CHAPTER 325E

REGULATION OF TRADE PRACTICES

FUEL DELIVERY TICKETS

325E.01 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.

History: *1943 c 328*

UTILITIES; CUSTOMER DEPOSITS

325E.015 RESIDENTIAL ENERGY SALES PRACTICES.

Subdivision 1. **Definition.** "Budget payment plan" means a billing method in which estimated annual energy consumption costs are billed to the consumer in ten or more approximately equal monthly payments.

Subd. 2. **Budget payment plan a customer option.** Not later than September 1, 1982, every supplier of electricity or space heating fuels that offers some of its residential customers a budget payment plan shall make the plan available to all residential customers who request it provided that any customer with an outstanding balance on an account shall be placed on a budget payment plan that includes repayment of the outstanding balance. Suppliers of fuel oil, liquefied petroleum gas, firewood, and coal are exempt from the provisions of this subdivision.

History: *1982 c 563 s 15*

325E.02 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:

(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 prepayments shall not be construed as being a deposit.

History: *1974 c 424 s 1*

325E.025 DELINQUENT BILLINGS.

Subdivision 1. **Definitions.** For purposes of this section, "utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for fur-

nishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in its production and retail sale. The term "utility" includes municipalities and cooperative electric associations, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service. This section is not applicable to the sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale.

"Customer" means any person, firm, association, or corporation, or any agency of the federal, state, or local government being supplied with service by a utility.

Subd. 2. **Payment responsibility for utility service.** A utility shall not: (1) recover or attempt to recover payment for a tenant's outstanding bill or charge from a landlord, property owner or manager, or manufactured home park owner, as defined in section 327C.01, or manufactured home dealer, as defined in section 327B.01, who has not contracted for the service; (2) condition service on payment of an outstanding bill or other charge for utility service due upon the outstanding account of a previous customer or customers when all of the previous customers have vacated the property; or (3) place a lien on the landlord's or owner's property for a tenant's outstanding bill or charge whether created by local ordinance or otherwise. A utility may recover or attempt to recover payment for a tenant's outstanding bill or charge from a property owner where the manager, acting as the owner's agent, contracted for the utility service.

History: *1985 c 135 s 1; 1986 c 473 s 9; 1989 c 356 s 15*

325E.026 UNAUTHORIZED USE OF UTILITY METERS.

Subdivision 1. **Definitions.** When used in this section, the terms defined in section 216B.02 have the same meanings. Other terms used in this section have the following meanings:

(a) "Bypassing" means the act of attaching, connecting, or otherwise affixing a wire, cord, socket, pipe, hose, motor, or other instrument or device to utility or customer-owned facilities or equipment so that service provided by the utility is transmitted, supplied, or used without passing through a meter authorized by the utility for measuring or registering the amount of service provided.

(b) "Tampering" means damaging, altering, adjusting, or obstructing the operation of a meter or submeter provided by a utility for measuring or registering the amount of electricity, natural gas, or other utility service passing through the meter.

(c) "Unauthorized connection" means the physical connection or physical reconnection of utility service by a person without the authorization or consent of the utility.

(d) "Unauthorized metering" means removing, installing, connecting, reconnecting, or disconnecting a meter, submeter, or metering device for service by a utility, by a person other than an authorized employee or agent of the utility.

(e) "Utility" means a public utility defined in section 216B.02, subdivision 4; a municipal utility; or a cooperative electric association organized under chapter 308A.

Subd. 2. **Civil actions; remedies.** A utility may bring a civil action for damages against a person who: (1) deliberately commits, authorizes, attempts, solicits, aids, or abets bypassing, tampering, unauthorized connection, or unauthorized metering that results in damages to the utility; or (2) knowingly receives service provided as a result of bypassing, tampering, unauthorized connection, or unauthorized metering. The utility may recover double the costs of the service provided; the costs and expenses for investigation, disconnection, reconnection, service calls, equipment, and employees; and the trial costs and witness fees.

Subd. 3. **Damages to benefit ratepayers.** Damages recovered under this section in excess of the actual damages sustained by a public utility regulated by the commission must be taken into account by the commission and applied for the benefit of the public utility's ratepayers in establishing utility rates.

Subd. 4. **Additional remedies.** The remedies provided in this section are supplemental and additional to other remedies or powers conferred by law and not in limitation of other civil or criminal statutory or common law remedies.

History: *1987 c 272 s 1; 1989 c 356 s 16*

METAL BEVERAGE CONTAINERS

325E.03 SALE OF BEVERAGE CONTAINERS HAVING DETACHABLE PARTS; PENALTY.

Subdivision 1. No person shall sell or offer for sale in this state a carbonated soft drink, beer, other malt beverage, or tea in liquid form and intended for human consumption contained in an individual sealed metal container designed and constructed so that a part of the container is detached in the process of opening the container.

Subd. 2. A violation of subdivision 1 is a misdemeanor and each day of violation is a separate offense.

History: *1975 c 308 s 1,2; 1977 c 226 s 1*

325E.035 [Repealed, 1Sp1989 c 1 art 20 s 30]

SAMPLES; DISTRIBUTION IN PLASTIC BAGS

325E.04 FREE SAMPLES; DISTRIBUTION; PENALTY.

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.

History: *1971 c 832 s 1,2; 1974 c 85 s 1*

SALE AND LABELING OF PLASTICS

325E.042 PROHIBITING SALE OF CERTAIN PLASTICS.

Subdivision 1. **Plastic can.** (a) A person may not sell, offer for sale, or give to consumers in this state a beverage packaged in a plastic can.

(b) A plastic can subject to this subdivision is a single serving beverage container composed of plastic and metal excluding the closure mechanism.

Subd. 2. **Nondegradable plastic.** A person may not sell, offer for sale, or give to consumers beverages or motor oil containers held together by connected rings made of nondegradable plastic material.

Subd. 3. **Penalty.** A person who violates subdivision 1 or 2 is guilty of a misdemeanor.

History: *1988 c 685 s 26; 1991 c 337 s 57*

325E.044 PLASTIC CONTAINER LABELING.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Distributor" means a person engaged in business that ships or transports products to retailers in this state to be sold by those retailers.

(b) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(c) "Manufacturer" means any manufacturer offering for sale and distribution a product packaged in a container.

(d) "Plastic container" means an individual, separate, plastic bottle, can, or jar with a capacity of 16 ounces or more.

Subd. 2. **Labeling rules required.** By March 31, 1989, the board shall adopt rules

requiring labeling of plastic containers. The rules adopted under this subdivision must allow a manufacturer of plastic containers, a person who places products in plastic containers, and a person who sells products in plastic containers to choose an appropriate method of labeling plastic containers. The board shall adopt rules as consistent as practicable with national industrywide plastic container coding systems. The rules may exempt plastic containers of a capacity of less than a specified minimum size from the labeling requirements.

Subd. 3. **Prohibition.** A person may not manufacture or bring into the state for sale in this state a plastic container that does not comply with the labeling rules adopted under subdivision 2.

Subd. 4. **Enforcement; civil penalty; injunctive relief.** (a) After being notified that a plastic container does not comply with the rules under subdivision 2, any manufacturer or distributor who violates subdivision 3 is subject to a civil penalty of $50 for each violation up to a maximum of $500 and may be enjoined from such violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 3 in the manner provided in section 8.31, subdivision 2b.

