Article 4

Commercial Regulation and Consumer Protection

Section 1. Minnesota Statutes 2022, section 8.31, subdivision 1, is amended to read:

Subdivision 1. Investigate offenses against provisions of certain designated sections; assist in enforcement. The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the Nonprofit Corporation Act (sections 317A.001 to 317A.909), the Act Against Unfair Discrimination and Competition (sections 325D.01 to 325D.07; the Unlawful Trade Practices Act (sections 325D.09 to 325D.16), the Antitrust Act (sections 325D.49 to 325D.66), section 325F.67 and other laws against false or fraudulent advertising; the antidiscrimination acts contained in section 325D.67; the act against monopolization of food products (section 325D.68), the act regulating telephone advertising services (section 325E.39); the Prevention of Consumer Fraud Act (sections 325F.68 to 325F.70); the act regulating price gouging (section 325E.80); and chapter 53A regulating currency exchanges and assist in the enforcement of those laws as in this section provided.

Subd. 2. Data protection impact assessments. A data protection impact assessment collected or maintained by the attorney general under section 325O.04 is classified under section 325O.04, subdivision 4.

Sec. 2. Minnesota Statutes 2022, section 53C.01, is amended by adding a subdivision to read:

Sec. 3. Minnesota Statutes 2022, section 53C.01, is amended by adding a subdivision to read:

Sec. 4. Minnesota Statutes 2022, section 53C.01, subdivision 12c, is amended to read:

Subd. 12c. Theft deterrent device. "Theft deterrent device" means the following devices:

(1) a vehicle alarm system;
2.31 (2) a window etch product;
2.32 (3) a body part marking product;
3.1 (4) a steering lock; or
3.2 (5) a pedal or ignition lock;
3.3 (6) a fuel or ignition kill switch.

Sec. 5. Minnesota Statutes 2022, section 53C.08, subdivision 1a, is amended to read:

Subd. 1a. Disclosures required. Prior to the execution of a retail installment contract, the seller shall provide to a buyer, and obtain the buyer's signature on, a written disclosure that sets forth the following information:

- (1) a description and the total price of all items sold in the following categories if the contract includes a charge for the item:
  - (i) a service contract;
  - (ii) an insurance product;
  - (iii) a debt cancellation agreement;
  - (iv) a theft deterrent device; or
  - (v) a surface protection product;
- (2) whether a GPS starter interrupt device is installed on the motor vehicle, regardless of whether the contract includes a charge for the GPS starter interrupt device;
- (3) the amount that would be calculated under the contract as the regular installment payment if charges for the items referenced under clause (1) are not included in the contract;
- (4) the amount that would be calculated under the contract as the regular installment payment if charges for the items referenced under clause (1) are included in the contract; and
- (5) the disclosures required under this subdivision must be in at least ten-point type and must be contained in a single document that is separate from the retail installment contract and any other vehicle purchase documents.

Subd. 4. Retail rate for labor. (a) Compensation for warranty labor must equal the dealer's effective nonwarranty labor rate multiplied by the time allowances recognized by the manufacturer to compensate its dealers for warranty work, and must not be less than the nonwarranty customer-paid service repair orders. If no time guide exists for a warranty repair, compensation for warranty labor must equal the dealer's effective nonwarranty labor rate multiplied by the time actually spent to complete the repair order and must not be less than the nonwarranty customer-paid service repair orders.
than the time charged to retail customers for the same or similar work performed. The effective nonwarranty labor rate is determined by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders submitted under subdivision 2 by the total number of labor hours that generated those sales. Compensation for warranty labor must include all diagnostic time for repairs performed under this section, including but not limited to all time spent communicating with the manufacturer's technical assistance or external manufacturer source in order to provide a warranty repair; and must not be less than the time charged to retail customers for the same or similar work performed.

(b) A manufacturer may disapprove a dealer's effective nonwarranty labor rate if:

(1) the disapproval is provided to the dealer in writing;

(2) the disapproval is sent to the dealer within 30 days of the submission of the effective nonwarranty labor rate by the dealer to the manufacturer;

(3) the disapproval includes a reasonable substantiation that the effective nonwarranty labor rate submission is inaccurate, incomplete, or unreasonable in light of a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make vehicles; and

(4) the manufacturer proposes an adjustment of the effective nonwarranty labor rate.

c) If a manufacturer fails to approve or disapprove the rate within this time period, the rate is approved. If a manufacturer disapproves a dealer's effective nonwarranty labor rate, and the dealer does not agree to the manufacturer's proposed adjustment, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of their failure to agree. If the manufacturer's internal dispute resolution procedure is unsuccessful, or if the procedure is not implemented within a reasonable time after the dealer notifies the manufacturer of their failure to agree, the dealer may use the civil remedies available under section 80E.17. A dealer must file a civil suit under section 80E.17, as permitted by this subdivision, within 60 days of receiving the manufacturer's proposed adjustment to the effective nonwarranty labor rate, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.

Sec. 23. Minnesota Statutes 2022, section 325D.01, subdivision 5, is amended to read:

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

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

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

(3) for purposes of gasoline offered for sale by way of posted price or indicating meter by a retailer, at a retail location where gasoline is dispensed into passenger automobiles and trucks by the consumer, "cost" means either:

(i) the average terminal price on the day, at the terminal from which the most recent supply of gasoline delivered to the retail location was acquired, plus all applicable state and federal excise taxes and fees; or

(ii) the actual current delivered invoice or replacement cost of the gasoline, whichever is lower, plus all applicable state and federal excise taxes and fees, plus the lesser of six percent or eight cents.

Sec. 7. Minnesota Statutes 2022, section 325D.44, subdivision 1, is amended to read:

Subdivision 1. Acts constituting. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(1) passes off goods or services as those of another;

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) uses deceptive representations or designations of geographic origin in connection with goods or services;

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparages the goods, services, or business of another by false or misleading representation of fact;

(9) advertises goods or services with intent not to sell them as advertised;

(10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
Sec. 8. Minnesota Statutes 2022, section 325D.44, subdivision 2, is amended to read:

Subd. 2. Proof.
(a) In order to prevail in an action under sections 325D.43 to 325D.48, a complainant need not prove competition between the parties or actual confusion or misunderstanding.
(b) For purposes of subdivision 1, clause (13), the standard of proof provided under section 325F.69, subdivision 7, applies.

Sec. 9. Minnesota Statutes 2022, section 325D.71, is amended to read:

325D.71 UNLAWFUL GASOLINE SALES.

