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325E.015 [Repealed, 2004 c 216 s 4]

325E.02 CUSTOMER DEPOSITS.

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. The rate of interest must be set annually and be equal to the weekly average yield of one-year United States Treasury securities adjusted for constant maturity for the last full week in November. The interest rate must be rounded to the nearest tenth of one percent. By December 15 of each year, the commissioner of commerce shall announce the rate of interest that must be paid on all deposits held during all or part of the subsequent 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; 1997 c 121 s 1; 2004 c 261 art 2 s 2*

325E.021 UTILITY DELINQUENCY CHARGES.

A public utility as defined by section 216B.02, a municipality or cooperative electric association, or telephone company as defined by section 237.01 shall, if that utility adopts a policy of imposing a charge or fee upon delinquent residential and farm accounts, provide that each billing shall clearly state the terms and conditions of any penalty in the form of the monthly percentage rate.

History: *1980 c 579 s 31*

325E.025 LANDLORDS AND TENANTS; UTILITY BILLS.

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 furnishing 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.

Subdivision 1. **Restriction.** 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. **Criminal penalty.** 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*

IMMIGRATION SERVICES

325E.031 IMMIGRATION SERVICES.

Subdivision 1. **Definitions.** (a) For the purpose of this section, the terms in this subdivision have the meanings given.

(b) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Immigration and Naturalization Service, the United States Department of Labor, or the United States Department of State.

(c) "Immigration assistance service" means any advice, guidance, information, or action provided or offered to customers or prospective customers relating to any immigration matter and for which a fee is charged.

Subd. 2. **Notice.** (a) Any person who provides or offers immigration assistance services in this state shall post a notice at that person's place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance services. Each language must be on a separate sign and posted in a location visible to customers. Each sign must be at least 11 inches by 17 inches and must contain the following statements:

(1) "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(2) "I AM NOT ACCREDITED TO REPRESENT YOU BEFORE THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AND THE IMMIGRATION BOARD OF APPEALS."

(b) Any person who advertises immigration assistance services in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other

written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and the language in which the advertisement appears that contains the language in paragraph (a), clause (1).

Subd. 3. **Prohibited activities.** Any person who provides or offers to provide immigration assistance services may not do any of the following:

(1) give any legal advice concerning an immigration matter or perform an act constituting the practice of immigration law as defined in Code of Federal Regulations, title 8, section 1.1 (i), (j), (k), or (m);

(2) represent, hold out or advertise, in connection with the provision of assistance in immigration matters, other titles or credentials in any language, including, but not limited to, "notary public" or "immigration consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter;

(3) make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage;

(4) retain any compensation for service not performed; or

(5) refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer even if subject to a fee dispute.

Subd. 4. **Written contract.** Except as otherwise provided in this section, before providing an immigration assistance service a person shall provide the customer with a written contract that includes the following:

(1) an explanation of the services to be performed;

(2) identification of all compensation and costs to be charged to the customer for the services to be performed; and

(3) a statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs.

The written contract must be in both English and in the language of the customer. A copy of the contract must be provided to the customer upon the customer's execution of the contract. A customer has the right to rescind a contract within 72 hours after signing the contract. Any documents prepared on behalf of, or paid for by the customer, must be returned upon demand of the customer.

This subdivision does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse the organization's or clinic's reasonable costs relating to providing immigration services to that client.

Subd. 5. **Exemptions.** This section does not apply to:

(1) an attorney licensed to practice law in any state or territory of the United States, or in any foreign country when authorized by the Minnesota Supreme Court, to the extent the attorney renders immigration assistance service in the course of practicing as an attorney;

(2) a nonlawyer assistant, as described by the rules of the Minnesota Supreme Court, employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the assistant's employment;

(3) a not-for-profit organization recognized by the Board of Immigration Appeals under Code of Federal Regulations, title 8, section 292.2(a), and employees of those organizations accredited under Code of Federal Regulations, title 8, section 292.2(d), and designated entities as defined under Code of Federal Regulations, title 8, section 245a.1; and

(4) an organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom the advice or assistance is provided.

Subd. 6. **Penalty and remedies.** A person who violates this section is guilty of a misdemeanor. The penalties and remedies of section 8.31 apply to violations of this section, including a private cause of action.

History: *1996 c 401 s 1*

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

SAMPLES; DISTRIBUTION

325E.04 FREE SAMPLES; DISTRIBUTION.