History: *1988 c 685 s 27*

325E.045 [Repealed, 1991 c 337 s 90]

NOTE: Subdivision 1 was also amended by Laws 1991, chapter 199, article 1, section 71, to read as follows:

"Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Degradable" means capable of being decomposed by natural biological processes, including exposure to ultraviolet rays of the sun, within five years after the date of disposal.

(b) "Person" means an individual, partnership, corporation, sole proprietorship, association, or other for-profit or nonprofit organization, including the state and its political subdivisions.

(c) "Polyethylene beverage ring" means a device made of polyethylene that is used or intended to be used to hold beverage bottles or other beverage containers together."

FARM EQUIPMENT DEALERSHIPS

325E.05 AGRICULTURAL IMPLEMENT DEALERSHIPS; RETURN OF STOCK.

If a franchised agricultural machinery or implement dealership is discontinued for economic reasons, the firm, company, person, or successor in interest 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, person, or successor in interest.

History: *1959 c 398 s 1; 1988 c 502 s 1*

325E.06 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 or oral 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 or oral contract, sales agreement, or security agreement is terminated, canceled, 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 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 terminate, 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 the following:

(a) 85 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 or its predecessor on the date of the termination, cancellation, or discontinuance of the contract;

(b) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the retailer has an invoice 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 termination, cancellation, or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer, or distributor; and

(c) 50 percent of the most recently published price of all other parts provided the price list or catalog is not more than ten years old as of the date of the cancellation or discontinuance of the contract.

The wholesaler, manufacturer, or distributor shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the prices required to be paid or credited by this subdivision for 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.

Payment required to be made under this subdivision must be made not later than 90 days from the date the farm implements, machinery, attachments, and repair parts are returned by the retailer, and if not by then paid, the amount payable by the wholesaler, manufacturer, or distributor bears interest at the rate of 1-1/2 percent per month from the date the contract was terminated, canceled, or discontinued until the date payment is received by the retailer.

In lieu of the return of the farm implements, machinery, attachments, and repair parts to the wholesaler, manufacturer, or distributor, the retailer may advise the wholesaler, manufacturer, or distributor that the retailer has implements, machinery, attachments, or repair parts that the retailer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of implements, machinery, attachments, or repair parts and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of the machinery and parts and where the machinery and parts may be inspected and the list of farm implements, machinery, attachments, or repair parts may be verified. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the retailer, to accept payment or a credit to the retailer's account on behalf of the retailer, and to release the machinery and parts to the wholesaler, manufacturer, or distributor. The notice constitutes the appointment of the escrow agent to act on the retailer's behalf. The wholesaler, manufacturer, or distributor has 30 days from the date of the mailing of the notice, which shall be by certified mail, in which to inspect the machinery and parts and verify the accuracy of the retailer's list. The wholesaler, manufacturer, or distributor shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the retailer has been made if the retailer has outstanding sums due the wholesaler, manufacturer, or distributor; or

(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the machinery or parts to the wholesaler, manufacturer, or distributor that are acceptable as returns.

If the wholesaler, manufacturer, or distributor sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns shall accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the retailer or the credit list with payment, the title to the farm implements, farm machinery, attachments, or repair parts acceptable as returns passes to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor is entitled to keep the farm implements, machinery, attachments, or repair parts. The escrow agent shall ship or cause to be shipped the machinery and parts acceptable as returns to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to personally perform the inventorying, packing and loading of the machinery and parts. When the machinery or parts have been received by the wholesaler, manufacturer, or distributor, notice of the receipt of the machinery or parts shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the retailer. The escrow agent shall keep the balance of the funds in the retailer's escrow account until it is notified that an agreement has been reached as to the nonreturnables after which the escrow agent shall disburse the remaining funds and dispose of any remaining parts or machinery as provided in the settlement. If no settlement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

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 the retailer's contract remedy or the remedy provided herein, and an election by the retailer to pursue the contract remedy shall not bar the retailer's 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 the dealer's 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 the retailer's 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) 85 percent of the current net price of repair parts, 100 percent of invoiced prices and 50 percent of the price of all other parts as provided in subdivision 1, and (d) five percent for handling, packing and loading, if applicable.

Subd. 5. **Exceptions.** Unless a retailer has delivered parts to an escrow agent pursuant to subdivision 1, 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 (a) 85 percent of the net price of the repair part as listed in the then current price list or catalog, (b) 100 percent of the invoiced price and (c) 50 percent of the most recent published price as provided in subdivision 1. 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.

Subd. 7. **Successor in interest.** The obligations under this section of a wholesaler, manufacturer, or distributor apply to its successor in interest or assignee. A successor in interest includes a purchaser of assets or stock, a surviving corporation resulting from a merger or liquidation, a receiver, and a trustee of the original wholesaler, manufacturer, or distributor.

History: *1974 c 158 s 1 subds 1-6; 1985 c 155 s 1; 1986 c 444; 1988 c 502 s 2-5; 1989 c 76 s 1-3*

325E.061 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.061 to 325E.065, the terms defined in this section have the meanings given them.

Subd. 2. **Farm equipment.** "Farm equipment" means equipment and parts for equipment including, but not limited to, tractors, trailers, combines, tillage implements, balers, skid steer loaders, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

Subd. 3. **Farm equipment manufacturer.** "Farm equipment manufacturer" means a person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing, assembly, or wholesale distribution of farm equipment. The term also includes any successor in interest of the farm equipment manufacturer, including any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original farm equipment manufacturer.

Subd. 4. **Farm equipment dealer or dealership.** "Farm equipment dealer" or "farm equipment dealership" means a person, partnership, corporation, association, or other form of business enterprise engaged in acquiring farm equipment from a manufacturer and reselling the farm equipment at wholesale or retail.

Subd. 5. **Dealership agreement.** "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which enables the dealer to purchase equipment from the manufacturer and provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

History: *1988 c 511 s 1; 1991 c 70 s 1-3*

325E.062 TERMINATIONS OR CANCELLATIONS.

Subdivision 1. **Good cause required.** No farm equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. In addition, good cause exists whenever:

(1) without the consent of the farm equipment manufacturer who shall not withhold consent unreasonably, (a) the farm equipment dealer has transferred an interest in the farm equipment dealership, or (b) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (c) there has been a substantial reduction in interest of a partner or major stockholder;

(2) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement of dissolution or liquidation of the dealer;

(3) there has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;

(4) the farm equipment dealer has defaulted under a chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the farm equipment manufacturer;

(5) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;

(6) the farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;

(7) the dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare; or

(8) the farm equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. **Notice.** Except as otherwise provided in this subdivision, a farm equipment manufacturer shall provide a farm equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (1) to (7).

History: *1988 c 511 s 2*

325E.063 VIOLATIONS.

(a) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to coerce a farm equipment dealer to accept delivery of farm equipment which the farm equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to:

(1) condition or attempt to condition the sale of farm equipment on a requirement that the farm equipment dealer also purchase other goods or services; except that a farm

equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer;

(2) coerce a farm equipment dealer into a refusal to purchase the farm equipment manufactured by another farm equipment manufacturer;

(3) discriminate in the prices charged for farm equipment of like grade and quality sold by the farm equipment manufacturer to similarly-situated farm equipment dealers. The clause does not prevent the use of differentials which make only due allowance for difference in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered, by the farm equipment manufacturer; or

(4) attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat is based on the results of a natural disaster, including a sustained drought in the dealership market area, a labor dispute, or other circumstance beyond the dealer's control.

