause therefor, may issue such order as may be required to compel compliance with the discovery procedures authorized by this section.

Subd. 2b. **Assurance of discontinuance.** The attorney general may accept an assurance of discontinuance of any act or practice he deems to be in violation of the laws referred to in subdivision 1 from any person he alleges is engaging in, or has engaged in, the act or practice. The assurance may include a stipulation for the performance, provision or payment by the alleged violator of any remedies allowable under subdivision 3a. Any assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or in Ramsey county. An assurance shall not be considered an admission of a violation for any purpose. Failure to comply with the assurance of discontinuance shall be punishable as contempt. For the purposes of this subdivision the term "person" has the meaning specified in section 325.78.

Subd. 3. **Injunctive relief.** In addition to the penalties provided by law for violation of the laws referred to in subdivision 1, specifically and generally, whether or not injunctive relief is otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of those laws and to require the payment of civil penalties. Whenever it shall appear to the satisfaction of the attorney general that any of those laws has been or is being violated, or is about to be violated, he shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law; and (b) to sue for and recover for the state, from any person who is found to have violated any of the laws referred to in subdivision 1, a civil penalty, in an amount to be determined by the court, not in excess of \$25,000. All sums recovered by the attorney general under this section shall be deposited in the general fund of the state treasury.

Subd. 3a. **Consumer remedies.** In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

Subd. 3b. **Orders and judgments prima facie evidence.** Any permanent injunction, judgment or order of the court made pursuant to subdivision 3 shall be prima facie evidence in an action brought under subdivision 3a that the defendant used or employed an act or practice in violation of the laws referred to in subdivision 1, provided that this subdivision shall not apply to consent judgments or decrees where the court makes no finding of illegality, including assurances of discontinuance pursuant to subdivision 2b.

Subd. 4. **Exception.** The provisions of this section shall not apply to any person, firm or corporation engaged in the insurance business and as such subject to sections 72A.17 to 72A.30.

[1947 c 587 s 8; 1957 c 821 s 10; 1965 c 51 s 70; 1967 c 302 s 1; 1969 c 6 s 41; 1973 c 35 s 50; 1973 c 155 s 1-5; 1974 c 524 s 2-8]

325.91 [Repealed, 1971 c 71 s 3]

325.911 [Repealed, 1971 c 71 s 3]

325.912 [Repealed, 1971 c 71 s 3]

325.913 [Repealed, 1971 c 71 s 3]

325.914 [Repealed, 1971 c 71 s 3]

325.915 [Repealed, 1971 c 71 s 3]

UNSOLICITED GOODS

325.92 **EFFECT OF DELIVERY.** Unless otherwise agreed, where unsolicited goods are addressed to and sent to a person, he has a right to refuse to accept delivery

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of the goods and is not bound to return such goods to the sender. The receipt of such unsolicited goods shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

[1969 c 609 s 1]

325.925 FREE SAMPLES; DISTRIBUTION. Subdivision 1. It shall be unlawful to cause to be delivered indiscriminately door to door to residences, other than through the United States mail, any advertising, sample of merchandise, or promotional material which is contained in a plastic film outer bag any dimension of which exceeds seven inches and which contains less than one hole, one-half inch in diameter, for each 25 square inch area, or any samples of drugs, medicines, razor blades, or aerosol cans regardless of how packaged. This subdivision shall not apply to plastic bags with an average thickness of more than .0015 of an inch.

Subd. 2. Any person who is found to have violated this section shall be guilty of a misdemeanor.

[1971 c 832 s 1, 2; 1974 c 85 s 1]

CREDIT CARDS

325.93 DEFINITIONS. Subdivision 1. For purposes of sections 325.93 to 325.932 the terms defined in this section shall have meanings given them.

Subd. 2. "Credit card" means any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which authorizes the holder to obtain credit or to purchase or lease property or services on the credit of the issuer or of the obligor, but does not mean a telephone company credit card.

Subd. 3. "Person" includes an individual or family, and in the absence of agreement to the contrary, a partnership, association, corporation or other legal or commercial entity.