Subdivision 1. **Restrictions.** 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. **Criminal penalty.** 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 Subdivision 1. [Repealed, 1991 c 337 s 90]

Subd. 2. [Repealed, 1991 c 337 s 90]

Subd. 3. [Repealed, 1990 c 597 s 73; 1990 c 604 art 10 s 32; 1991 c 337 s 90]

Subd. 4. [Repealed, 1990 c 597 s 73; 1990 c 604 art 10 s 32; 1991 c 337 s 90]

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 or outdoor power equipment, 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 or outdoor power equipment 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 and reasonable assembly charges which have been paid by the retailer, or invoiced to retailer's account by the wholesaler, manufacturer, or distributor and the following:

(a) 95 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;

(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;

(d) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(e) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor, except that specialized repair tools and signage that has never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor the specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

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, data processing and communications hardware and software, and specialized repair tools and signage 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, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and repair parts for outdoor power equipment, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and repair parts for outdoor power equipment, data processing and communications hardware and software, and specialized repair tools and signage. 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 60 days from the date the farm implements, machinery, attachments, repair parts, outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage are received by the manufacturer, and if not by then paid, the amount payable by the wholesaler, manufacturer, or distributor bears interest at the maximum rate allowed by law 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage 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, outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage. 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, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage, 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 and reasonable assembly which have been paid by the retailer, (c) 95 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) 95 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, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them.

Subd. 6. **Definition.** (a) 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.

(b) For the purposes of this section, "outdoor power equipment" does not include motorcycles, boats, personal watercraft, snowmobiles, or all-terrain vehicles designed for recreation.

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; 2001 c 72 s 1-4*

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.0631 WARRANTIES.

Subdivision 1. **Application.** The requirements of this section apply to all warranty claims submitted by a dealer to a farm equipment manufacturer in which the farm

equipment dealer has complied with the reasonable policies and procedures contained in the farm equipment manufacturer's warranty.

Subd. 2. **Prompt payment.** Claims filed for payment under warranty agreements must be approved or disapproved within 30 days of receipt by the farm equipment manufacturer. Unless the farm equipment dealer agrees to a later date, approved claims for payment must be paid within 30 days of their approval. When a claim is disapproved, the farm equipment manufacturer shall notify the dealer within the 30-day period stating the specific grounds on which the disapproval is based. Any claim not specifically disapproved within 30 days of receipt is deemed approved and must be paid within 30 days.

Subd. 3. **Posttermination claims.** If, after termination of a contract, a dealer submits a warranty claim for warranty work performed before the effective date of the termination, the farm equipment manufacturer shall approve or disapprove the claim within 30 days of receipt.

Subd. 4. **Compensation for warranty work.** Warranty work performed by the dealer must be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours multiplied by the dealer's established customer hourly retail labor rate, which the dealer shall communicate to the farm equipment manufacturer before performing the warranty work.

Subd. 5. **Expenses.** Expenses expressly excluded under the farm equipment manufacturer's warranty to the customer must not be included in claims and are not required to be paid on requests for compensation from the dealer for warranty work performed.

Subd. 6. **Compensation for parts.** All parts used by the dealer in performing warranty work must be paid to the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of 15 percent to reimburse the dealer for reasonable costs of doing business in performing warranty service on the farm equipment manufacturer's behalf, including but not limited to freight and handling costs.

Subd. 7. **Adjustment for errors.** The farm equipment manufacturer may adjust for errors discovered during audit, and if necessary, to adjust claims paid in error.

Subd. 8. **Alternate terms and conditions.** A dealer may choose to accept alternate reimbursement terms and conditions in lieu of the requirements of subdivisions 2 to 7, provided there is a written dealer agreement between the farm equipment manufacturer and the dealer providing for compensation to the dealer for warranty labor costs either as: (1) a discount in the pricing of the equipment to the dealer; or (2) a lump-sum payment to the dealer. The discount or lump sum must be no less than five percent of the suggested retail price of the equipment. If the requirements of this subdivision are met and alternate terms and conditions are in place, subdivisions 2 to 7 do not apply and the alternate terms and conditions are enforceable.

History: *2003 c 78 s 1*

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:

(1) 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;

(2) trucks and truck parts; or

(3) equipment used for, or adapted for use in, mining or forestry applications.

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.

Subd. 6. **Truck.** "Truck" means a motor vehicle designed and used for carrying things other than passengers, a truck-tractor as defined in section 168.011, subdivision 12, and a semitrailer as defined in section 168.011, subdivision 14. "Truck" does not include a pickup truck or van with a manufacturer's nominal rated carrying capacity of three-fourths ton or less.