History: *1988 c 511 s 3; 1991 c 70 s 4*

325E.064 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied, including a choice of law provision, which is inconsistent with the terms of sections 325E.061 to 325E.065 or that purports to waive a farm equipment manufacturer's compliance with sections 325E.061 to 325E.065 is void and unenforceable and does not waive any rights which are provided to a person by sections 325E.061 to 325E.065.

History: *1988 c 511 s 4; 1991 c 70 s 5*

325E.065 REMEDIES.

If a farm equipment manufacturer violates sections 325E.061 to 325E.065, a farm equipment dealer may bring an action against the manufacturer in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney's fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: *1988 c 511 s 5*

325E.066 CITATION.

Sections 325E.061 to 325E.065 may be cited as the "Minnesota agricultural equipment dealership act."

History: *1988 c 511 s 6*

325E.067 APPLICABILITY.

The provisions of sections 325E.061 to 325E.065 are effective April 14, 1988, and apply to all dealership agreements now in effect which have no expiration date and which are continuing contracts, and all other contracts entered into, amended, or renewed after April 14, 1988. Any contract in force and effect on April 14, 1988, which by its terms will terminate on a date subsequent thereto and which is not renewed is governed by the law as it existed before April 14, 1988.

History: *1988 c 511 s 7*

HEAVY AND UTILITY EQUIPMENT MANUFACTURERS AND DEALERS

325E.068 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.068 to 325E.0684, the terms defined in this section have the meanings given them.

Subd. 2. **Heavy and utility equipment.** "Heavy and utility equipment," "heavy equipment," or "equipment" means equipment and parts for equipment including but not limited to excavators, crawler tractors, wheel loaders, compactors, pavers, backhoes, hydraulic hammers, cranes, fork lifts, compressors, generators, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in all types of construction of buildings, highways, airports, dams, or other earthen structures or in moving, stock piling, or distribution of materials used in such construction, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

Subd. 3. **Heavy and utility equipment manufacturer.** "Heavy and utility equipment manufacturer," "heavy equipment manufacturer," or "equipment manufacturer" means a person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing, assembly, or wholesale distribution of heavy and utility equipment as defined in subdivision 2. The term also includes a successor in interest of the heavy and utility equipment manufacturer, including a purchaser of assets or stock, a surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a trustee of the original equipment manufacturer.

Subd. 4. **Heavy and utility equipment dealer or dealership.** "Heavy and utility equipment dealer" or "heavy and utility equipment dealership" means a person, partnership, corporation, association, or other form of business enterprise engaged in the business of acquiring heavy and utility equipment from a manufacturer and reselling the heavy and utility equipment at wholesale or retail.

Subd. 5. **Dealership agreement.** "Dealership agreement" means an oral or written agreement of definite or indefinite duration between an equipment manufacturer and an equipment dealer that enables the dealer to purchase heavy and utility equipment from the manufacturer and provides for the rights and obligations of the parties with respect to the purchase or sale of heavy and utility equipment.

History: *1989 c 267 s 1; 1991 c 70 s 6-8*

325E.0681 TERMINATIONS OR CANCELLATIONS.

Subdivision 1. **Good cause required.** No equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. In addition, good cause exists whenever:

(a) Without the consent of the equipment manufacturer who shall not withhold consent unreasonably, (1) the equipment dealer has transferred an interest in the equipment dealership, (2) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (3) there has been a substantial reduction in interest of a partner or major stockholder.

(b) The equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it that has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The equipment dealer has defaulted under a security agreement between the dealer and the equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the equipment manufacturer.

(e) The equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business.

(f) The equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare.

(h) The equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. **Notice.** Except as otherwise provided in this subdivision, an equipment manufacturer shall provide an equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice must state all reasons constituting good cause for the action and must provide that the dealer has until expiration of the notice period in which to cure a claimed deficiency. If the deficiency is rectified within the notice period, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (a) to (g).

Subd. 3. **Obligation to repurchase.** If a dealership agreement is terminated, canceled, or discontinued, the equipment manufacturer shall pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent of the net cost of all unused heavy and utility equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. This amount must include transportation charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right.

Subd. 4. **Repair parts.** (a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 85 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held by the dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date; and

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account, if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts returned for the handling, packing, and loading of the parts back to the manufacturer unless the manufacturer elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the heavy and utility equipment passes to the manufacturer. However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Subd. 5. **Payment; interest.** Payment required to be made under this section must be made not later than 90 days from the date the heavy and utility equipment is returned by the dealer, and if not by then paid, the amount payable by the manufacturer bears interest at the rate of 1-1/2 percent per month from the date the agreement was terminated, canceled, or discontinued until the date payment is received by the dealer.

Subd. 6. **Notice of intent to return.** In lieu of returning the heavy and utility equipment to the manufacturer, the dealer may advise the manufacturer that the dealer has heavy and utility equipment that the dealer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of heavy and utility equipment and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of them and where they may be inspected. The list may be verified by the manufacturer. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the heavy and utility equipment to the manufacturer. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf.

Subd. 7. **Manufacturer inspection.** (a) The manufacturer has 30 days from the date of the mailing of the notice under subdivision 6, which must be by certified mail, in which to inspect the heavy and utility equipment and verify the accuracy of the dealer's list.

(b) The manufacturer shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the dealer has been made if the dealer has an outstanding amount due the manufacturer; or

(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the heavy and utility equipment to the manufacturer that are acceptable as returns.

Subd. 8. **Payment or credit requirements.** If the manufacturer sends a credit list as provided under subdivision 7 to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns must accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to and the right to possess the heavy and utility equipment acceptable as returns passes to the manufacturer. The escrow agent shall ship or cause to be shipped the heavy and utility equipment acceptable as returns to the manufacturer unless the manufacturer elects to personally perform the inventorying, packing, and loading of the heavy and utility equipment. When they have been received by the manufacturer, notice of their receipt shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until it is notified that an agreement has been reached as to the nonreturnables. After being notified of the agreement, the escrow agent shall disburse the remaining funds and dispose of any remaining heavy and utility equipment as provided in the agreement. If no agreement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

Subd. 9. **Provisions of contract supplemented.** This section is supplemental to an agreement between the dealer and the manufacturer covering the return of heavy and utility equipment. The dealer may elect to pursue either the dealer's contract remedy or the remedy provided in this section. An election by the dealer to pursue the contract remedy does not bar the dealer's right to the remedy provided in this section as to the heavy and utility equipment not affected by the contract remedy. Notwithstanding anything contained in this section, the rights of a manufacturer to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods is not affected. A repurchase made under this section is not subject to the bulk transfers law, sections 336.6-101 to 336.6-111.

Subd. 10. **Death of dealer; repurchase from heirs.** In the event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer 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 dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer under subdivision 1.

Subd. 11. **Failure to pay sums specified on cancellation of contracts; liability.** In the event that a manufacturer, upon the cancellation of a dealership agreement, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer is liable in a civil action to be brought by the dealer or the dealer's heir or heirs for: (1) 100 percent of the net cost of the heavy or utility equipment; (2) transportation charges which have been paid by the dealer; (3) 85 percent of the current net price of repair parts, 100 percent of invoiced prices, and 50 percent of the price of all other parts as provided in subdivision 1; and (4) five percent for handling, packing, and loading, if applicable.