Subd. 4. "Issuer" means a person or firm which issues a credit card.

[1969 c 1004 s 1]

325.931 UNSOLICITED CREDIT CARDS. No person in whose name a credit card is issued shall be liable for any amount resulting from use of that card from which he or a member of his family or household derives no benefit unless he has accepted the card by (1) signing or using the card, or (2) authorizing the use of the card by another. A mere failure to destroy or return an unsolicited credit card is not such an acceptance.

[1969 c 1004 s 2]

325.932 LOST OR STOLEN CREDIT CARDS. Subdivision 1. No person in whose name a credit card has been issued which he has accepted as provided in section 325.931 shall be liable for any amount in excess of \$50 resulting from the unauthorized use of the card from which he or a member of his family or household derives no benefit; provided, however, that the limitation on liability of this subdivision shall be effective only if the issuer is notified of any unauthorized charges contained in a bill within 60 days of receipt of the bill by the person in whose name the card is issued.

Subd. 2. No person in whose name a credit card is issued shall be liable for any amount resulting from the unauthorized use of such credit card after receipt by the issuer of notice that the card has been lost or stolen and from which such person or a member of his family or household derives no benefit.

[1969 c 1004 s 3]

325.9325 DISPUTED ACCOUNTS. Subdivision 1. **Billing information.** Every credit card issuer shall include on each billing statement the name, address, and telephone number of the department designated by it to receive requests by the customer account holder to correct mistakes or make adjustments to the billing statement.

Subd. 2. **Required response.** Every credit card issuer, within 30 days of receipt from a customer account holder, in writing at the address specified in subdivision 1, of a questioned or disputed charge, shall conduct an individual inquiry into the facts and send to the customer account holder an explanatory response in clear and definite terms.

Subd. 3. **Violation.** A violation of this section shall be treated as a violation of section 325.79.

[1973 c 460 s 1]

HOME SOLICITATION SALES

325.933 DEFINITIONS. Subdivision 1. As used in sections 325.933 to 325.938, the terms defined in this section have the meanings given them.

Subd. 2. "Home solicitation sale" means a sale of goods or services, by a seller who regularly engages in transactions of the same kind, purchased primarily for personal, family or household purposes, and not for agricultural purposes, with a purchase price of more than \$25, in which the seller or a person acting for him personally solicits the sale, and when the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller, except as otherwise provided in this subdivision. It does not include:

(a) a sale made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(b) a sale in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer and the buyer furnishes the seller with a separate dated and signed statement not furnished by the seller describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale. This exclusion shall only apply where (i) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and, (ii) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer; or

(c) a sale in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(d) a sale in which the buyer has initiated the contact either by oral, telephone, or written request (other than on a form provided by the seller), and requested the seller to visit his home for the purpose of negotiating the purchase of the specific good or service requested. This exclusion shall only apply where the buyer furnishes the seller with a separate dated and signed statement in the buyer's handwriting expressly acknowledging and waiving his right to cancel the sale; or

(e) a sale of insurance, securities, or real property; or a sale by public auction.

Subd. 3. "Sale" includes a lease or rental.

Subd. 4. "Seller" includes a lessor or anyone offering goods for rent, or an assignee of the seller.

Subd. 5. "Buyer" includes a lessee or anyone who gives a consideration for the privilege of using goods or services.

Subd. 6. "Business day" means any day other than a Saturday, Sunday, or holiday as defined in section 645.44.

[1973 c 443 s 1]

325.934 BUYER'S RIGHT TO CANCEL. Subdivision 1. In addition to any other rights the buyer may have, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the home solicitation sale occurs. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the seller and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the home solicitation sale.