(a) Any offer for sale of gasoline by a retailer by way of posted price or indicating meter that is below cost, as defined by section 325D.01, subdivision 5, clause (3), is a violation of section 325D.04, except that the criminal penalties in section 325D.071 do not apply. In addition to the penalties for violations and the remedies provided for injured parties set forth elsewhere in this chapter, the commissioner of commerce may use the authority under section 45.027 for the purpose of preventing violations of this section. A retailer who sells gasoline at the same or higher legally posted price of a competitor in the same market area, on the same day, is not in violation of this section.

(b) A retailer who offers gasoline for sale at a price below cost as part of a promotion at an individual location for no more than three days in any calendar quarter is not in violation of this section.

(c) A retailer who offers gasoline for sale at a price below cost through the use of coupons, loyalty programs, membership-based pricing programs, or promotions or programs of similar import is not in violation of this section.

Sec. 10. Minnesota Statutes 2022, section 325E.31, is amended to read:

325E.31 REMEDIES.

(a) 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.
(b) In addition to the penalties and remedies under paragraph (a), the attorney general is entitled to sue for and recover on behalf of the state a civil penalty from a person found to have violated sections 325E.27 to 325E.30. The court must determine the civil penalty amount, which must not exceed $500,000.

**EFFECTIVE DATE:** This section is effective the day following final enactment.

Sec. 26. Minnesota Statutes 2022, section 325E.66, is amended by adding a subdivision to read:

Subd. 1a. Prices and rates. Upon the occurrence of a weather event classified as a severe thunderstorm pursuant to the criteria established by the National Oceanic and Atmospheric Administration, a residential building contractor operating within the geographic region impacted by the weather event and repairing damage caused by the weather event shall not:

(1) charge an unconscionably excessive price for labor in comparison to the market price charged for comparable services in the geographic region impacted by the weather event;

or

(2) charge an insurance company a rate that exceeds what the residential building contractor otherwise charges members of the general public.

Sec. 27. Minnesota Statutes 2022, section 325E.66, subdivision 2, is amended to read:

Subd. 2. Private remedy. If a residential contractor violates subdivision 1 or 1a, the insured or the applicable insurer may bring an action against the residential contractor in a court of competent jurisdiction for damages sustained by the insured or insurer as a consequence of the residential contractor's violation.

Sec. 28. Minnesota Statutes 2022, section 325E.66, subdivision 3, is amended to read:

Subd. 3. Public enforcement. The commissioner of labor and industry shall enforce subdivision 1 under sections 326B.081 to 326B.085.

Sec. 29. [325E.67] POST-LOSS ASSIGNMENT OF BENEFITS. 

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

(b) "Residential contractor" means a residential roofer, as defined in section 326B.802, subdivision 14, a residential building contractor, as defined in section 326B.802, subdivision 11, or a residential remodeler, as defined in section 326B.802, subdivision 12.

(c) "Residential real estate" means a new or existing building, including appurtenant structures, constructed for habitation by at least one family but no more than four families.
Subd. 2. Post-loss assignment. A post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate must comply with the following:

(1) the assignment must only authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering residential real estate;

(2) the assignment must include all of the following:
   (i) an itemized description of the work to be performed;
   (ii) an itemized description of materials, labor, and fees for the work to be performed;
   (iii) a total itemized amount to be paid for the work to be performed;

(3) the assignment must include a statement that the residential contractor has made no assurances that the claimed loss is fully covered by an insurance contract and must include the following notice in capitalized 14-point type:

"YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. THE ITEMIZED DESCRIPTION OF THE WORK PERFORMED, AS SET FORTH IN THIS ASSIGNMENT FORM, HAS NOT BEEN AGREED TO BY THE INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE INSURER MAY ONLY PAY FOR THE REASONABLE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY.";

(4) the named insured has the right to cancel the assignment within ten business days after receipt of the scope of work by the insurance company. The cancellation must be made in writing or a comparable digital format. Within ten business days of the date of the written cancellation, the residential contractor must tender to the named insured, the landowner, or the possessor of the real estate any payments, partial payments, or deposits that have been made by that person;

(5) the assignment must include the following notice in capitalized 14-point type, located in the immediate proximity of the space reserved in the assignment for the signature of the named insured:

"YOU MAY CANCEL THIS ASSIGNMENT WITHOUT PENALTY WITHIN TEN BUSINESS DAYS FROM THE LATER OF THE DATE THE ASSIGNMENT IS EXECUTED OR THE DATE ON WHICH YOU RECEIVE A COPY OF THE EXECUTED ASSIGNMENT. YOU MUST CANCEL THE ASSIGNMENT IN WRITING AND THE CANCELLATION MUST BE DELIVERED TO [insert the name and address of residential contractor as provided by the residential contractor]. IF MAILED, THE CANCELLATION MUST BE POSTMARKED ON OR BEFORE THE TEN (10) BUSINESS DAY DEADLINE. IF YOU CANCEL THIS ASSIGNMENT, THE RESIDENTIAL CONTRACTOR MAY NOT PERFORM ANY WORK RELATED TO THE CLAIMED LOSS."
CONTRACTOR HAS UP TO TEN (10) BUSINESS DAYS TO RETURN ANY
PAYMENTS OR DEPOSITS YOU HAVE MADE.

(6) the assignment must not impair the interests of a mortgagee or other parties with any
legal interests listed on the declarations page of the property and casualty insurance policy
that is the subject of the assignment; and

(7) the assignment must not prevent or inhibit an insurer from communicating with the
named insured or mortgagee listed on the declarations page of the property and casualty
insurance policy that is the subject of the assignment.

Subd. 3. Other requirements. A residential contractor receiving the assignment described
in subdivision 2 must:

(1) deliver a copy of the assignment to the insurer of the residential real estate within
five business days of the date the assignment is executed;

(2) cooperate with the insurer of the residential real estate in an investigation into the
claim by providing documents and records requested by the insurer and complying with the
post-loss duties under the insurance policy; and

(3) comply with section 325E.66.

Subd. 4. Certain assignments void. A post-loss assignment of benefits entered into
with a residential contractor that violates any provision of the federal Insured Homeowner's
Protection Act of 1998, Public Law 105-216, as amended, is void.

Sec. 30. [325E.72] DIGITAL FAIR REPAIR.
Subdivision 1. Short title. This act may be cited as the "Digital Fair Repair Act."
Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the
meanings given.