Subd. 12. **Exceptions.** Unless a dealer has delivered parts to an escrow agent pursuant to subdivision 1, this section does not require the repurchase from a dealer of a repair part where the dealer previously has failed to return the repair part to the manufacturer after being offered a reasonable opportunity to return the repair part at a price not less than: (1) 85 percent of the net price of the repair part as listed in the then current price list or catalog; (2) 100 percent of the invoiced price; and (3) 50 percent of the most recent published price as provided in subdivision 1.

This section does not require the repurchase from a dealer of repair parts that 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.

History: *1989 c 267 s 2; 1991 c 71 s 1-10*

325E.0682 VIOLATIONS.

(a) It is a violation of sections 325E.068 to 325E.0684 for an equipment manufacturer to coerce an equipment dealer to accept delivery of heavy and utility equipment that the equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 325E.068 to 325E.0684 for an equipment manufacturer to:

(1) condition or attempt to condition the sale of equipment on a requirement that the equipment dealer also purchase other goods or services; except that an equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any equipment used in the trade area and telecommunications necessary to communicate with the equipment manufacturer;

(2) coerce an equipment dealer into a refusal to purchase the equipment manufactured by another equipment manufacturer;

(3) discriminate in the prices charged for equipment of like grade and quality sold by the equipment manufacturer to similarly situated equipment dealers. This clause does not prevent the use of differentials that make only due allowance for difference in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the equipment is sold or delivered, by the equipment manufacturer; or

(4) attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat is based on the results of a natural disaster, a labor dispute, or other circumstance beyond the dealer's control.

History: *1989 c 267 s 3; 1991 c 70 s 9*

325E.0683 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied, including a choice of law provision, that is inconsistent with the terms of sections 325E.068 to 325E.0684 or that purports to waive an equipment manufacturer's compliance with sections 325E.068 to 325E.0684 is void and unenforceable and does not waive any rights that are provided to a person by sections 325E.068 to 325E.0684.

History: *1989 c 267 s 4; 1991 c 70 s 10*

325E.0684 REMEDIES.

If an equipment manufacturer violates sections 325E.068 to 325E.0684, an equipment dealer may bring an action against the manufacturer in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney's fees. The dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: *1989 c 267 s 5*

CIGARETTE VENDING MACHINES

325E.07 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 vending machine which does not bear the warning required by this section shall be guilty of a misdemeanor.

History: *1963 c 545 s 1*

325E.075 SALE OF TOBACCO BY VENDING MACHINE.

Subdivision 1. **Definition.** For purposes of this section, "tobacco" has the meaning given the term in section 609.685.

Subd. 2. **Prohibition.** Tobacco may be offered for sale or sold in this state by or from a vending machine or appliance or any other medium, device, or object designated or used for vending purposes only at the following locations:

(1) in an area within a factory, business, office, or other place not open to the general public or to which persons under 18 years of age are not generally permitted access;

(2) in an on-sale alcoholic beverage establishment or an off-sale liquor store, if:

(i) the tobacco vending machine is located within the immediate vicinity, plain view, and control of a responsible employee, so that all tobacco purchases will be readily observable by that employee;

(ii) the tobacco vending machine is not located in a coatroom, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; and

(iii) the tobacco vending machine is inaccessible to the public when the establishment is closed; and

(3) in other establishments, upon the following conditions:

(i) it must be located within the immediate vicinity, plain view and control of a responsible employee, so that all tobacco purchases will be readily observable by that employee; it must not be located in a coatroom, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; and it must be inaccessible to the public when the establishment is closed; and

(ii) it must be operable only by activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of tokens provided by an employee of the establishment before each sale.

Subd. 3. **Local regulation.** The governing body of a local unit of government may adopt rules or ordinances relating to vending machine sales of tobacco that are more restrictive than the restrictions imposed by this section.

History: *1990 c 421 s 1*

GASOLINE STATIONS; HANDICAPPED SERVICE

325E.08 SERVICE FOR HANDICAPPED AT GASOLINE STATIONS.

All gasoline service stations which offer both full service and self-service gasoline dispensing operations shall provide an attendant to dispense gasoline at the self-service price into vehicles bearing handicapped plates or a handicapped parking certificate issued pursuant to section 168.021.

History: *1979 c 160 s 1*

MOTOR FUEL; SALE PRICE AND OCTANE DISPLAY

325E.09 [Repealed, 1992 c 575 s 54]

325E.095 COMPUTATION OF SALES BY SMALL RETAILERS.

A retail business selling less than 50,000 gallons of motor vehicle fuel per year may compute fuel pump sales by the half gallon.

This section supersedes any contrary provision of law.

History: *1983 c 106 s 1*

325E.0951 MOTOR VEHICLE AIR POLLUTION CONTROL SYSTEMS.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) **Motor vehicle.** "Motor vehicle" means any self-propelled vehicle powered by an internal combustion engine and designed for use on the public highways, such as automobiles, trucks, and buses.

(b) **Person.** "Person" means an individual, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

(c) **Air pollution control system.** "Air pollution control system" means any device or element of design installed on or in a motor vehicle or motor vehicle engine in order to comply with pollutant emission restrictions established for the motor vehicle or motor vehicle engine by federal statute or regulation.

Subd. 2. **Prohibited acts.** (a) A person may not knowingly tamper with, adjust, alter, change, or disconnect any air pollution control system on a motor vehicle or on a motor vehicle engine.

(b) A person may not manufacture, advertise, offer for sale, sell, use, or install a device that causes any air pollution control system not to be functional as designed.

(c) A person may not sell or transfer a motor vehicle with knowledge that any air pollution control system is either not in place or is not functional.

Subd. 3. **Repairs.** This section does not prevent the service, repair, or replacement of any air pollution control system.

Subd. 3a. **Disclosure.** No person may transfer a motor vehicle that was required to be manufactured with an air pollution control system without certifying in writing to the transferee that to the best of the person's knowledge, the air pollution control systems, including the restricted gasoline fill pipe, have not been removed, altered, or rendered inoperative. The registrar of motor vehicles shall prescribe the manner and form in which this written disclosure must be made. No transferor may knowingly give a false statement to a transferee in making a disclosure required by this subdivision.

Subd. 4. **Penalty.** A person who violates this section is guilty of a misdemeanor.

Subd. 5. **Rules superseded.** This section supersedes Minnesota Rules, part 7005.1190, to the extent the rule is inconsistent with this section.

Subd. 6. **Nonapplication.** This section does not apply to a sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying it.

History: *1Sp1985 c 14 art 19 s 36; 1988 c 487 s 1; 1988 c 634 s 11; 1990 c 446 s 4*

MOTOR OIL COLLECTION; RECYCLING

325E.10 DEFINITIONS.

Subdivision 1. For the purposes of sections 325E.11 and this section, the terms defined in this section have the meanings given them.

Subd. 2. "Motor oil" means petroleum based oil used as a lubricant in a motor vehicle as defined in section 168.011, subdivision 4.

Subd. 3. "Used motor oil" means motor oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Subd. 4. "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, or other entity.

History: *1977 c 68 s 1*

325E.11 COLLECTION FACILITIES; NOTICE.