[1973 c 443 s 2]

325.935 WRITING REQUIRED; NOTICE OF RIGHT TO CANCEL; NOTICE OF CANCELLATION. Subdivision 1. In a home solicitation sale, at the time the sale occurs, the seller shall:

(a) inform the buyer orally of his right to cancel;

(b) furnish the buyer with a fully completed receipt or copy of a contract pertaining to the sale which shows the date of the transaction, contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

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"You, the buyer, may cancel this purchase at any time prior to midnight of the third business day after the date of this purchase. See attached notice of cancellation form for an explanation of this right."; and

(c) furnish each buyer a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in bold face type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION

[enter type of goods or services purchased]

.....
(goods or services)

[enter date of transaction]

.....
(date)

If you do not want the goods or services described above, you may cancel your purchase by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to [Name of seller], at [Address of Seller's Place of Business] not later than midnight of [Date]. If you cancel, any payments made by you under the contract or sale, any property traded in, and any instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the written instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller does not pick up the goods within 20 days of the date of your notice of cancellation, you may retain or dispose of them without any further obligation.

I HEREBY CANCEL THIS TRANSACTION.

.....
(Date)

....."
(Buyer's signature)

Subd. 2. In lieu of the notice of cancellation required by subdivision 1, the seller may provide a notice which conforms to applicable federal law or regulation so long as it provides the information required by subdivision 1. Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

[1973 c 443 s 3]

325.936 RETURN OF PAYMENTS OR GOODS. Subdivision 1. Within ten days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must also be tendered by the seller in as good condition as when received by the seller. If the seller fails to tender said goods, the buyer may, if he so elects, recover from the seller an amount equal to the trade-in allowance stated in the agreement.

Subd. 2. Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of the goods delivered to him by the seller.

Subd. 3. Except as provided in subdivision 2, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale. The buyer is not obligated to tender at any place other than his residence.

Subd. 4. If the seller fails to demand possession of goods within 20 days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

Subd. 5. The buyer has the duty to take reasonable care of the goods in his possession before cancellation or revocation and during the time provided in subdivision 4 for the seller to demand possession, during which time the goods are otherwise at the seller's risk.

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Subd. 6. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

[1973 c 443 s 4]

325.937 PENALTIES FOR VIOLATION. Any person who is found to have violated sections 325.933 to 325.936 shall be subject to the penalties provided in section 325.907.

[1973 c 443 s 5]

325.938 DAMAGES. Any person injured by a violation of sections 325.933 to 325.936 may recover damages, together with costs and disbursements, including reasonable attorneys fees, and receive other equitable relief as determined by the court.

[1973 c 443 s 6]

CONSUMER CREDIT SALES

325.94 DEFINITIONS. Subdivision 1. As used in this section and section 325.941, the following terms shall have the meanings assigned to them.

Subd. 2. "Consumer credit sale" means a sale of goods or services in which

(a) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a natural person; and

(c) the goods or services are purchased primarily for a personal, family or household purpose, and not for commercial, agricultural, or business purpose.

Subd. 3. "Goods" means all tangible personal chattels, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described. The term includes such chattels which are furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

Subd. 4. "Services" means work, labor, or services of any kind.

Subd. 5. "Sale of goods" includes, without limitation, any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

[1971 c 275 s 1]

325.941 RESTRICTIONS. Subdivision 1. **Instruments.** In a consumer credit sale, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section.

Subd. 2. **Provision restrictions.** No contract or obligation relating to a consumer credit sale shall contain any provision by which:

(a) The consumer agrees not to assert against an assignee any claim or defense arising out of the transaction;

(b) In the absence of consumer's default, the holder may arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(c) A power of attorney is given to confess judgment in this state, or an assignment of wages is given;

(d) The seller or holder of the contract or obligation, or a person acting on his behalf, is given authority to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of the goods;

(e) The consumer waives any right of action against the seller or holder of the contract or obligation, or any other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or obligation or in the repossession of goods;

(f) The consumer relieves the seller from any liability for any legal remedy which the consumer may have against the seller under the contract or obligation or any separate instrument executed in connection therewith.

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Subd. 3. **Claims and defenses.** Any assignee of the contract or obligation relating to the consumer credit sale shall be subject to all claims and defenses of the consumer against the seller arising from the sale, notwithstanding any agreement to the contrary. Provided, however, that the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The rights of the consumer under this subdivision can only be asserted as a matter of defense to or set off against a claim by the assignee.

[1971 c 275 s 2]

CONSUMER WARRANTIES

325.951 DEFINITIONS. Subdivision 1. As used in sections 325.951 to 325.954, the terms defined in this section have the meanings given them.