Subd. 7. **Truck parts.** "Truck parts" means all parts of a truck, including body parts.

History: *1989 c 267 s 1; 1991 c 70 s 6-8; 1993 c 199 s 1-3; 1996 c 291 s 1; 2003 c 78 s 2*

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 and reasonable assembly 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) 95 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;

(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;

(4) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(5) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor. Specialized repair tools or signage that have never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor such specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

(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, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage 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 60 days from the date the heavy and utility equipment is received by the manufacturer, and if not by then paid, the amount payable by the

manufacturer bears interest at the maximum rate allowed by law 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.

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 manufactur-

er 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 and reasonable assembly charges which have been paid by the dealer; (3) 95 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; (4) payment for data processing and communication hardware and software, or specialized repair tools or signage as outlined in subdivision 1, paragraph (d); and (5) 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) 100 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, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them.

History: *1989 c 267 s 2; 1991 c 71 s 1-10; 1993 c 13 art 2 s 10; 2001 c 72 s 5-9*

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. **Required posting.** 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. **Criminal penalty.** 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 [Repealed, 1997 c 227 s 8]

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 SALES; COMPUTATION BY SMALL RETAILERS

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*

MOTOR VEHICLES; AIR POLLUTION CONTROL SYSTEMS

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. [Repealed, 1995 c 220 s 141]

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; 1995 c 247 art 1 s 44*

MOTOR OIL COLLECTION; RECYCLING

325E.10 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.11 to 325E.112 and this section, the terms defined in this section have the meanings given them.

Subd. 2. **Motor oil.** "Motor oil" means oil used as a lubricant or hydraulics in a transmission or internal combustion engine motor vehicle as defined in section 168.011, subdivision 4.

Subd. 2a. **Motor oil filter.** "Motor oil filter" means any filter used in combination with motor oil.

Subd. 3. **Used motor oil.** "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.** "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, or other entity.

Subd. 5. **Used motor oil filter.** "Used motor oil filter" means a motor oil filter which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History: *1977 c 68 s 1; 1995 c 220 s 118; 1997 c 216 s 130-132; 2003 c 128 art 2 s 44*

325E.11 COLLECTION FACILITIES; NOTICE.

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

(1) post a notice indicating the nearest location where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse, post a toll-free telephone number that may be called by the public to determine a convenient location, or post a listing of locations where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse; or

(2) if the person is subject to section 325E.112, subdivision 1, paragraph (b), post a notice informing customers purchasing motor oil or motor oil filters of the location of the used motor oil and used motor oil filter collection site established by the retailer in accordance with section 325E.112, subdivision 1, paragraph (b), where used motor oil and used motor oil filters may be returned at no cost.

(b) A notice under paragraph (a) shall be posted on or adjacent to the motor oil and motor oil filter displays, 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 and used motor oil filters in the garbage.";

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

(3)(i) "There is a free collection site here for your used oil and used motor oil filters.";

(ii) "There is a free collection site for used oil and used motor oil filters located at (name of business and street address).";

(iii) "For the location of a free collection site for used oil and used motor oil filters call (toll-free phone number).."; or

(iv) "Here is a list of free collection sites for used oil and used motor oil filters."

(c) The Division of Weights and Measures in the Department of Commerce shall enforce compliance with this section as provided in section 239.54. The Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072 in coordination with the Division of Weights and Measures.

History: *1977 c 68 s 2; 1987 c 348 s 37; 1995 c 220 s 119; 1997 c 216 s 133; 1999 c 231 s 182; 1Sp2001 c 4 art 6 s 72*

325E.112 USED MOTOR OIL AND USED MOTOR OIL FILTER COLLECTION.

Subdivision 1. **Collection.** (a) Motor oil and motor oil filter manufacturers and retailers shall seek to provide by May 31, 2001:

(1) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a five-mile radius of any resident in the seven-county metropolitan area; and

(2) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a city or town with a population of greater than 1,500 outside the seven-county metropolitan area. The commissioner of the Pollution Control Agency shall determine by June 30, 2001, whether these goals have been met.