(b) "Authorized repair provider" means an individual or business who is unaffiliated
with an original equipment manufacturer and who has: (1) an arrangement with the original
equipment manufacturer, for a definite or indefinite period, under which the original
equipment manufacturer grants to the individual or business a license to use a trade name,
service mark, or other proprietary identifier to offer diagnostic, maintenance, or repair
services for digital electronic equipment under the name of the original equipment
manufacturer; or (2) an arrangement with the original equipment manufacturer to offer
diagnostic, maintenance, or repair services for digital electronic equipment on behalf of the
original equipment manufacturer. An original equipment manufacturer that offers diagnostic,
maintenance, or repair services for the original equipment manufacturer's digital electronic
equipment is considered an authorized repair provider with respect to the digital electronic
equipment if the original equipment manufacturer does not have an arrangement described
in this paragraph with an unaffiliated individual or business.
"Contractor" has the meaning given in section 326B.31, subdivision 14.

"Cybersecurity" means the practice of protecting networks, devices, and data from unauthorized access or criminal use and the practice of ensuring confidentiality, integrity, and availability of information.

"Digital electronic equipment" or "equipment" means any hardware product that depends, in whole or in part, on digital electronics embedded in or attached to the product in order for the product to function, for which the original equipment manufacturer makes available tools, parts, or documentation to authorized repair providers.

"Documentation" means a manual, diagram, reporting output, service code description, schematic diagram, or similar information made available by an original equipment manufacturer to an authorized repair provider to facilitate diagnostic, maintenance, or repair services for digital electronic equipment.

"Embedded software" means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for the equipment, in order to operate the equipment. Embedded software includes all relevant patches and fixes made by the manufacturer of the equipment or part in order to operate the equipment.

"Fair and reasonable terms" means, with respect to:

- Parts for digital electronic equipment offered by an original equipment manufacturer:
  - (i) costs that are fair to both parties; and
  - (ii) terms under which an original equipment manufacturer offers the part to an authorized repair provider and which:
    - (A) is not conditioned on or imposing a substantial obligation to use or restrict the use of the part to diagnose, maintain, or repair digital electronic equipment sold, leased, or otherwise supplied by the original equipment manufacturer, including a condition that the owner or independent repair provider become an authorized repair provider of the original equipment manufacturer; or
    - (B) a requirement that a part be registered, paired with, or approved by the original equipment manufacturer or an authorized repair provider before the part is operational or otherwise supplied by the original equipment manufacturer, including a condition that the owner or independent repair provider become an authorized repair provider of the original equipment manufacturer;

- (2) tools, software, and documentation for digital electronic equipment offered by an original equipment manufacturer:
  - (i) costs that are equivalent to the lowest actual cost for which the original equipment manufacturer offers the tool, software, or documentation to an authorized repair provider,
including any discount, rebate, or other financial incentive offered to an authorized repair provider; and

(ii) terms that are equivalent to the most favorable terms under which an original equipment manufacturer offers the tool, software, or documentation to an authorized repair provider, including the methods and timeliness of delivery of the tool, software, or documentation, do not impose on an owner or an independent repair provider:

(A) a substantial obligation to use or restrict the use of the tool, software, or documentation to diagnose, maintain, or repair digital electronic equipment sold, leased, or otherwise supplied by the original equipment manufacturer, including a condition that the owner or independent repair provider become an authorized repair provider of the original equipment manufacturer; or

(B) a requirement that a tool be registered, paired with, or approved by the original equipment manufacturer or an authorized repair provider before the part or tool is operational; and

(3) documentation offered by an original equipment manufacturer: that the documentation is made available by the original equipment manufacturer at no charge, except that when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

(i) "Independent repair provider" means an individual or business operating in Minnesota that (1) does not have an arrangement described in paragraph (b) with an original equipment manufacturer; (2) is not affiliated with any individual or business that has an arrangement described in paragraph (b); and (3) is engaged in providing diagnostic, maintenance, or repair services for digital electronic equipment. An original equipment manufacturer or, with respect to the original equipment manufacturer, an individual or business that has an arrangement with the original equipment manufacturer or is affiliated with an individual or business that has an arrangement with that original equipment manufacturer, is considered an independent repair provider for purposes of the instances the original equipment manufacturer engages in diagnostic, maintenance, or repair services for digital electronic equipment that is not manufactured by or sold under the name of the original equipment manufacturer.

(ii) "Manufacturer of motor vehicle equipment" means a business engaged in the business of manufacturing or supplying components used to manufacture, maintain, or repair a motor vehicle.

(k) "Motor vehicle" means a vehicle that is: (1) designed to transport persons or property on a street or highway; and (2) certified by the manufacturer under (1) all applicable federal safety and emissions standards, and (ii) all requirements for distribution and sale in the United States. Motor vehicle does not include a recreational vehicle or an auto home equipped for habitation.
"Motor vehicle dealer" means an individual or business that, in the ordinary course of business: (1) is engaged in the business of selling or leasing new motor vehicles to an individual or business pursuant to a franchise agreement; (2) has obtained a license under section 168.27; and (3) is engaged in providing diagnostic, maintenance, or repair services for motor vehicles or motor vehicle engines pursuant to a franchise agreement.

"Motor vehicle manufacturer" means a business engaged in the business of manufacturing or assembling new motor vehicles.

"Original equipment manufacturer" means any individual or business that, in the ordinary course of business, is engaged in the business of selling or leasing to any individual or business new digital electronic equipment manufactured by or on behalf of the original equipment manufacturer.

"Owner" means an individual or business that owns or leases digital electronic equipment purchased or used in Minnesota.

"Part" means any replacement part or assembly of parts, either new or used, made available by an original equipment manufacturer to authorized repair providers to facilitate the maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.

"Tool" means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provide, program, pair a part, calibrate functionality, or perform any other function required to repair the original equipment or part back to fully functional condition, including updates.

"Trade secret" has the meaning given in section 325C.01, subdivision 5.

"Video game console" means a computing device, such as a console machine, a handheld console device, or another device or system, and its components and peripherals, that is primarily used by consumers for playing video games but which is neither a general nor an all-purpose computer. A general or all-purpose computer includes but is not limited to a desktop computer, laptop, tablet, or cell phone.

Subd. 3. Requirements. (a) For digital electronic equipment and parts for the equipment sold or used in Minnesota, an original equipment manufacturer must make available to any independent repair provider or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software, for diagnostic, maintenance, or repair purposes. Nothing in this section requires an original equipment manufacturer to make available a part, a tool, or documentation if it is no longer available to the original equipment manufacturer.

Subd. 4. For digital electronic equipment and parts for the equipment sold or used in Minnesota, an original equipment manufacturer must make available to any independent repair provider or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software, for diagnostic, maintenance, or repair purposes. Nothing in this section requires an original equipment manufacturer to make available a part, a tool, or documentation if it is no longer available to the original equipment manufacturer.
Such parts, tools, and documentation shall be made available within 60 days after the first sale of the digital electronic equipment in Minnesota.