(a) Any person selling at retail or offering motor oil for retail sale in this state shall:

(1) post a notice indicating the nearest location, or a location within ten miles of the point of sale, where used motor oil may be returned for recycling or reuse; or

(2) provide a collection tank at the point of sale for the deposit and collection of used motor oil and post a notice of the availability of the tank.

(b) A notice under paragraph (a) shall be posted on or adjacent to the motor oil display itself, be at least 8-1/2 inches by 11 inches in size, contain the universal recycling symbol with the following language:

(1) "It is illegal to put used oil in the garbage.";

(2) "Recycle your used oil."; and

(3) (i) "There is a collection tank here for your used oil."; or

(ii) "The nearest collection tank for used oil is located at (name of business and address)."

(c) The division of weights and measures under the department of public service shall enforce compliance of this section as provided in section 239.54.

History: *1977 c 68 s 2; 1987 c 348 s 37*

LEAD ACID BATTERIES

325E.115 LEAD ACID BATTERIES; COLLECTION FOR RECYCLING.

Subdivision 1. **Surcharge; collection; notice.** (a) A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in this state shall:

(1) accept, at the point of transfer, lead acid batteries from customers;

(2) charge a fee of $5 per battery sold unless the customer returns a used battery to the retailer; and

(3) post written notice in accordance with section 325E.1151.

(b) Any person selling lead acid batteries at wholesale or offering lead acid batteries for sale at wholesale must accept, at the point of transfer, lead acid batteries from customers.

Subd. 2. **Compliance; management.** The division of weights and measures under the department of public service shall enforce compliance of subdivision 1 as provided in section 239.54. The commissioner of the pollution control agency shall inform persons governed by subdivision 1 of requirements for managing lead acid batteries.

History: *1987 c 186 s 15; 1987 c 348 s 38; 1Sp1989 c 1 art 20 s 21; 1991 c 337 s 58*

325E.1151 LEAD ACID BATTERY PURCHASE AND RETURN.

Subdivision 1. **Purchasers must return battery or pay $5.** (a) A person who purchases a lead acid battery at retail must:

(1) return a lead acid battery to the retailer; or

(2) pay the retailer a $5 surcharge.

(b) A person who has paid a $5 surcharge under paragraph (a) must receive a $5 refund from the retailer if the person returns a lead acid battery with a receipt for the purchase of a new battery from that retailer within 30 days after purchasing a new lead acid battery.

(c) A retailer may keep the unrefunded surcharges for lead acid batteries not returned within 30 days.

Subd. 2. **Retailers must accept batteries.** (a) A person who sells lead acid batteries at retail must accept lead acid batteries from consumers and may not charge to receive the lead acid batteries. A consumer may not deliver more than five lead acid batteries to a retailer at one time.

(b) A retailer of lead acid batteries must recycle the lead acid batteries received from consumers.

(c) A retailer who violates paragraph (b) is guilty of a misdemeanor. Each lead acid battery that is not recycled is a separate violation.

Subd. 3. **Retailers must post notices.** (a) A person who sells lead acid batteries at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least 8-1/2 inches by 11 inches and contain the universal recycling symbol and state:

"NOTICE: USED BATTERIES

This retailer is required to accept your used lead acid batteries, EVEN IF YOU DO NOT PURCHASE A BATTERY. When you purchase a new battery, you will be charged an additional $5 unless you return a used battery within 30 days.

It is a crime to put a motor vehicle battery in the garbage."

Subd. 4. **Notices required in newspaper advertisements.** (a) An advertisement for sale of new lead acid batteries at retail in newspapers published in this state must contain the notice in paragraph (b).

(b) The notice must state:

"$5 additional charge unless a used lead acid battery is returned. Improper disposal of a lead acid battery is a crime."

History: *1Sp1989 c 1 art 20 s 22; 1991 c 337 s 59*

325E.12 PENALTY.

Any person violating sections 325E.10 to 325E.12 shall be guilty of a petty misdemeanor.

History: *1977 c 68 s 3*

BATTERY REQUIREMENTS

325E.125 GENERAL AND SPECIAL PURPOSE BATTERY REQUIREMENTS.

Subdivision 1. **Labeling.** (a) The manufacturer of a button cell battery that is to be sold in this state shall ensure that each battery is labeled to clearly identify for the final consumer of the battery the type of electrode used in the battery.

(b) The manufacturer of a rechargeable battery that is to be sold in this state shall ensure that each rechargeable battery is labeled to clearly identify for the final consumer of the battery the type of electrode and the name of the manufacturer. The manufacturer of a rechargeable battery shall also provide clear instructions for properly recharging the battery.

Subd. 2. **Mercury content.** (a) Except as provided in paragraph (c), a manufacturer

may not sell, distribute, or offer for sale in this state an alkaline manganese battery that contains more than 0.025 percent mercury by weight.

(b) On application, the commissioner of the pollution control agency may exempt a specific type of battery from the requirements of paragraph (a) or (d) if there is no battery meeting the requirements that can be reasonably substituted for the battery for which the exemption is sought. A battery exempted by the commissioner under this paragraph is subject to the requirements of section 115A.9155, subdivision 2.

(c) Notwithstanding paragraph (a), a manufacturer may not sell, distribute, or offer for sale in this state a button cell nonrechargeable battery not subject to paragraph (a) that contains more than 25 milligrams of mercury.

(d) A manufacturer may not sell, distribute, or offer for sale in this state a dry cell battery containing a mercuric oxide electrode.

(e) After January 1, 1996, a manufacturer may not sell, distribute, or offer for sale in this state an alkaline manganese battery, except an alkaline manganese button cell, that contains mercury unless the commissioner of the pollution control agency determines that compliance with this requirement is not technically and commercially feasible.

Subd. 2a. **Approval of new batteries.** A manufacturer may not sell, distribute, or offer for sale in this state a nonrechargeable battery other than a zinc air, zinc carbon, silver oxide, lithium, or alkaline manganese battery, without first having received approval of the battery from the commissioner of the pollution control agency. The commissioner shall approve only batteries that comply with subdivision 1 and do not pose an undue hazard when disposed of. This subdivision is intended to ensure that new types of batteries do not add additional hazardous or toxic materials to the state's mixed municipal waste stream.

Subd. 3. **Rechargeable tools and appliances.** (a) A manufacturer may not sell, distribute, or offer for sale in this state a rechargeable consumer product unless:

(1) the battery can be easily removed by the consumer or is contained in a battery pack that is separate from the product and can be easily removed; and

(2) the product and the battery are both labeled in a manner that is clearly visible to the consumer indicating that the battery must be recycled or disposed of properly and the battery must be clearly identifiable as to the type of electrode used in the battery.

(b) "Rechargeable consumer product" as used in this subdivision means any product that contains a rechargeable battery and is primarily used or purchased to be used for personal, family, or household purposes.

(c) On application by a manufacturer, the commissioner of the pollution control agency may exempt a rechargeable consumer product from the requirements of paragraph (a) if:

(1) the product cannot be reasonably redesigned and manufactured to comply with the requirements prior to the effective date of Laws 1990, chapter 409, section 2;

(2) the redesign of the product to comply with the requirements would result in significant danger to public health and safety; or

(3) the type of electrode used in the battery poses no unreasonable hazards when placed in and processed or disposed of as part of mixed municipal solid waste.

(d) An exemption granted by the commissioner of the pollution control agency under paragraph (c), clause (1), must be limited to a maximum of two years and may be renewed.