Subd. 2. "Consumer sale" means a sale of new goods, or as regards an express warranty, any goods, purchased primarily for personal, family, or household purposes, and not for agricultural or business purposes.

Subd. 3. "Goods" are as defined in section 325.94.

Subd. 4. "New goods" mean those goods which are purchased for the first time other than for purposes of resale.

Subd. 5. "Express warranty" means a written statement arising out of a consumer sale pursuant to which the manufacturer, distributor, or retailer undertakes (1) to preserve or maintain the utility or performance of the goods or provide compensation or replacement if there is a failure in utility or performance; or (2) declares that in the event of any sample or model, that the whole of the goods conforms to the sample or model. It is not necessary to the creation of an express warranty that formal words such as "warrant" or "guarantee" be used or that a specific intention to make a warranty be present, but an affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty.

[1973 c 692 s 1]

325.952 IMPLIED WARRANTIES. Subdivision 1. Unless disclaimed in the manner prescribed in subdivision 2, every consumer sale in this state shall be accompanied by an implied warranty that the goods are merchantable, and, in a consumer sale where the seller has reason to know that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, an implied warranty of fitness. A seller may, however, limit damages or remedies for breach of implied warranties as provided in chapter 336.

Subd. 2. **Disclaimer.** No consumer sale on an "as is" or "with all faults" basis shall be effective to disclaim the implied warranty of merchantability, or, where applicable, the implied warranty of fitness, unless a conspicuous writing clearly informs the buyer, prior to the sale, in simple and concise language each of the following:

(1) The goods are being sold on an "as is" or "with all faults" basis; and

(2) The entire risk as to the quality and performance of the goods is with the buyer.

In the event of a consumer sale by means of a mail order catalog, the catalog may contain the required writing in lieu of the requirement of notification prior to the sale.

[1973 c 692 s 2]

325.953 EXPRESS WARRANTIES. Subdivision 1. **Disclaimers.** No express warranty arising out of a consumer sale of new goods shall disclaim implied warranties of merchantability, or, where applicable, of fitness.

Subd. 2. **Honoring of express warranties.** The maker of an express warranty arising out of a consumer sale in this state shall honor the terms of the express warranty. In a consumer sale, the manufacturer shall honor an express warranty made by the manufacturer; the distributor shall honor an express warranty made by the distributor; and the retail seller shall honor an express warranty made by the retail seller.

Subd. 3. **Liability of manufacturer to retailer.** Every manufacturer who makes an express warranty pursuant to a consumer sale, who authorizes a retail seller within this state to perform services or repairs under the terms of the express warranty shall be liable to the retail seller in an amount equal to that which is

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charged by the retail seller for like service or repairs rendered to retail consumers who are not entitled to warranty protection.

[1973 c 692 s 3]

325.954 REMEDIES. A violation of sections 325.951 to 325.954 shall be treated as a violation of section 325.79. The remedies provided by sections 325.951 to 325.954 are cumulative and shall not be construed as restricting any remedy that is otherwise available.

[1973 c 692 s 4]

CLUB CONTRACTS

325.96 DEFINITIONS. Subdivision 1. As used in sections 325.96 to 325.965, the terms defined in this section have the meanings given them.

Subd. 2. "Club" means any health club, social referral club or buying club.

Subd. 3. "Contract" means any agreement by which one becomes a member of a club.

Subd. 4. "Health club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit having the primary purpose of engaging in instruction, training, encouragement or assistance in physical fitness, body building, exercising, reducing, figure development or any other such activities, or furnishing the use of facilities for such activities.

Subd. 5. "Social referral club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit with the primary purpose of matching members of the opposite sex, by the use of computer or any other means, to facilitate dating or general social contact.

Subd. 6. "Buying club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit with the primary purpose of providing benefits to members from the cooperative purchase of services or merchandise.

Subd. 7. "Member" means a status by which any natural person is entitled to any of the benefits of a club.