Subd. 4. Enforcement by attorney general. A violation of this section is an unlawful practice under section 325D.44. All remedies, penalties, and authority granted to the attorney general under section 3.31 are available to the attorney general to enforce this section.

Subd. 5. Limitations. (a) Nothing in this section requires an original equipment manufacturer to divulge a trade secret or license any intellectual property to an owner or an independent service provider, except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

(b) Nothing in this section alters the terms of any arrangement described in subdivision 2, paragraph (b), including but not limited to the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to the arrangement, in force between an authorized repair provider and an original equipment manufacturer. A provision in the terms of an arrangement described in subdivision 2, paragraph (b), that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this section is void and unenforceable.

(c) Nothing in this section requires an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider pursuant to the terms of an arrangement described in subdivision 2, paragraph (b).

(d) Nothing in this section requires an original equipment manufacturer or authorized repair provider to make available any parts, tools, or documentation for the purpose of making modifications to any digital electronic equipment.

(e) Nothing in this section shall be construed to require the original equipment manufacturer to sell service parts if the service parts are no longer provided by the original equipment manufacturer or made available to authorized repair providers of the original equipment manufacturer.

(f) Nothing in this section shall require an original equipment manufacturer to make available special documentation, tools, and parts that would disable or override anti-theft security measures set by the owner of the equipment without the owner's authorization.

(g) Nothing in this section shall apply if the original equipment manufacturer provides equivalent or better, readily available replacement equipment at no charge to the customer.

(h) Nothing in this section requires the original manufacturer to provide access to parts, tools, or documentation for work that is required to be done or supervised by an individual.

(b) Such parts, tools, and documentation shall be made available within 60 days after the first sale of the digital electronic equipment in Minnesota.
or contractor licensed under chapter 326B or with any individual or contractor who does
not possess the relevant license required for that work.

Subd. 6. Exclusions. (a) Nothing in this section applies to: (1) a motor vehicle
manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in
that capacity; or (2) any product or service of a motor vehicle manufacturer, manufacturer
of motor vehicle equipment, or motor vehicle dealer acting in that capacity.

(b) Nothing in this section applies to manufacturers or distributors of a medical device
as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section
301 et seq., or a digital electronic product or software manufactured for use in a medical
setting including diagnostic, monitoring, or control equipment or any product or service
that the manufacturer or distributor of a medical device offers.

(c) Nothing in this section applies to manufacturers, distributors, importers, or dealers
of any off-road or nonroad equipment, including without limitation farm and utility tractors;
farm implements; farm machinery; forestry equipment; industrial equipment; utility
equipment; construction equipment; compact construction equipment; road-building
equipment; electronic vehicle charging infrastructure equipment; mining equipment; turf;
yard, and garden equipment; outdoor power equipment; portable generators; marine;
all-terrain sports, and recreational vehicles, including without limitation racing vehicles;
stand-alone or integrated stationary or mobile internal combustion engines; generator sets
and fuel cell power; power tools; and any tools, technology, attachments, accessories,
components, and repair parts for any of the foregoing.

(d) Nothing in this section shall be construed to require any original equipment
manufacturer or authorized repair provider to make available any parts, tools, or
documentation required for the diagnosis, maintenance, or repair of a video game console
and its components and peripherals.

(e) Nothing in this section applies to an energy storage system, as defined in section
216B.2422, subdivision 1, paragraph (f).

(f) Nothing in this section requires an original equipment manufacturer to make available
parts, documentation, or tools related to cybersecurity.

Subd. 7. Liability, defenses, and warranties. No original equipment manufacturer or
authorized repair provider shall be liable for any damage or injury caused to any digital
electronic equipment, person, or property that occurs as a result of repair, diagnosis,
maintenance, or modification performed by an independent repair provider or owner,
including but not limited to any indirect, incidental, special, or consequential damages; any
loss of data, privacy, or profits; or an inability to use, or reduced functionality of, the digital
electronic equipment.

Subd. 8. Applicability. This section applies to equipment sold on or after July 1, 2017.
EFFECTIVE DATE. This section is effective July 1, 2024.

Sec. 31. (325E.80) ABNORMAL MARKET DISRUPTIONS; UNCONSCIONABLY EXCESSIVE PRICES.

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

(b) "Essential consumer good or service" means a good or service that is vital for the health, safety, or welfare of the public, including without limitation: food, water, fuel, gasoline, shelter, transportation, health care services, pharmaceuticals, and medical, personal hygiene, sanitation, and cleaning supplies;

(c) "Seller" means a manufacturer, supplier, wholesaler, distributor, or retail seller of goods and services;

(d) "Unconscionably excessive price" means a price that represents a gross disparity compared to the seller's average price of an essential good or service, offered for sale or sold in the usual course of business, in the 60-day period before an abnormal market disruption is declared under subdivision 2. None of the following is an unconscionably excessive price:

1. a price that is substantially related to an increase in the cost of manufacturing, obtaining, replacing, providing, or selling a good or service;

2. a price that is no more than 25 percent above the seller's average price during the 60-day period before an abnormal market disruption is declared under subdivision 2;

3. a price that is consistent with the fluctuations in applicable commodity markets or seasonal fluctuations; or

4. a contract price, or the results of a price formula, that was established before an abnormal market disruption is declared under subdivision 2.

Subd. 2. Abnormal market disruption. (a) The governor may by executive order declare an abnormal market disruption if there is a substantial and atypical change in the market for an essential consumer good or service caused by an event that results in a declaration of a state of emergency by the governor.

(b) The governor's abnormal market disruption declaration must state that the declaration is activating this section and must specify the geographic area of Minnesota to which the declaration applies.

(c) A declaration under this subdivision terminates 30 days after the date that the state of emergency for which it was activated ends.

Subd. 3. Notice. Upon the implementation, renewal, limitation, or termination of an abnormal market disruption declaration made under subdivision 2: (1) the governor must immediately post notice on applicable government websites and provide notice to the media.
and (2) the commissioner of commerce must provide notice directly to sellers by any practical means:

Subd. 4. Prohibition. If the governor declares an abnormal market disruption, a person is prohibited from selling or offering to sell an essential consumer good or service for an amount that represents an unconscionably excessive price during the period in which the abnormal market disruption declaration is effective:

Subd. 5. Civil penalty. A person who is found to have violated this section is subject to a civil penalty of not more than $1,000 per sale or transaction, with a maximum penalty of $25,000 per day, in addition to any damages that may be owed under subdivision 7:

Subd. 6. Enforcement authority. The attorney general may investigate and bring an action against a seller for an alleged violation of this section. If the attorney general investigates a violation of this section, the attorney general must: (1) promptly notify the seller that they are the subject of an investigation; and (2) notify the seller when the investigation closes. A notice issued by the attorney general notifying the seller that an investigation has closed is not a determination on the merits of an investigation:

Subd. 7. Damages. Any person, any governmental body, or the state of Minnesota or any of its subdivisions or agencies, injured directly or indirectly by a violation of this section may bring a civil action and may recover up to three times the actual damages sustained. In any subsequent action arising from the same conduct, the court may take any steps necessary to avoid duplicative recovery against a defendant. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision or otherwise permitted by law.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 32. Minnesota Statutes 2022, section 325F.662, subdivision 2, is amended to read:

Subd. 2. Written warranty required. (a) Every used motor vehicle sold by a dealer is covered by an express warranty which the dealer shall provide to the consumer in writing.