Subd. 4. **Rechargeable batteries and products; notice.** (a) A person who sells rechargeable batteries or products powered by rechargeable batteries governed by section 115A.9157 at retail shall post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least four inches by six inches and state:

"ATTENTION USERS OF RECHARGEABLE BATTERIES AND CORDLESS PRODUCTS:

Under Minnesota law, manufacturers of rechargeable batteries, rechargeable battery packs, and products powered by nonremovable rechargeable batteries will provide a special collection system for these items by April 15, 1994. It is illegal to put rechargeable batteries in the garbage. Use the special collection system that will be provided in your area. Take care of our environment.

DO NOT PUT RECHARGEABLE BATTERIES OR PRODUCTS POWERED BY NONREMOVABLE RECHARGEABLE BATTERIES IN THE GARBAGE."

(c) Notice is not required for home solicitation sales, as defined in section 325G.06, or for catalogue sales.

Subd. 5. **Prohibitions.** A manufacturer of rechargeable batteries or products powered by rechargeable batteries that does not participate in the pilot projects and programs required in section 115A.9157 may not sell, distribute, or offer for sale in this state rechargeable batteries or products powered by rechargeable batteries after January 1, 1992.

After January 1, 1992, a person who first purchases rechargeable batteries or products powered by rechargeable batteries for importation into the state for resale may not purchase rechargeable batteries or products powered by rechargeable batteries made by any person other than a manufacturer that participates in the projects and programs required under section 115A.9157.

History: *1990 c 409 s 2; 1991 c 257 s 3-6; 1992 c 593 art 1 s 35*

NOTE: The amendment to subdivision 1 by Laws 1992, chapter 593, article 1, section 35, is effective July 1, 1993, and applies to batteries manufactured on or after that date. See Laws 1992, chapter 593, article 1, section 55.

NOTE: The effective dates for subdivision 2 are listed in Laws 1991, chapter 257, section 8.

(a) Subdivision 2, paragraphs (a), (b), and (d), are effective February 1, 1992, and apply to batteries manufactured on or after that date.

(b) For zinc air batteries that exceed 100 milligrams in weight, subdivision 2, paragraph (c), is effective February 1, 1993, and applies to batteries manufactured on or after that date.

(c) For all other batteries, subdivision 2, paragraph (c), is effective August 1, 1991, and applies to batteries manufactured on or after that date. Subdivision 2, paragraph (e), applies to batteries manufactured on or after January 1, 1996.

NOTE: Subdivision 3 is effective July 1, 1993, and applies to rechargeable consumer products manufactured on or after that date. See Laws 1990, chapter 409, section 4.

325E.1251 PENALTY ENFORCEMENT.

Subdivision 1. **Penalty.** Violation of sections 115A.9155 and 325E.125 is a misdemeanor. A manufacturer who violates section 115A.9155 or 325E.125 is also subject to a minimum fine of $100 per violation.

Subd. 2. **Recovery of costs.** In an enforcement action under this section in which the state prevails, the state may recover reasonable administrative expenses, court costs, and attorney fees incurred to take the enforcement action, in an amount to be determined by the court.

History: *1990 c 409 s 3; 1991 c 257 s 7*

ODOMETERS

325E.13 TAMPERING WITH ODOMETERS; DEFINITIONS.

Subdivision 1. For the purposes of sections 325E.13 to 325E.16, 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.

History: *1973 c 264 s 1*

325E.14 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 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 325E.15.

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 an 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.

History: *1973 c 264 s 2; 1986 c 444*

325E.15 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 325E.13 to 325E.16 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.

History: *1973 c 264 s 3*

325E.16 PENALTIES; REMEDIES.

Subdivision 1. Any person who is found to have violated sections 325E.13 to 325E.16 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 325E.13 to 325E.16 shall be subject to the penalties provided in section 8.31.

Subd. 3. Any person injured by a violation of sections 325E.13 to 325E.16 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.

History: *1973 c 264 s 4*

RECORDED MATERIAL; UNLAWFUL SALE OF SOUNDS

325E.17 UNLAWFUL TRANSFER OF SOUNDS; SALES.

Unless exempt under section 325E.19, 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 owns the master phonograph record, master disc, master tape, or other device or article from which the sounds are derived.

History: *1973 c 579 s 1*

325E.18 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.

History: *1973 c 579 s 2*

325E.19 EXEMPTIONS.

Sections 325E.17 to 325E.20 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.

History: *1973 c 579 s 3*

325E.20 VIOLATIONS; PUNISHMENT.

Violation of sections 325E.17 to 325E.20 is a felony and is punishable upon conviction by a fine of not more than $40,000 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.

History: *1973 c 579 s 4; 1984 c 628 art 3 s 11*

WIRE AND CABLE; PURCHASE AND SALE

325E.21 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 police officer 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 police officer 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.

History: *(10225) 1907 c 228 s 1; 1957 c 960 s 1; 1973 c 123 art 5 s 7; 1986 c 444*

325E.22 PENALTY.

Any person violating the provisions of section 325E.21 shall be guilty of a gross misdemeanor.

History: *(10226) 1907 c 228 s 2*

OUTDOOR ADVERTISING; DISCRIMINATION

325E.23 DEFINITIONS.

Subdivision 1. For the purposes of sections 325E.23 to 325E.25 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.

History: *1965 c 531 s 1*

325E.24 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.

History: *1965 c 531 s 2*

325E.25 VIOLATIONS.

Any person violating the provisions of sections 325E.23 to 325E.25 is guilty of a misdemeanor.

History: *1965 c 531 s 3*

AUTOMATIC DIALING-ANNOUNCING DEVICES

325E.26 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 325E.26 to 325E.30 have the meanings given them in this section.

Subd. 2. **Automatic dialing-announcing device.** "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

Subd. 3. **Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line.

Subd. 4. **Commercial telephone solicitation.** "Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in section 290.21, subdivision 3, clauses (a) to (e).

Subd. 5. **Subscriber.** "Subscriber" means a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person.

History: *1987 c 294 s 1*

325E.27 USE OF PRERECORDED OR SYNTHESIZED VOICE MESSAGES.

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 325E.30 do not apply to (1) messages from school districts to students, parents, or employees, (2) messages to subscribers with whom the caller has a current business or personal relationship, or (3) messages advising employees of work schedules.

History: *1987 c 294 s 2*

325E.28 REQUIREMENTS ON AUTOMATIC DIALING-ANNOUNCING DEVICES.

A caller shall not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber.

History: *1987 c 294 s 3*

325E.29 MESSAGE REQUIREMENTS.

Where the message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose:

(1) the name of the business, firm, organization, association, partnership, or entity for which the message is being made;

(2) the purpose of the message;

(3) the identity or kinds of goods or services the message is promoting; and

(4) if applicable, the fact that the message intends to solicit payment or commitment of funds.

History: *1987 c 294 s 4*

325E.30 TIME OF DAY LIMIT.

A caller shall not use an automatic dialing-announcing device nor make any commercial telephone solicitation before 9:00 a.m. or after 9:00 p.m.

History: *1987 c 294 s 5*

325E.31 REMEDIES.

A person who is found to have violated sections 325E.27 to 325E.30 is subject to the penalties and remedies, including a private right of action to recover damages, as provided in section 8.31.

History: *1987 c 294 s 6*

RECYCLING TIRES

325E.32 WASTE TIRES; COLLECTION.