(b) If the commissioner of the Pollution Control Agency determines that motor oil and motor oil filter manufacturers and retailers have not met the goals in paragraph (a) by May 31, 2001, then beginning July 1, 2001, all retailers that sell at an individual location more than 1,000 motor oil filters per calendar year at retail for off-site

installation must provide for collection of used motor oil and used motor oil filters from the public. Retailers who do not collect the used motor oil and used motor oil filters at their individual locations may meet the requirement by entering into a written agreement with another party whose location is:

(1) within two miles of the retailer's location if the retailer is located:

(i) within the Interstate Highway 494/694 beltway;

(ii) in a home rule charter or statutory city or a town contiguous to the Interstate Highway 494/694 beltway; or

(iii) in a home rule charter or statutory city of over 30,000 population within the metropolitan area as defined in section 473.121; or

(2) within five miles of the retailer's location if the retailer is not in an area described in clause (1).

(c) The written agreement under paragraph (b) must specify that the other party will accept from the public up to ten gallons of used motor oil and ten used motor oil filters per person per month during normal hours of operation unless:

(1) the used motor oil is known to be contaminated with antifreeze, other hazardous waste, or other materials which may increase the cost of used motor oil management and disposal;

(2) the storage equipment for that particular waste is temporarily filled to capacity; or

(3) the used motor oil or used motor oil filters are from a business.

(d) Persons accepting used motor oil from the public in accordance with this subdivision shall presume that the used motor oil is not contaminated with hazardous waste, provided the person offering the used motor oil is acting in good faith and the person accepting the used motor oil does not have evidence to the contrary. Persons collecting used motor oil from the public must take precautions to prevent contamination of used motor oil storage equipment. Precautions may include, but are not limited to, keeping a log of persons dropping off used motor oil, securing access to used motor oil storage equipment, or posting signage at the site indicating the proper use of the equipment.

(e) Persons accepting used motor oil and used motor oil filters under paragraph (b), including persons accepting the oil and filters on behalf of the retailer, may not charge a fee when accepting ten gallons or less of used motor oil or ten or fewer used motor oil filters per person per month.

(f) Persons that receive contaminated used motor oil may manage the used motor oil as household hazardous waste through publicly administered household hazardous waste collection programs, with approval from the household hazardous waste program. Used motor oil contaminated with hazardous waste from the public that cannot be managed through a household hazardous waste collection program must be managed as a hazardous waste in accordance with rules adopted by the Pollution Control Agency.

Subd. 2. **Reimbursement program.** A contaminated used motor oil reimbursement program is established to provide reimbursement of the costs of disposing of contaminated used motor oil. In order to receive reimbursement, persons who accept used motor oil from the public or parties that they have contracted with to accept used motor oil must provide to the commissioner of the Pollution Control Agency proof of contamination, information on methods the person used to prevent the contamination of used motor oil at the site, a copy of the billing for disposal costs incurred because of the contamination and proof of payment, and a copy of the hazardous waste manifest or shipping paper used to transport the waste. The commissioner shall reimburse a recipient of contaminated used motor oil 100 percent of the costs of properly disposing of the contaminated used motor oil. The commissioner may not reimburse persons who intentionally place contaminants or do not take precautions to prevent contaminants from being placed in used motor oil, or operate a private collection site that:

(1) is not publicly promotable or listed with the agency;

(2) does not accept up to five gallons of used motor oil and five used motor oil filters per person per day without charging a fee; or

(3) does not control access to the site during times when the site is closed.

A person operating a collection site may refuse to accept any used motor oil or used motor oil filter:

(1) that is from a business;

(2) that appears to be contaminated with antifreeze, hazardous waste, or other materials that may increase the cost of used motor oil management and disposal; or

(3) when the storage equipment for that particular waste is temporarily filled.

Persons operating government collection sites are eligible for reimbursement of the costs of disposing of contaminated used motor oil. Reimbursements made under this subdivision are limited to the money available in the contaminated used motor oil reimbursement account.

Subd. 2a. [Repealed, 1Sp2003 c 21 art 8 s 20]

Subd. 3. [Repealed, 2003 c 128 art 2 s 56]

Subd. 4. **Liability exemption.** Persons who accept used motor oil and used motor oil filters from the public and retailers and manufacturers who contract with such persons for purposes of subdivision 1 are exempt from liability under chapter 115B for the used motor oil, contaminated used motor oil, and used motor oil filters accepted at facilities that accept used motor oil or used motor oil filters from the public free of charge, after the used motor oil, contaminated used motor oil, and used motor oil filters are sent off-site in compliance with rules adopted by the Pollution Control Agency.

Subd. 5. **Enforcement.** The commissioner of the Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072.