At a minimum, the express warranty applies for the following terms:

1. if the used motor vehicle has less than 36,000 miles, the warranty must remain in effect for at least 60 days or 2,500 miles, whichever comes first;

2. if the used motor vehicle has 36,000 miles or more, but less than 75,000 miles, the warranty must remain in effect for at least 30 days or 1,000 miles, whichever comes first; and

3. unless the vehicle is sold by a new motor vehicle dealer, as defined in section 168.27, subdivision 2, if the used motor vehicle has 75,000 miles or more, the warranty must remain in effect for at least 15 days or 500 miles, whichever comes first.
The express warranty must require the dealer, in the event of a malfunction, defect, or failure in a covered part, to repair or replace the covered part, or at the dealer's election, to accept return of the used motor vehicle from the consumer and provide a refund to the consumer.

For used motor vehicles with less than 36,000 miles, the dealer's express warranty shall cover, at minimum, the following parts:

1. with respect to the engine, all lubricated parts, intake manifolds, engine block, cylinder head, rotary engine housings, and ring gear;
2. with respect to the transmission, the automatic transmission case, internal parts, and the torque converter; or, the manual transmission case, and the internal parts;
3. with respect to the drive axle, the axle housings and internal parts, axle shafts, drive shafts and output shafts, and universal joints; but excluding the secondary drive axle on vehicles, other than passenger vans, mounted on a truck chassis;
4. with respect to the brakes, the master cylinder, vacuum assist booster, wheel cylinders, steering pump, valve body, piston, and rack;
5. with respect to the steering, the steering gear housing and all internal parts, power steering pump, valve body, piston, and rack;
6. the water pump;
7. the externally mounted mechanical fuel pump;
8. the radiator;
9. the alternator, generator, and starter.

For used motor vehicles with 36,000 miles or more, but less than 75,000 miles, the dealer's express warranty shall cover, at minimum, the following parts:

1. with respect to the engine, all lubricated parts, intake manifolds, engine block, cylinder head, rotary engine housings, and ring gear;
2. with respect to the transmission, the automatic transmission case, internal parts, and the torque converter; or, the manual transmission case, and the internal parts;
3. with respect to the drive axle, the axle housings and internal parts, axle shafts, drive shafts and output shafts, and universal joints; but excluding the secondary drive axle on vehicles, other than passenger vans, mounted on a truck chassis;
4. with respect to the brakes, the master cylinder, vacuum assist booster, wheel cylinders, steering pump, valve body, piston, and rack;
5. with respect to the steering, the steering gear housing and all internal parts, power steering pump, valve body, and piston;
6. the water pump;
7. the externally mounted mechanical fuel pump;
8. the radiator;
9. the alternator, generator, and starter.

For used motor vehicles with 75,000 miles or more, the dealer's express warranty shall cover, at minimum, the following parts:

1. with respect to the engine, all lubricated parts, intake manifolds, engine block, cylinder head, rotary engine housings, and ring gear;
2. with respect to the transmission, the automatic transmission case, internal parts, and the torque converter; or, the manual transmission case, and the internal parts;
3. with respect to the drive axle, the axle housings and internal parts, axle shafts, drive shafts and output shafts, and universal joints; but excluding the secondary drive axle on vehicles, other than passenger vans, mounted on a truck chassis;
4. with respect to the brakes, the master cylinder, vacuum assist booster, wheel cylinders, steering pump, valve body, and piston;
5. with respect to the steering, the steering gear housing and all internal parts, power steering pump, valve body, and piston;
the water pump; the externally mounted mechanical fuel pump.

A dealer's obligations under the express warranty remain in effect notwithstanding the fact that the warranty period has expired, if the consumer promptly notified the dealer of the malfunction, defect, or failure in the covered part within the specified warranty period and, within a reasonable time after notification, brings the vehicle or arrange with the dealer to have the vehicle brought to the dealer for inspection and repair.

If a dealer does not have a repair facility, the dealer shall designate where the vehicle must be taken for inspection and repair.

In the event the malfunction, defect, or failure in the covered part occurs at a location which makes it impossible or unreasonable to return the vehicle to the selling dealer, the consumer may have the repairs completed elsewhere with the consent of the selling dealer, which consent may not be unreasonably withheld.

Notwithstanding the provisions of this paragraph, a consumer may have nonwarranty maintenance and nonwarranty repairs performed other than by the selling dealer and without the selling dealer's consent.

Nothing in this section diminishes the obligations of a manufacturer under an express warranty issued by the manufacturer. The express warranties created by this section do not require a dealer to repair or replace a covered part if the repair or replacement is covered by a manufacturer's new car warranty, or the manufacturer otherwise agrees to repair or replace the part.

The express warranties created by this section do not cover defects or repair problems which result from collision, abuse, negligence, or lack of adequate maintenance following sale to the consumer.

The terms of the express warranty, including the duration of the warranty and the parts covered, must be fully, accurately, and conspicuously disclosed by the dealer on the front of the Buyers Guide.

Sec. 33. Minnesota Statutes 2022, section 325F.662, subdivision 3, is amended to read:

Subd. 3. Exclusions. Notwithstanding the provisions of subdivision 2, a dealer is not required to provide an express warranty for a used motor vehicle:

(1) except for a used motor vehicle described in subdivision 2, paragraph (a), clause (3), sold for a total cash sale price of less than $3,000, including the trade-in value of any vehicle traded in by the consumer, but excluding tax, license fees, registration fees, and finance charges;

(2) with an engine designed to use diesel fuel;
(3) with a gross weight, as defined in section 168.002, subdivision 13, in excess of 9,000 pounds;

(4) that has been custom-built or modified for show or for racing;

(5) except for a used motor vehicle described in subdivision 2, paragraph (a), clause (3), that is eight years of age or older, as calculated from the first day in January of the designated model year of the vehicle;

(6) that has been produced by a manufacturer which has never manufactured more than 10,000 motor vehicles in any one year;

(7) that has 75,000 or more miles at time of sale;

(8) that has not been manufactured in compliance with applicable federal emission standards in force at the time of manufacture as provided by the Clean Air Act, United States Code, title 42, sections 7401 through 7642, and regulations adopted pursuant thereto; or

(9) that has been issued a certificate of title that bears a "salvage" brand or stamp under section 168A.151.