Subd. 8. "Prepayment" means any payment over \$25 for service or merchandise made before the service is rendered or the merchandise is received. It is not a prepayment if a payment for service is made on the same day the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

Subd. 9. "Business day" means any day other than a Saturday, Sunday, or holiday as defined in section 645.44.

[1974 c 418 s 1]

325.961 RIGHT OF CANCELLATION. Any person who has elected to become a member of a club may cancel such membership by giving written notice of cancellation any time before midnight of the third business day following the date on which membership was attained. Notice of cancellation may be given personally or by mail. If given by mail, the notice is effective upon deposit in a mailbox, properly addressed and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the member not to be bound by the contract. Cancellation shall be without liability on the part of the member and the member shall be entitled to a refund, within ten days after notice of cancellation is given, of the entire consideration paid for the contract. Rights of cancellation may not be waived or otherwise surrendered.

[1974 c 418 s 2]

325.962 NOTICE TO MEMBERS. Subdivision 1. A copy of every contract shall be delivered to the member at the time the contract is signed. Every contract must be in writing, must be signed by the member, must designate the date on which the member signed the contract and must state, clearly and conspicuously in bold face type of a minimum size of fourteen points, the following:

"MEMBERS' RIGHT TO CANCEL"

"If you wish to cancel this contract, you may cancel by delivering or mailing a written notice to the club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to:

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(Insert name and mailing address of club). If you cancel, the club will return, within ten days of the date on which you give notice of cancellation, any payments you have made."

Subd. 2. Every contract which does not contain the notice specified in subdivision 1 may be cancelled by the member at any time by giving notice of cancellation by any means.

[1974 c 418 s 3]

325.963 LIMITATION ON MEMBERSHIP PERIOD. No contract shall be valid for a term longer than 18 months from the date upon which the contract is signed. However, a club may allow a member to convert his contract into a contract for a period longer than 18 months after the member has been a member of the club for a period of at least six months. The duration of the contract shall be clearly and conspicuously disclosed in the contract in bold face type of a minimum size of 14 points.

[1974 c 418 s 4]

325.964 BOND. Subdivision 1. Every buying club shall maintain a bond issued by a surety company admitted to do business in this state the principal sum of which shall at all times be at least as great as the sum of (a) the total amount of prepayment received for all contracts of membership entered into after May 31, 1974, and (b) the total of all deposits being held on merchandise ordered or purchased through the club, pursuant to contracts entered into after May 31, 1974.

Subd. 2. Every health club or social referral club shall maintain a bond issued by a surety company admitted to do business in this state the principal sum of which shall be at all times at least as great as the total amount of prepayment received for all contracts of membership entered into after May 31, 1974.

Subd. 3. In no event shall any bond required by this section be less than \$25,000.

Subd. 4. The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayment made pursuant to a contract entered into after May 31, 1974, due to insolvency of the club or the cessation of business by the club. A copy of the bond shall be filed with the attorney general. Any person claiming against the bond may maintain an action at law against the club and the surety.

Subd. 5. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

Subd. 6. This section does not apply to any club which files a declaration, executed under penalty of perjury by the owner or manager of such club, with the attorney general stating that the club does not require or in the ordinary course of business receive prepayment for services or merchandise.

[1974 c 418 s 5]

325.965 DUTIES OF ATTORNEY GENERAL; PENALTIES; REMEDIES.

Subdivision 1. The attorney general shall investigate violations of sections 325.96 to 325.965, and when from information in his possession he has reasonable ground to believe that any person has violated or is about to violate any provision of sections 325.96 to 325.965, or that any club is insolvent, he shall be entitled on behalf of the state (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law; (b) to sue for and recover for the state, from any person who is found to have violated any provision of sections 325.96 to 325.965, a civil penalty, in an amount to be determined by the court, not in excess of \$25,000; and in case the club has failed to maintain the bond required by sections 325.96 to 325.965, or is insolvent or in imminent danger of insolvency, to sue for and have an order appointing a receiver to wind up its affairs. All civil penalties recovered under this subdivision shall be deposited in the general fund of the state treasury.

Subd. 2. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the provisions of sections 325.96 to 325.965, may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

[1974 c 418 s 6]