

Sec. 6. **EFFECTIVE DATE.**

Article 2, section 2, is effective the day following final enactment.

Approved May 15, 1987

CHAPTER 153—H.F.No. 450

An act relating to commerce; regulating the advertisement of interest rates of investment products; providing penalties; proposing coding for new law in Minnesota Statutes, chapter 45.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [45.025] ADVERTISEMENT OF INTEREST RATES.

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

(a) "Advertisement" includes:

(1) printed or published material, audio visual material, and descriptive literature of an issuer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales aids of all kinds issued by an issuer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by issuers and agents and representations made by issuers and agents in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by an agent or issuer.

(b) "Agent" is a person who effects or attempts to effect or assist in the purchase or sale of an investment product.

(c) "Commissioner" means the commissioner of commerce.

(d) "Effective annual yield" is the annualized income expressed as a simple interest rate per annum based on the initial investment principal.

(e) "Effective net annual yield" means the effective annual yield, based on a hypothetical \$1,000 investment, minus any annual fee or similar regular periodic charges.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(f) "Investment product" includes but is not limited to:

(1) certificate of deposits, deposits, or fiduciary funds entrusted to banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, and any other financial institution whether or not licensed by or registered with the department of commerce;

(2) annuities, endowment policies, or other life insurance products;

(3) securities, including: a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganizational certificate or subscription; transferrable shares; investment contract, including but not limited to metals, gems, and coins; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining right, title or lease, or in payments out of production under the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the securities listed in this clause.

(g) "Issuer" includes but is not limited to: banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, insurance companies, investment companies, trusts, or a person who issues an investment product.

(h) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other entity.

Subd. 2. GENERAL RESTRICTION. A person may not advertise the interest rate of an investment product unless the effective net annual yield is disclosed in an equally prominent manner.

The name and address of the issuer and any prepayment expense, surrender charge, or withdrawal penalty charged by the issuer must also be disclosed in a prominent manner. If the expense, charge, or penalty varies according to the length of time the product is held, the advertisement must disclose the expense, fee, or penalty imposed if surrendered or terminated within one year.

Subd. 3. VARIABLE RATES. With the exception of life insurance policy and annuity contract illustrations based upon a prospective purchaser's age and sex that do not provide a comparison with another policy or contract, an investment product whose interest rate varies according to the income or earnings of the issuer may not advertise projections of effective annual yield for a period exceeding one year. In addition, the advertisement must include in a prominent manner substantially the following statement:

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"The effective annual yield or total return will fluctuate along with market and other economic conditions. Past performance does not guarantee future results."

Subd. 4. PAST PERFORMANCE. If the advertisement refers to the past performance of an investment product, the advertisement must disclose the effective net annual yield for the one-year period immediately preceding the most recent quarter. "Quarters" for the purposes of this subdivision end on March 31, June 30, September 30, and December 31.

Subd. 5. COMPARATIVE ILLUSTRATIONS. Illustrations comparing a life insurance policy or annuity contract of one company with a life insurance policy or an annuity contract of another company must clearly disclose with equal prominence for each policy or contract:

- (1) the guaranteed rate of interest paid on the cash value;
- (2) the current dividend scale or current rate of interest paid on the cash value;
- (3) the nonguaranteed nature of any current dividends, current interest rates, charges, or other fees applied to the policy or contract, including the issuer's rights to alter any of these factors;
- (4) any limitations on the crediting of dividends or interest;
- (5) the frequency and timing by which dividends or the current interest rate is determined; and
- (6) the net cash surrender value at all ages and contract durations illustrated.

Subd. 6. WAIVER. The commissioner may by rule or order waive or defer implementation of the provisions of subdivisions 2 to 5 with regard to any person or persons who comply with similar restrictions imposed by the Securities and Exchange Commission or other regulatory agency.

Subd. 7. MISDEMEANOR. A person who willfully violates a provision of this section, knowing that the advertisement was false or misleading in any material respect, may be fined not more than \$700 or imprisoned not more than 90 days, or both. Each act in violation of this section constitutes a separate offense and a prosecution or conviction for any violation of this section does not bar prosecution or conviction for another violation under this section.

Subd. 8. CIVIL REMEDY. A person violating this section is liable to a purchaser of the investment product. The purchaser may sue either in equity for rescission upon tender of the investment product or at law for damages if the purchaser no longer owns the investment product. In an action for rescission, the purchaser is entitled to recover the consideration paid for the investment product, together with interest at the legal rate, costs, and reasonable attorney fees, less the amount of any income received on the investment product. In an action

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at law, damages are the consideration paid for the investment product together with interest at the legal rate to the date of disposition, costs, and reasonable attorney fees, less the value of the investment product at the date of disposition. If the advertisement advertises an investment product whose interest rate varies according to the earnings or income of the issuer and if the advertisement projects the accumulated earnings for a period longer than one year, the issuer and agent are jointly and severally liable to the purchaser for the difference in the principal and interest received by the purchaser and the principal and interest as projected in the advertisement.

Subd. 9. DENIAL, SUSPENSION, OR REVOCATION. The commissioner may by order deny, suspend, or revoke an agent's or issuer's license or may censure the licensee if the commissioner finds that: (1) the order is in the public interest; (2) the agent or issuer violated any provision of this section; and (3) the agent or issuer is licensed by the department.

Approved May 15, 1987

CHAPTER 154—H.F.No. 487

An act relating to commerce; regulating membership camping practices; prohibiting certain advertising practices; establishing escrow requirements; regulating subdivided land sales practices; prohibiting certain advertising practices; amending Minnesota Statutes 1986, sections 82A.02, subdivisions 2, 10, and 19; 82A.04, subdivision 2; 82A.09, by adding a subdivision; 82A.11, subdivision 3; and 82A.24, subdivisions 3 and 6; proposing coding for new law in Minnesota Statutes, chapters 82A and 83.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 82A.02, subdivision 2, is amended to read:

Subd. 2. **AMENITY.** "Amenity" means any major recreational building, swimming pool, utility serviced camping sites, or similar facility which is represented as available for use by purchasers now or in the future. ~~"Amenity" does not include a sportscourt or other minor facility.~~

Sec. 2. Minnesota Statutes 1986, section 82A.02, subdivision 10, is amended to read:

Subd. 10. **MEMBERSHIP CAMPING CONTRACT.** "Membership camping contract" means an agreement offered or sold within this state evidencing a purchaser's right or license to use for more than ~~three years~~ one year a campground owned or operated by a membership camping operator and includes a membership which provides for this use.

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