Sec. 18. Minnesota Statutes 2022, section 325F.6641, subdivision 2, is amended to read:

Subd. 2. Disclosure requirements. (a) If a motor vehicle dealer licensed under section 168.27 offers a vehicle for sale in the course of a sales presentation to any prospective buyer the dealer must provide a written disclosure, and an oral disclosure, except for sales performed online, of:

(1) prior vehicle damage as required under subdivision 1;

(2) the existence or requirement of any title brand under section 168A.05, subdivision 3, 168A.151, 325F.6642, or 325F.665, subdivision 14, if the dealer has actual knowledge of the brand; and

(3) if a motor vehicle, which is part of a licensed motor vehicle dealer's inventory, has been submerged or flooded above the bottom dashboard while parked on the dealer's lot.

(b) If a person receives a flood disclosure as described in paragraph (a), clause (3), whether from a motor vehicle dealer or another seller, and subsequently offers that vehicle for sale, the person must provide the same disclosure to any prospective subsequent buyer.

(c) Written disclosure under this subdivision must be signed by the buyer and maintained in the motor vehicle dealer's sales file in the manner prescribed by the registrar of motor vehicles.
The disclosure required in subdivision 1 must be made in substantially the following form: "To the best of my knowledge, this vehicle has ... has not ... sustained damage in excess of 80 percent actual cash value."

Sec. 19. Minnesota Statutes 2022, section 325F.69, subdivision 1, is amended to read:

Subdivision 1. Fraud, misrepresentation, deceptive or unfair practices. The act, use, or employment by any person of any fraud, unfair or unconscionable practice, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoineable as provided in section 325F.70.

Sec. 20. Minnesota Statutes 2022, section 325F.69, is amended by adding a subdivision to read:

Subd. 7. Unfair or unconscionable acts or practices; standard of proof. For purposes of this section, an unfair method of competition or an unfair or unconscionable act or practice is any method of competition, act, or practice that: (1) offends public policy as established by the statutes, rules, or common law of Minnesota; (2) is unethical, oppressive, or unscrupulous; or (3) is substantially injurious to consumers.

Sec. 21. Minnesota Statutes 2022, section 325F.70, is amended by adding a subdivision to read:

Subd. 3. Private enforcement. (a) In addition to the remedies otherwise provided by law, a consumer injured by a violation of sections 325F.68 to 325F.70 in connection with a sale of merchandise for personal, family, household, or agricultural purposes may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney fees, and receive other equitable relief as determined by the court. An action brought under this section benefits the public.

(b) For the purposes of this subdivision:

(1) "consumer" means a natural person or family farmer;

(2) "family farmer" means a person or persons operating a family farm; and

(3) "family farm" has the meaning given in section 116B.02, subdivision 6.

EFFECTIVE DATE. This section is effective August 1, 2023, and applies to causes of action commenced on or after that date.

Sec. 22. [325F.995] GENETIC INFORMATION PRIVACY ACT.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given:

REVISOR FULL-TEXT SIDE-BY-SIDE
(b) "Biological sample" means any material part of a human, discharge from a material part of a human, or derivative from a material part of a human, including but not limited to tissue, blood, urine, or saliva, that is known to contain deoxyribonucleic acid (DNA).

(c) "Consumer" means an individual who is a Minnesota resident.

(d) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identifiable consumer and that is subject to:

   (1) administrative and technical measures to ensure the data cannot be associated with a particular consumer;

   (2) public commitment by the company to (i) maintain and use data in deidentified form, and (ii) not attempt to reidentify the data; and

   (3) legally enforceable contractual obligations that prohibit any recipients of the data from attempting to reidentify the data.

(e) "Direct-to-consumer genetic testing company" or "company" means an entity that:

   (1) offers consumer genetic testing products or services directly to consumers; or (2) collects, uses, or analyzes genetic data that was (i) collected via a direct-to-consumer genetic testing product or service, and (ii) provided to the company by a consumer. Direct-to-consumer genetic testing company does not include an entity that collects, uses, or analyzes genetic data or biological samples only in the context of research, as defined in Code of Federal Regulations, title 45, section 164.501, that is conducted in a manner that complies with the federal policy for the protection of human research subjects under Code of Federal Regulations, title 45, part 46; the Good Clinical Practice Guideline issued by the International Council for Harmonisation; or the United States Food and Drug Administration Policy for the Protection of Human Subjects under Code of Federal Regulations, title 21, parts 50 and 56.

(f) "Express consent" means a consumer's affirmative written response to a clear, meaningful, and prominent written notice regarding the collection, use, or disclosure of genetic data for a specific purpose.

(g) "Genetic data" means any data, regardless of the data's format, that concerns a consumer's genetic characteristics. Genetic data includes but is not limited to:

   (1) raw sequence data that results from sequencing a consumer's complete extracted DNA or a portion of the extracted DNA;

   (2) genotypic and phenotypic information that results from analyzing the raw sequence data; and

   (3) genetic data for a specific purpose.

(h) "Genetic data" means any data, regardless of the data's format, that concerns a consumer's genetic characteristics. Genetic data includes but is not limited to:

   (1) raw sequence data that results from sequencing a consumer's complete extracted DNA or a portion of the extracted DNA;

   (2) genotypic and phenotypic information that results from analyzing the raw sequence data; and
(3) self-reported health information that a consumer submits to a company regarding
the consumer's health conditions and that is (i) used for scientific research or product
development, and (ii) analyzed in connection with the consumer's raw sequence data.

Genetic data does not include deidentified data.

(h) "Genetic testing" means any laboratory test of a consumer's complete DNA, regions
of a consumer's DNA, chromosomes, genes, or gene products to determine the presence of
genetic characteristics.

(i) "Person" means an individual, partnership, corporation, association, business, business
trust sole proprietorship, other entity, or representative of an organization;

(j) "Service provider" means a person that is involved in the collection, transportation,
analysis of, or any other service in connection with a consumer's biological sample, extracted
genetic material, or genetic data on behalf of the direct-to-consumer genetic testing company,
or on behalf of any other person that collects, uses, maintains, or discloses biological samples;
extracted genetic material, or genetic data collected or derived from a direct-to-consumer
genetic testing product or service, or is directly provided by a consumer, or the delivery of
the results of the analysis of the biological sample, extracted genetic material, or genetic
data.