A person who sells automotive tires at retail must accept waste tires from customers for collection and recycling. The person must accept as many waste tires from each customer as tires are bought by that customer.

History: *1988 c 685 s 28*

MISCONDUCT OF ATHLETIC AGENTS

325E.33 MISCONDUCT OF ATHLETIC AGENTS.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program. The term includes any individual who may be eligible to engage in collegiate sports in the future.

(c) "Athletic director" means the person discharging the duties of coordinating and administering the overall athletic program for the educational institution attended by the student athlete.

(d) "Educational institution" means the public or private high school, college, junior college, or university that the student athlete last attended or to which the student athlete has expressed written intention to attend.

Subd. 2. **Waiver of eligibility.** A student athlete's waiver of intercollegiate athletic eligibility is not effective until the waiver of eligibility form prescribed by this subdivision has been filed with the offices of the secretary of state and the athletic director for seven days. The waiver is considered to have been on file seven days as of the eighth day after the receipt by the offices of the secretary of state and the athletic director of the completed waiver of eligibility form prescribed by this subdivision. The original waiver is to be filed with the secretary of state and must be available for public inspection in the office of the secretary of state during normal business hours. The waiver form must provide:

"WAIVER OF INTERCOLLEGIATE ATHLETIC ELIGIBILITY

I, ..., hereby waive any and all intercollegiate athletic eligibility. This waiver is not effective until seven days after it has been received by the Minnesota secretary of state and the office of the athletic director.

This waiver is revocable until my intercollegiate athletic eligibility is terminated as a result of my entering either a contract with an athletic agent or a professional sports contract.

.....

STUDENT ATHLETE

.....

EDUCATIONAL INSTITUTION

.....

DATE"

Subd. 3. **Representation of certain athletes prohibited.** A person may not, before the effective date of a student athlete's waiver of intercollegiate athletic eligibility, enter into a contract, written or oral, with a student athlete to:

(1) serve as the agent of the student athlete in obtaining a professional sports contract; or

(2) represent the student athlete or a professional sports organization in obtaining a professional sports contract for or with a student athlete.

A person who violates this subdivision is subject to the remedies under section 8.31, except that a civil penalty imposed under that section may be not more than $100,000, or three times the amount given, offered, or promised as an inducement for the student athlete to enter the agency contract or professional sports contract, exclusive of the compensation provided by the professional sports contract, whichever is greater.

Subd. 4. **Influencing of educational institution employees prohibited.** A person may not offer, give, or promise to give an employee of an educational institution, directly or indirectly, any benefit, reward, or consideration to which the employee is not legally entitled, with the intent that:

(1) the employee will influence a student athlete to enter into a contract with the person to serve as the athlete's agent or to enter into a professional sports contract; or

(2) the employee will refer student athletes to the person.

A person who violates this subdivision is subject to the remedies under section 8.31, except that a civil penalty imposed under that section may be not more than $100,000, or three times the value offered to the employee in violating this subdivision, whichever is greater.

Subd. 5. **Voidability of contract.** A contract entered into in violation of subdivision 3 is voidable by the student athlete. If voided by the student athlete, the athletic agent shall return to the student athlete any compensation received under the contract. The athletic agent shall also pay reasonable attorney's fees and costs incurred by a student athlete in any action or defense under this subdivision.

History: *1988 c 701 s 1*

DISTRIBUTION OF FREE NEWSPAPERS

325E.34 FREE NEWSPAPERS; EXCLUSIVE RIGHT TO DISTRIBUTE PROHIBITED.

Subdivision 1. **Definitions.** For the purposes of this section, the terms in paragraphs (a) and (b) have the meanings given them.

(a) "Newspaper" has the meaning given in section 331A.01, subdivision 5.

(b) "Place of public accommodation" has the meaning given in section 363.01, subdivision 33.

Subd. 2. **Prohibition.** No contract may provide for an exclusive right to display free newspapers for distribution in any place of public accommodation.

History: *1990 c 379 s 1; 1990 c 567 s 10*

SELLER-FINANCED AGRICULTURAL INPUT SALES

325E.35 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to section 325E.36.

Subd. 2. **Agricultural chemical.** "Agricultural chemical" has the meaning given in section 18D.01, subdivision 3.

Subd. 3. **Agricultural production input.** "Agricultural production input" means crop production inputs and livestock production inputs.

Subd. 4. **Crop production input.** "Crop production input" means agricultural chemicals, seeds, petroleum products, the custom application of agricultural chemicals and seeds, and labor used in preparing the land for planting, cultivating, growing, producing, harvesting, drying, and storing crops or crop products.

Subd. 5. **Discounted cash price.** "Discounted cash price" means an amount equal to the total of the payments made over the period of the credit sale, discounted by the interest rate index.

Subd. 6. **Feed.** "Feed" means commercial feeds, feed ingredients, mineral feeds, drugs, animal health products, or customer-formula feeds that are used for feeding livestock, including commercial feed as defined in section 25.33, subdivision 5.

Subd. 7. **Interest rate index.** "Interest rate index" means the prime rate as published in the Wall Street Journal plus two percentage points.

Subd. 8. **Livestock production input.** "Livestock production input" means feed and labor used in raising livestock.

Subd. 9. **Petroleum product.** "Petroleum product" means motor fuels and special fuels that are used in the production of crops and livestock, including petroleum products as defined in section 296.01, alcohol fuels, propane, lubes, and oils.

Subd. 10. **Seed.** "Seed" means agricultural seeds that are used to produce crops, including agricultural seeds and grains as defined in section 21.72, subdivision 12.

History: *1990 c 474 s 1*

325E.36 SELLER-FINANCED AGRICULTURAL INPUT SALES.

If a person sells agricultural production inputs at retail on credit and the interest rate charged to the buyer is less than the interest rate index, the person must also offer to sell the agricultural inputs to the buyer at a discounted cash price. Agricultural production inputs are sold on credit if the terms of the sale allow the buyer to submit any portion of the payment for the inputs more than 60 days after the date on which the goods are delivered.

History: *1990 c 474 s 2*

TERMINATION OF SALES REPRESENTATIVES

325E.37 TERMINATION OF SALES REPRESENTATIVES.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meaning given them.

(b) "Good cause" means a material breach of one or more provisions of a written sales representative agreement governing the relationship with the manufacturer, wholesaler, assembler, or importer, or in absence of a written agreement, failure by the sales representative to substantially comply with the material and reasonable requirements imposed by the manufacturer, wholesaler, assembler, or importer. Good cause includes, but is not limited to:

(1) the bankruptcy or insolvency of the sales representative;

(2) assignment for the benefit of creditors or similar disposition of the assets of the sales representative's business;

(3) the voluntary abandonment of the business by the sales representative as determined by a totality of the circumstances;

(4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the sales representative's business;

(5) any act of the sales representative which materially impairs the good will associated with the manufacturer's, wholesaler's, assembler's, or importer's trademark, trade name, service mark, logotype, or other commercial symbol; or

(6) failure to forward customer payments to the manufacturer, wholesaler, assembler, or importer.

(c) "Person" means a natural person, but also includes a partnership, corporation, and all other entities.

(d) "Sales representative" means a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission.

Sales representative does not include a person who:

(1) is an employee of the principal;

(2) places orders or purchases for the person's own account for resale;

(3) holds the goods on a consignment basis for the principal's account for resale; or

(4) distributes, sells, or offers the goods, other than samples, to end users, not for resale.

