

## CHAPTER 325F

### CONSUMER PROTECTION; PRODUCTS AND SALES

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#### 325F.09 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 rules issued by the commissioner.
- (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) "Commissioner" means commissioner of commerce.
- (i) "Inspector" means an inspector of the department of commerce.

**History:** 1983 c 289 s 109

**325F.11 TESTING OF ARTICLES TO DETERMINE AND INSURE COMPLIANCE.**

The commissioner 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 sections 325F.08 to 325F.18. The commissioner may contract or otherwise arrange with any testing facility, public or private, for testing and reporting the results. The commissioner may, by rule, require that any toy or other article within the provisions of sections 325F.08 to 325F.18 be adequately tested by a reputable testing facility, or the manufacturer or distributor of the article, and that the certified results of the test be filed with the commissioner before the sale, distribution, or other movement in commerce within this state of the toys or articles. The commissioner may by rule provide for penalties for the failure to provide test results.

**History:** 1983 c 289 s 110

**325F.665 NEW MOTOR VEHICLE WARRANTIES; MANUFACTURER'S DUTY TO REPAIR, REFUND, OR REPLACE.**

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "consumer" means the purchaser, other than for purposes of resale, of a new motor vehicle used for personal, family, or household purposes at least 40 percent of the time, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

(b) "manufacturer" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles;

(c) "manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

(d) "motor vehicle" means (1) a passenger automobile as defined in section 168.011, subdivision 7, including pickup trucks and vans, and (2) the self-propelled motor vehicle chassis or van portion of recreational equipment as defined in section 168.011, subdivision 25, which is sold to a consumer in this state.

Subd. 2. **Manufacturer's duty to repair.** If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the express warranties or during the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term or the one-year period.

Subd. 3. **Manufacturer's duty to refund or replace.** (a) If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the

consumer after a reasonable number of attempts, the manufacturer shall, at the consumer's option, either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price, including the cost of any options or other modifications arranged, installed, or made by the manufacturer, its agent, or its authorized dealer within 30 days after the date of original delivery, and all other charges including, but not limited to, sales tax, license fees and registration fees, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile driven or ten percent of the purchase price of the vehicle, whichever is less. Refunds must be made to the consumer, and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles. A reasonable allowance for use is that amount directly attributable to use by the consumer and any previous consumer prior to his or her first report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It is an affirmative defense to any claim under this section (1) that an alleged nonconformity does not substantially impair the use or market value, or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(b) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or its authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist, or (2) the vehicle is out of service by reason of repair for a cumulative total of 30 or more business days during the term or during the period, whichever is the earlier date.

(c) If the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle and is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the conformity has been subject to repair at least once by the manufacturer, its agents, or its authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(d) The term of an express warranty, the one-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, or fire, flood, or other natural disaster.

(e) The presumption contained in paragraph (b) applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested.

(f) At the time of purchase the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OF IT OR A RE-

FUND OF ITS PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE."

**Subd. 4. Resale of returned motor vehicle.** (a) If a motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of another state, it may not be resold in this state unless:

(1) the manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for 12,000 miles or 12 months after the date of resale, whichever is earlier; and

(2) the manufacturer provides the consumer with a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY MINNESOTA LAW."

The provisions of this section apply to the resold motor vehicle for full term of the warranty required under this subdivision.

(b) Notwithstanding the provisions of paragraph (a), if a new motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven, the motor vehicle may not be resold in this state.

**Subd. 5. Alternative dispute settlement procedure.** If a manufacturer has established, or participates in, an informal dispute settlement procedure which substantially complies with the provisions of the Code of Federal Regulations, title 16, part 703 (1982), the provisions of subdivision 3 concerning refunds or replacement do not apply to a consumer who has not first used this procedure.

The findings and decisions in an informal dispute resolution proceeding are admissible as nonbinding evidence in any legal action and are not subject to further foundation requirements.

**Subd. 6. Civil remedy.** Any consumer injured by a violation of this section may bring a civil action to enforce this section and recover costs and disbursements, including reasonable attorney's fees.

**Subd. 7. Limitation on actions.** An action brought under this section must be commenced within six months of the expiration of the express warranty term, or within one year of the date of original delivery of the new motor vehicle to a consumer, whichever is the later date.

**Subd. 8. Remedy nonexclusive.** Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

**History:** 1983 c 108 s 1