History: *1995 c 220 s 120; 1997 c 216 s 134; 1998 c 389 art 16 s 16; 1999 c 231 s 183-185*

325E.113 [Repealed, 2003 c 128 art 2 s 56]

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 in the Department of Commerce 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; 1Sp2001 c 4 art 6 s 73*

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, except a lead acid battery that is designed to provide power for a boat motor that is purchased at the same time as the battery, 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; 1993 c 249 s 32*

325E.12 PENALTY.

Violation of sections 325E.10 to 325E.1151 is a petty misdemeanor. Sections 325E.10 to 325E.1151 may be enforced under section 115.071.

History: *1977 c 68 s 3; 1993 c 249 s 33*

BATTERIES AND CORDLESS PRODUCTS

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 contains no intentionally introduced mercury or 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; 1993 c 249 s 34*

325E.1251 PENALTY ENFORCEMENT.

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

Subd. 2. **Recovery of costs.** Section 325E.125 may be enforced under section 115.071. 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; 1993 c 249 s 35*

ODOMETERS

325E.13 TAMPERING WITH ODOMETERS; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.13 to 325E.16, the terms defined in this section have the meanings given them.

Subd. 2. **Owner.** "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.** "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.** "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. **Tampering.** 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. **Operating restriction.** 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. **Sales and use restrictions.** 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. **Sales restriction.** 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. **Conspiracy.** No person shall conspire with any other person to violate this section or section 325E.15.

Subd. 6. **Repair or replacement restriction.** 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 regulations contained in Code of Federal Regulations, title 49, sections 580.1 to 580.17, as amended through October 1, 1998, implementing Title IV of the Federal Motor Vehicle Information and Cost Savings Act prescribe the manner in which written disclosure must be made in this state and are adopted by reference. No transferor shall violate any regulations adopted under this section or knowingly give a false statement to a transferee in making any disclosure required by the regulations.

History: *1973 c 264 s 3; 2000 c 426 s 30*

325E.16 PENALTIES; REMEDIES.

Subdivision 1. **Criminal penalty.** Any person who is found to have violated sections 325E.13 to 325E.16 shall be guilty of a gross misdemeanor.

Subd. 2. **Civil penalty.** 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. **Civil action.** 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

325E.169 DEFINITIONS.

Subdivision 1. **Scope.** For the purpose of sections 325E.169 to 325E.201, the terms defined in this section have the meanings given them.

Subd. 2. **Person.** "Person" means an individual, firm, partnership, limited liability company, corporation, or association.

Subd. 3. **Owner.** "Owner" means the person who owns the sounds or images fixed in a master recording upon which sounds or images are recorded and from which the transferred recorded sounds or images are directly or indirectly derived.

Subd. 4. **Recording.** "Recording" means the tangible medium on which sounds or images are recorded or otherwise stored and includes a phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images may be recorded or stored.

History: *1993 c 221 s 1*

325E.17 UNLAWFUL TRANSFERS OR SALES OF RECORDINGS.

Unless exempt under section 325E.19, it is unlawful for any person knowingly:

(1) to transfer or cause to be transferred any sounds or images from one recording to another recording; or

(2) to 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 recording without the consent of the owner of the master recording.

History: *1973 c 579 s 1; 1993 c 221 s 2*

325E.18 IDENTITY OF TRANSFEROR.

It is unlawful for any person for commercial purposes to sell, distribute, circulate, offer for sale, distribution or circulation, or possess for the purpose of sale, distribution or circulation, any recording unless the recording bears the actual name and address of the transferor of the sounds or images in a prominent place on its outside face, label, or package.

History: *1973 c 579 s 2; 1993 c 221 s 3*

325E.19 EXEMPTIONS.

Sections 325E.169 to 325E.201 do not apply to any person who transfers or causes to be transferred any recordings (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; 1993 c 221 s 4*

325E.20 [Repealed, 1993 c 221 s 7]

325E.201 VIOLATIONS; PUNISHMENT.

A violation of section 325E.17 or 325E.18 is a felony and is punishable upon conviction by:

(1) a fine of not more than $100,000, or imprisonment for not more than two years, or both, if the violation is a first offense involving more than 100 but not more than 1,000 sound recordings or more than seven but not more than 65 audio-visual recordings;

(2) a fine of not more than $250,000, or imprisonment for not more than five years, or both, if the violation is a second or subsequent offense, or involves more than 1,000 sound recordings or more than 65 audio-visual recordings; or

(3) a fine of not more than $25,000, or imprisonment for not more than a year and a day, or both, for any other violation.