Subd. 2. Disclosure and consent requirements. (a) To safeguard the privacy,
confidentiality, security, and integrity of a consumer's genetic data, a direct-to-consumer
genetic testing company must:

(1) provide clear and complete information regarding the company's policies and
procedures governing the collection, use, maintenance, and disclosure of genetic data by
making available to a consumer:

(i) a high-level privacy policy overview that includes basic, essential information about
the company's collection, use, or disclosure of genetic data; and

(ii) a prominent, publicly available privacy notice that includes at a minimum information
about the company's data collection, consent, use, access, disclosure, maintenance, transfer;
security, retention, and deletion practices;

(2) obtain a consumer's express consent to collect, use, and disclose the consumer's
genetic data, including at a minimum:

(i) initial express consent that clearly (A) describes the uses of the genetic data collected
through the genetic testing product service, and (B) specifies who has access to the test
results and how the genetic data may be shared;

(b) "Genetic testing" means any laboratory test of a consumer's complete DNA, regions
of a consumer’s DNA, chromosomes, genes, or gene products to determine the presence of
genetic characteristics.

(i) "Person" means an individual, partnership, corporation, association, business, business
trust, sole proprietorship, other entity, or representative of an organization.

(j) "Service provider" means a person that is involved in the collection, transportation,
analysis of, or any other service in connection with a consumer's biological sample, extracted
genetic material, or genetic data on behalf of the direct-to-consumer genetic testing company,
or on behalf of any other person that collects, uses, maintains, or discloses biological samples;
extracted genetic material, or genetic data collected or derived from a direct-to-consumer
genetic testing product or service, or is directly provided by a consumer, or the delivery of
the results of the analysis of the biological sample, extracted genetic material, or genetic
data.

Subd. 2. Disclosure and consent requirements. (a) To safeguard the privacy,
confidentiality, security, and integrity of a consumer's genetic data, a direct-to-consumer
genetic testing company must:

(1) provide easily accessible, clear, and complete information regarding the company's
policies and procedures governing the collection, use, maintenance, and disclosure of genetic
data by making available to a consumer all of the following written in plain language:

(i) a high-level privacy policy overview that includes basic, essential information about
the company's collection, use, or disclosure of genetic data;

(ii) a prominent, publicly available privacy notice that includes at a minimum information
about the company's data collection, consent, use, access, disclosure, maintenance, transfer;
security, retention, and deletion practices of genetic data; and

(iii) information that clearly describes how to file a complaint alleging a violation of
this section, pursuant to section 45.027;

(2) obtain a consumer's express consent to collect, use, and disclose the consumer's
genetic data, including at a minimum:

(i) initial express consent that clearly (A) describes the uses of the genetic data collected
through the genetic testing product service, and (B) specifies who has access to the test
results and how the genetic data may be shared;
Commerce - Commercial Regulation & Consumer Protection
Senate Language S2744-3

May 01, 2023 02:58 PM

House Language UES2744-2

(i) separate express consent, which must include the name of the person receiving the
information, for each transfer or disclosure of the consumer's genetic data or biological
test results to any person other than the company's vendors and service providers;

(ii) separate express consent for each use of genetic data or the biological sample that is
done beyond the primary purpose of the genetic testing product or service and inherent
contextual uses;

(iii) separate express consent to retain any biological sample provided by the consumer
following completion of the initial testing service requested by the consumer;

(iv) informed consent in compliance with federal policy for the protection of human
research subjects under Code of Federal Regulations, title 45, part 46, to transfer or disclose
the consumer's genetic data to a third-party person for research purposes or research
conducted under the control of the company for publication or generalizable knowledge
purposes; and

(v) express consent for marketing by (A) the direct-to-consumer genetic testing company
to a consumer based on the consumer's genetic data, or (B) a third party to a consumer based
on the consumer having ordered or purchased a genetic testing product or service. For
purposes of this clause, "marketing" does not include customized content or offers provided
on the websites or through the applications or services provided by the direct-to-consumer
 genetic testing company with the first-party relationship to the customer;

(vi) not disclose genetic data to the law enforcement or any other governmental agency
without a consumer's express written consent unless the disclosure is made pursuant to a
valid search warrant or court order;

(vii) develop, implement, and maintain a comprehensive security program to protect a
consumer's genetic data against unauthorized access, use, or disclosure; and

(viii) provide a process for a consumer to:

(a) access the consumer's genetic data;

(b) delete the consumer's account and genetic data; and

(c) request and obtain the destruction of the consumer's biological sample.

(b) Notwithstanding any other provisions in this section, a direct-to-consumer genetic
testing company is prohibited from disclosing a consumer's genetic data without the
consumer's express consent to: (1) any entity offering health insurance, life insurance, or
long-term care insurance; or (2) any employer of the consumer. Any consent under this
paragraph must clearly identify the recipient of the consumer's genetic data proposed to be
disclosed.
A company that is subject to the requirements described in paragraph (a), clause (2), shall provide effective mechanisms, without any unnecessary steps, for a consumer to revoke any consent of the consumer or all of the consumer's consents after a consent is given, including at least one mechanism which utilizes the primary medium through which the company communicates to the consumer. If a consumer revokes a consent provided pursuant to paragraph (a), clause (2), the company shall honor the consumer's consent revocation as soon as practicable, but not later than 30 days after the consumer revokes consent. The company shall destroy a consumer's biological sample within 30 days of receipt of revocation of consent to store the sample.

A direct-to-consumer genetic testing company must provide a clear and complete notice to a consumer that the consumer's deidentified data may be shared with or disclosed to third parties for research purposes in accordance with Code of Federal Regulations, title 45, part 46. Subd. 3. Service provider agreements. (a) A contract between the company and a service provider must prohibit the service provider from retaining, using, or disclosing any biological sample, extracted genetic material, genetic data, or any information regarding the identity of the consumer, including whether that consumer has solicited or received genetic testing, as applicable, for any purpose other than for the specific purpose of performing the services specified in the service contract. The mandatory prohibition set forth in this subdivision requires a service contract to include, at minimum, the following provisions:

(1) a provision prohibiting the service provider from retaining, using, or disclosing the biological sample, extracted genetic material, genetic data, or any information regarding the identity of the consumer, including whether that consumer has solicited or received genetic testing, as applicable, for any purpose other than providing the services specified in the service contract; and

(2) a provision prohibiting the service provider from associating or combining the biological sample, extracted genetic material, genetic data, or any information regarding the identity of the consumer, including whether that consumer has solicited or received genetic testing, as applicable, with information the service provider has received from or on behalf of another person or persons, or has collected from its own interaction with consumers or as required by law.