(e) "Sales representative agreement" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between a sales representative and another person or persons, whereby a sales representative is granted the right to represent, sell, or offer for sale a manufacturer's, wholesaler's, assembler's, or importer's goods by use of the latter's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics, and in which there exists a community of interest between the parties in the marketing of the goods at wholesale, by lease, agreement, or otherwise. "Wholesale orders" means the solicitation of orders for goods by persons in the distribution chain for ultimate sale at retail.

Subd. 2. **Termination of agreement.** (a) A manufacturer, wholesaler, assembler, or importer may not terminate a sales representative agreement unless the person has good cause and:

(1) that person has given written notice setting forth the reason(s) for the termination at least 90 days in advance of termination; and

(2) the recipient of the notice fails to correct the reasons stated for termination in the notice within 60 days of receipt of the notice.

(b) A notice of termination is effective immediately upon receipt where the alleged grounds for termination are the reasons set forth in subdivision 1, paragraph (b), clauses (1) to (6), hereof.

Subd. 3. **Renewal of agreements.** Unless the failure to renew a sales representative agreement is for good cause, and the sales representative has failed to correct reasons for termination as required by subdivision 2, no person may fail to renew a sales representative agreement unless the sales representative has been given written notice of the intention not to renew at least 90 days in advance of the expiration of the agreement. For purposes of this subdivision, a sales representative agreement of indefinite duration shall be treated as if it were for a definite duration expiring 180 days after the giving of written notice of intention not to continue the agreement.

Subd. 4. **Rights upon termination.** If a sales representative is paid by commission under a sales representative agreement and the agreement is terminated, the representative is entitled to be paid for all sales as to which the representative would have been

entitled to commissions pursuant to the provisions of the sales representative agreement, made prior to the date of termination of the agreement or the end of the notification period, whichever is later, regardless of whether the goods have been actually shipped. Payment of commissions due the sales representative shall be paid in accordance with the terms of the sales representative agreement or, if not specified in the agreement, payments of commissions due the sales representative shall be paid in accordance with section 181.145.

Subd. 5. **Arbitration.** (a) The sole remedy for a manufacturer, wholesaler, assembler, or importer who alleges a violation of any provision of this section is to submit the matter to arbitration. A sales representative may also submit a matter to arbitration, or in the alternative, at the sales representative's option prior to the arbitration hearing, the sales representative may bring the sales representative's claims in a court of law, and in that event the claims of all parties must be resolved in that forum. In the event the parties do not agree to an arbitrator within 30 days after the sales representative demands arbitration in writing, either party may request the appointment of an arbitrator from the American Arbitration Association. Each party to a sales representative agreement shall be bound by the arbitration. In the event that the American Arbitration Association declines to appoint an arbitrator, the arbitration shall proceed under chapter 572. The cost of an arbitration hearing must be borne equally by both parties unless the arbitrator determines a more equitable distribution. Except as provided in paragraph (c), the arbitration proceeding is to be governed by the uniform arbitration act, sections 572.08 to 572.30.

(b) The arbitrator may provide any of the following remedies:

(1) sustainment of the termination of the sales representative agreement;

(2) reinstatement of the sales representative agreement, or damages;

(3) payment of commissions due under subdivision 4;

(4) reasonable attorneys' fees and costs to a prevailing sales representative;

(5) reasonable attorneys' fees and costs to a prevailing manufacturer, wholesaler, assembler, or importer, if the arbitrator finds the complaint was frivolous, unreasonable, or without foundation; or

(6) the full amount of the arbitrator's fees and expenses if the arbitrator finds that the sales representative's resort to arbitration or the manufacturer's, wholesaler's, assembler's, or importer's defense in arbitration was vexatious and lacking in good faith.

(c) The decision of any arbitration hearing under this subdivision is final and binding on the sales representative and the manufacturer, wholesaler, assembler, or importer. The district court shall, upon application of a party, issue an order confirming the decision.

Subd. 6. **Scope; limitations.** (a) This section applies to a sales representative who, during some part of the period of the sales representative agreement:

(1) is a resident of Minnesota or maintains that person's principal place of business in Minnesota; or

(2) whose geographical territory specified in the sales representative agreement includes part or all of Minnesota.

(b) To be effective, any demand for arbitration under subdivision 5 must be made in writing and delivered to the principal on or before one year after the effective date of the termination of the agreement.

History: *1990 c 539 s 1; 1991 c 190 s 1*

CFC PRODUCT SALES PROHIBITED

325E.38 SALE OF CERTAIN CFC PRODUCTS PROHIBITED.

Subdivision 1. **Motor vehicle coolants.** A person may not offer for sale or sell CFC coolants in containers weighing less than 15 pounds that are designed for or are suitable

for use in motor vehicle air conditioners except to persons who possess CFC recycling equipment and who present proof of ownership of CFC recycling equipment at the time of purchase.

Subd. 2. **Solvents.** A person may not offer for sale or sell solvents containing CFCs in containers weighing 15 pounds or less.

Subd. 3. **Party streamers.** A person may not offer for sale or sell CFC propelled party streamers.

Subd. 4. **Noise horns.** A person may not offer for sale or sell CFC noise horns.

Subd. 5. **CFC definition.** For purposes of this section, the term "CFC" has the definition given in section 116.70, subdivision 3.

Subd. 6. **Applicability to new chemicals.** For each new chemical added to section 116.70, subdivision 3, after the effective date of Laws 1990, chapter 560, the application of this section to the new chemical is effective on the date specified for elimination of production of that chemical in the Montreal Treaty.

History: *1990 c 560 art 2 s 8*

NOTE: Subdivisions 1 to 4 are effective January 1, 1993. See Laws 1990, chapter 560, article 2, section 9.

TELEPHONE ADVERTISING SERVICES

325E.39 TELEPHONE ADVERTISING SERVICES.

Subdivision 1. **Definition.** For purposes of this section, "telephone advertising service" means a service that enables advertisers to make recorded personal or other advertisements available to respondents by means of voice mail or another messaging device accessed by telephone. "Telephone advertising service" does not mean advertisements for telephone services or a newspaper or other medium of mass communication that publishes an advertisement for a telephone advertising service.

Subd. 2. **Verification and identification.** A person who operates a telephone advertising service in this state shall:

(1) verify the placement of an advertisement that includes the advertiser's telephone number or other information that enables respondents to identify and communicate directly with the advertiser by calling the listed number or otherwise communicating with the person identified as the advertiser to ensure that the person placed or consented to the placement of the advertisement; and

(2) in any advertising for the telephone advertising service, provide a business mailing address or business telephone number sufficient to enable persons to communicate with the business operation of the service.

History: *1992 c 377 s 2*

PETROLEUM-BASED SWEEPING COMPOUNDS

325E.40 SALE OF PETROLEUM-BASED SWEEPING COMPOUND PRODUCTS PROHIBITED.

Subdivision 1. **Prohibition.** A person may not offer for sale or sell any sweeping compound product that the person knows contains petroleum oil.

Subd. 2. **Labeling.** The manufacturer of sweeping compound that is to be sold in this state shall label the packaging for the compound to clearly indicate the type of oil contained in the compound.

Subd. 3. **Enforcement.** In addition to the enforcement mechanisms available for this chapter, the commissioner of the pollution control agency may enforce this section under section 116.072.

History: *1992 c 593 art 1 s 36*