History: *1993 c 221 s 5*

WIRE AND CABLE; PURCHASE AND SALE

325E.21 DEALERS IN WIRE AND CABLE; RECORDS AND REPORTS.

Subdivision 1. **Purchase or acquisition record required.** 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. **Sheriff's copy of record required.** 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. **Retention required.** 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. **Scope.** 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.** "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.** "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.** "Person" means an individual, partnership, firm, association, or corporation.

History: *1965 c 531 s 1*

325E.24 FURNISHING OF SPACE; EXCEPTIONS.

Subdivision 1. **Unlawful discrimination prohibited.** 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. **Limits on duty to furnish.** 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 Minnesota Statutes 2000, 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.

Subd. 6. **Message.** "Message" means any call, regardless of its content.

History: *1987 c 294 s 1; 1994 c 534 art 2 s 1; 2003 c 2 art 1 s 38*

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*

TELEPHONE SOLICITATION

325E.311 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.311 to 325E.316, the terms in subdivisions 2 to 6 have the meanings given them.

Subd. 2. **Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a residential subscriber in this state by using a telephone or a telephone line.

Subd. 3. **Caller identification service.** "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5. **Residential subscriber.** "Residential subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person.

Subd. 6. **Telephone solicitation.** "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a

live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber's prior express invitation or permission;

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship;

(3) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law; or

(4) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser.

History: *2002 c 367 s 1*

325E.312 TELEPHONE SOLICITATIONS.

Subdivision 1. **Persons included in no-call list.** No caller shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who is on the no-call list established and maintained under section 325E.313.

Subd. 2. **Identification of caller.** Any caller who makes a telephone solicitation to a residential subscriber in this state shall state the caller's identity clearly at the beginning of the call and, if requested, the caller's telephone number.

Subd. 3. **Interference with caller identification.** No caller who makes a telephone solicitation to a residential subscriber in this state shall knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

History: *2002 c 367 s 2*

325E.313 NO-CALL LIST.

Subdivision 1. **Establishment of list.** The commissioner shall establish and maintain a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The commissioner may fulfill the requirements of this subdivision by contracting with an agent for the establishment and maintenance of the list. The list must be established by January 1, 2003.

Subd. 2. **Operation and maintenance of list.** (a) Each local exchange company must inform its residential subscribers of the opportunity to provide notification to the commissioner or its contractor that the subscriber objects to receiving telephone solicitations. The notification must be made in the manner prescribed by the commissioner.

(b) Any residential subscriber may contact the commissioner or the commissioner's agent and give notice, in the manner prescribed by the commissioner, that the subscriber objects to receiving telephone solicitations. The commissioner shall add the telephone number of any subscriber who gives notice of objection to the list maintained pursuant to subdivision 1 within 90 days of the date the notice is received.

(c) Any notice given by a subscriber under this subdivision shall be effective for four years unless revoked by the subscriber. Any subsequent notices given by the same subscriber related to a different telephone number are separate from the original notice.

(d) The commissioner shall allow consumers to give notice under this subdivision by mail or electronically.

(e) The commissioner shall establish the procedures by which a person wishing to make telephone solicitations may obtain access to the list. Those procedures shall, to the extent practicable, allow for access to paper or electronic copies of the list.

Subd. 3. **Use of federal list.** If, pursuant to United States Code, title 15, section 6102(a), the Federal Trade Commission establishes a national list of telephone numbers of subscribers who object to receiving telephone solicitations, the commissioner shall include subscribers who live in Minnesota and are included in the national list in the list established under this section. The commissioner shall also transmit to the Federal Trade Commission the telephone numbers included on the no-call list established under this section and shall request that they be included in the national list.

History: *2002 c 367 s 3*

325E.314 FEES; ACQUISITION AND USE OF LIST.

(a) A person or entity desiring to make telephone solicitations shall pay a fee, payable to the commissioner, for access to, or for paper or electronic copies of, the list established under section 325E.313. The fee shall not exceed $125 for each acquisition of the list. The fee shall not exceed $90 in fiscal year 2004, and the fee shall not exceed $75 in fiscal year 2005 and thereafter.

(b) A caller who makes a telephone solicitation to the telephone line of any residential subscriber must, at the time of the call, have obtained access to a current version of the list at least once in the 90 days prior to the call. A caller who complies with this requirement is not liable for any violation of section 325E.312 relating to a solicitation made to a subscriber during the first 30 days after the caller first obtained a copy of the list including that subscriber's telephone number that has not been superseded by a later list obtained by the caller that does not include the subscriber's telephone number.

(c) If the Federal Trade Commission establishes a national do-not-call list as described in section 325E.313, subdivision 3, a person or entity who is required by law to obtain a copy of the national list is not required to purchase or retain a copy of the list established by the commissioner, unless the Federal Trade Commission fails to incorporate the Minnesota names transmitted by the commissioner.

History: *2002 c 367 s 4*

325E.315 RELEASE OF INFORMATION.

Information contained in the list established under section 325E.313 shall be used only for the purposes of compliance with sections 325E.311 to 325E.316 or in a proceeding or action under section 325E.316. The information contained in the list is private data on individuals or nonpublic data as defined in section 13.02.

History: *2002 c 367 s 5*

325E.316 PENALTIES.

Subdivision 1. **Enforcement by commissioner.** In enforcing sections 325E.311 to 325E.316, the commissioner has all powers provided by section 45.027, including, but not limited to, the power to impose a civil penalty to a maximum of $1,000 for each solicitation that violates section 325E.312.

Subd. 2. **Defenses.** (a) In any action or proceeding against a person under this section, it shall be a defense that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of section 325E.312.

(b) No provider of caller identification service shall be held liable for violations of section 325E.312 committed by other persons or entities.

Subd. 3. **Time limitations.** No action or proceeding may be brought under this section:

(1) more than two years after the person bringing the action knew or should have known of the alleged violation; or

(2) more than two years after the termination of any proceeding or action by the state of Minnesota, whichever is later.

Subd. 4. **Jurisdiction.** A court of this state may exercise personal jurisdiction over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section according to the provisions of section 543.19.

Subd. 5. **Other remedies.** The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

History: *2002 c 367 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 363A.03, subdivision 34.

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 296A.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; 1998 c 299 s 30*

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

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*

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*

JUNK FAXES

325E.395 FACSIMILE TRANSMISSION OF UNSOLICITED ADVERTISING MATERIALS.

Subdivision 1. **Telephone number and address required; notice.** (a) A person conducting business in this state may not make or cause to be made a facsimile transmission of documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of property or services unless the person establishes a toll-free telephone number that a recipient of the unsolicited documents may call to notify the sender not to transmit to the recipient unsolicited documents.

(b) Unsolicited facsimile transmissions subject to this section must include a statement, in at least 9-point type, informing the recipient of the toll-free telephone number the recipient may call, and an address the recipient may write to, to notify the sender not to transmit to the recipient unsolicited documents to the facsimile number specified by the recipient.

(c) Upon receiving a request not to transmit unsolicited documents, no person or entity conducting business in this state may make or cause to be made any unsolicited facsimile transmissions of documents to the person making the request.

Subd. 2. **Exception.** This section does not apply to the transmission of documents by a telecommunications service provider to the extent that the telecommunications service provider merely provides transmission facilities.

Subd. 3. **Remedies and penalties.** A person who is found to have violated this section is subject to the penalties and remedies, including a private right of action, as provided in section 8.31.

History: *1993 c 197 s 1*

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*

DECEPTIVE TRADE PRACTICES

325E.41 DECEPTIVE TRADE PRACTICES; ENVIRONMENTAL MARKETING CLAIMS.

Subdivision 1. **Adoption of federal guides.** (a) Environmental marketing claims made by a manufacturer, packager, wholesaler, or retailer for a product sold or offered for sale or distribution in this state, including those related to the product's packaging, must conform to the standards or be consistent with the examples contained in Code of Federal Regulations, title 16, part 260, "Guides for the Use of Environmental Marketing Claims" regarding general environmental benefits claims, claims that a product or package is degradable, compostable, recyclable, or contains recycled content, and claims relating to source reduction, refillability, or ozone safety.

(b) Paragraph (a) does not apply to an environmental claim unless the claim is made in an attempt to influence purchasing decisions by end users of the product.

Subd. 2. **Investigation; enforcement.** A person who violates this section is subject to the penalties and remedies in section 8.31.

History: *1996 c 359 s 2*

325E.42 DECEPTIVE TRADE PRACTICES; GAMBLING ADVERTISING AND MARKETING CLAIMS.

Subdivision 1. **Regulation.** All advertising or marketing materials relating to the conduct of any form of legal gambling in Minnesota, including informational or promotional materials, must:

(1) be sufficiently clear to prevent deception; and

(2) not overstate expressly, or by implication, the attributes or benefits of participating in legal gambling.

Subd. 2. **Attorney general's actions.** The attorney general may bring an action against any person violating this section in accordance with section 8.31, except that no private action is permitted to redress or correct a violation of this section.

Subd. 3. **Advertising media excluded.** This section applies to actions of the owner, publisher, agent, or employee of newspapers, magazines, other printed matter, or radio or television stations or other advertising media used for the publication or dissemination of an advertisement or marketing materials, only if the owner, publisher, agent, or employee has been personally served with a certified copy of a court order or consent judgment or agreement prohibiting the publication of particular gambling advertising or marketing materials and thereafter publishes such materials.

History: *1994 c 633 art 8 s 2*

ENFORCEMENT OF MUSICAL WORKS COPYRIGHT LICENSES

325E.50 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 325E.50 to 325E.57, the terms defined in this section have the meanings given them.

Subd. 2. **Copyright owner.** "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States under United States Code, title 17, sections 101 to 810.

Subd. 3. **Performing rights society.** "Performing rights society" means an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors, and Publishers (ASCAP); Broadcast Music, Inc. (BMI); and SESAC, Inc.

Subd. 4. **Proprietor.** "Proprietor" means the owner of a retail establishment, office, restaurant, inn, bar, tavern, or any other similar establishment or place of business located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

Subd. 5. **Royalty or royalties.** "Royalty" or "royalties" means the license fees payable by a proprietor to a performing rights society for the public performance of nondramatic musical works.

History: *1996 c 336 s 1*

325E.51 LICENSING NEGOTIATIONS.

No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than 72 hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

(1) a schedule of the rates and terms of royalties under the contract;

(2) upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the society; and

(3) notice that it will make available, upon written request of any proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted musical works in the performing rights society's repertory, provided that the notice shall specify the means by which the information can be secured.

History: *1996 c 336 s 2*

325E.52 ROYALTY CONTRACT REQUIREMENTS.

Every contract for the payment of royalties between a proprietor and a performing rights society executed in this state must be in writing and signed by the parties and must include, at a minimum, the following information:

(1) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(2) the name of the performing rights society;

(3) the duration of the contract; and

(4) the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of rates for the duration of the contract.

History: *1996 c 336 s 3*

325E.53 IMPROPER LICENSING PRACTICES.

No performing rights society or any agent or employee of a performing rights society shall: (1) collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to sections 325E.50 to 325E.57; or (2) enter into the premises of a propri-

etor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor without first showing personal identification to the proprietor or the proprietor's employees and disclosing that the agent is acting on behalf of the performing rights society and disclosing the purpose of this discussion.

History: *1986 c 444; 1996 c 336 s 4*

325E.54 INVESTIGATION.

Nothing in sections 325E.50 to 325E.57 shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the federal copyright law, United States Code, title 17.

History: *1996 c 336 s 5*

325E.55 REMEDIES; INJUNCTION.

A person who suffers a violation of sections 325E.50 to 325E.57 may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other available remedy.

History: *1996 c 336 s 6*

325E.56 REMEDIES CUMULATIVE.

The rights, remedies, and prohibitions contained in sections 325E.50 to 325E.57 are in addition to and cumulative of any other right, remedy, or prohibition accorded by common law, or state or federal law. Nothing contained in sections 325E.50 to 325E.57 shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

History: *1996 c 336 s 7*

325E.57 EXCEPTIONS.

Sections 325E.50 to 325E.57 do not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission, or to contracts with cable operators, programmers, or other transmission services. Sections 325E.50 to 325E.57 do not apply to musical works performed in synchronization with an audio/visual film or tape, or to the gathering of information for determination of compliance with or activities related to the enforcement of sections 325E.169 to 325E.201.

History: *1996 c 336 s 8*

325E.58 SIGN CONTRACTOR; BOND.

(a) A sign contractor may post a compliance bond with the commissioner, conditioned that the sign contractor shall faithfully perform duties and comply with laws, ordinances, rules, and contracts entered into for the installation of signs. The bond must be renewed annually and maintained for so long as determined by the commissioner. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the annual amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days' written notice mailed to the commissioner by United States mail.

(b) The amount of the bond shall be $8,000. The bond may be drawn upon only by a local unit of government that requires sign installers to post a compliance bond. The bond is in lieu of any compliance bond required by a local unit of government.

(c) For purposes of this section, "sign" means a device, structure, fixture, or placard using graphics, symbols, or written copy that is erected on the premises of an establishment including the name of the establishment or identifying the merchandise, services, activities, or entertainment available on the premises.

History: *1997 c 222 s 44*