(b) A service provider subject to this subdivision is subject to the same confidentiality obligations as a direct-to-consumer genetic testing company with respect to all biological samples, extracted genetic materials, and genetic material, or any information regarding the identity of any consumer in the service provider's possession.

Subd. 4. Enforcement. The commissioner of commerce may enforce this section under section 45.027.

A company that is subject to the requirements described in paragraph (a), clause (2), shall provide effective mechanisms, without any unnecessary steps, for a consumer to revoke any consent of the consumer or all of the consumer's consents after a consent is given, including at least one mechanism which utilizes the primary medium through which the company communicates to the consumer. If a consumer revokes consent provided pursuant to paragraph (a), clause (2), the company shall honor the consumer's consent revocation as soon as practicable, but not later than 30 days after the consumer revokes consent. The company shall destroy a consumer's biological sample within 30 days of receipt of revocation of consent to store the sample.
Subd. 5. Limitations. This section does not apply to:
(1) protected health information that is collected by a covered entity or business associate,
(2) a public or private institution of higher education; or
(3) an entity owned or operated by a public or private institution of higher education.

Subd. 6. Construction. This section does not supersede the requirements and rights described in section 13.386 or the remedies available under chapter 13 for violations of section 13.386.

Sec. 35. Minnesota Statutes 2022, section 325G.051, subdivision 1, is amended to read:
Subdivision 1. Limitation; prohibition. (a) A seller or lessor of goods or services doing business in Minnesota may impose a surcharge on transactions in Minnesota with a purchaser who elects to use a credit or charge card in lieu of payment by cash, check, or similar means, provided:
(1) if the sale or lease of goods or services is processed in person, the seller or lessor informs the customer of the surcharge both orally at the time of sale and by a sign conspicuously posted on the seller’s or lessor’s premises;
(2) if the sale or lease of goods or services is processed through a website or mobile device, the seller or lessor informs the customer of the surcharge by conspicuously posting a surcharge notice during the sale, at the point of sale, on the customer order summary, or on the checkout page of the website;
(3) if the sale or lease of services is processed over the telephone, the seller or lessor informs the customer of the surcharge orally; and
(4) the surcharge does not exceed five percent of the purchase price.
(b) A seller or lessor of goods or services that establishes and is responsible for the seller or lessor’s own customer credit or charge card may not impose a surcharge on a purchaser who elects to use that credit or charge card in lieu of payment by cash, check, or similar means.
(c) For purposes of this section “surcharge” means a fee or charge imposed by a seller or lessor upon a business customer that increases the price of goods or services to the business customer because the business customer uses a credit or charge card to purchase or lease the goods or services. The term does not include a discount offered by a seller or lessor to a business customer who makes payment for goods or services by cash, check, or similar means not involving a credit or charge card if the discount is offered to all prospective business customers and its availability is clearly and conspicuously disclosed to all prospective business customers.

Subd. 5. Limitations. This section does not apply to:
(1) protected health information that is collected by a covered entity or business associate,
(2) a public or private institution of higher education; or
(3) an entity owned or operated by a public or private institution of higher education.

Subd. 6. Construction. This section does not supersede the requirements and rights described in section 13.386 or the remedies available under chapter 13 for violations of section 13.386.

Sec. 35. Minnesota Statutes 2022, section 325G.051, subdivision 1, is amended to read:
Subdivision 1. Limitation; prohibition. (a) A seller or lessor of goods or services doing business in Minnesota may impose a surcharge on transactions in Minnesota with a purchaser who elects to use a credit or charge card in lieu of payment by cash, check, or similar means, provided:
(1) if the sale or lease of goods or services is processed in person, the seller or lessor informs the purchaser of the surcharge both orally at the time of sale and by a sign conspicuously posted on the seller’s or lessor’s premises;
(2) if the sale or lease of goods or services is processed through a website or mobile device, the seller or lessor informs the customer of the surcharge by conspicuously posting a surcharge notice during the sale, at the point of sale, on the customer order summary, or on the checkout page of the website;
(3) if the sale or lease of services is processed over the telephone, the seller or lessor informs the customer of the surcharge orally; and
(4) the surcharge does not exceed five percent of the purchase price.
(b) A seller or lessor of goods or services that establishes and is responsible for the seller or lessor’s own customer credit or charge card may not impose a surcharge on a purchaser who elects to use that credit or charge card in lieu of payment by cash, check, or similar means.
(c) For purposes of this section “surcharge” means a fee or charge imposed by a seller or lessor upon a business customer that increases the price of goods or services to the business customer because the business customer uses a credit or charge card to purchase or lease the goods or services. The term does not include a discount offered by a seller or lessor to a business customer who makes payment for goods or services by cash, check, or similar means not involving a credit or charge card if the discount is offered to all prospective business customers and its availability is clearly and conspicuously disclosed to all prospective business customers.
Subdivision 1. Citation. This chapter may be cited as the "Minnesota Age-Appropriate Design Code Act."

Subd. 2. Construction.

(a) A business that develops and provides online services, products, or features that children are likely to access must consider the best interests of children when designing, developing, and providing that online service, product, or feature.

(b) If a conflict arises between commercial interests of a business and the best interests of children likely to access an online product, service, or feature, the business must prioritize the privacy, safety, and well-being of children over the business's commercial interests.

Sec. 25.

[325O.02] DEFINITIONS.

(a) For purposes of this chapter, the following terms have the meanings given:

(b) "Affiliate" means a legal entity that controls, is controlled by, or is under common control with that other legal entity. For these purposes, "control" or "controlled" means: ownership of or the power to vote more than 50 percent of the outstanding shares of any class of voting security of a company; control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a company.

"Business" means:

(1) a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners; and

(2) an affiliate of a business that shares common branding with the business. For purposes of this clause, "common branding" means a shared name, servicemark, or trademark that the average consumer would understand that two or more entities are commonly owned.

For purposes of this chapter, for a joint venture or partnership composed of businesses in which each business has at least a 40 percent interest, the joint venture or partnership and each business that composes the joint venture or partnership shall separately be considered a single business, except that personal data in the possession of each business and disclosed to the joint venture or partnership must not be shared with the other business.

(d) "Child" means a consumer who is under 18 years of age.

(e) "Collect" means buying, renting, gathering, obtaining, receiving, or accessing any personal data pertaining to a consumer by any means. This includes receiving data from the consumer, either actively or passively, or by observing the consumer’s behavior.
(f) "Consumer" means a natural person who is a Minnesota resident, however identified, including by any unique identifier.

(g) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice.

(h) "Data protection impact assessment" means a systematic survey to assess and mitigate risks to children who are reasonably likely to access the online service, product, or feature that arise from the data management practices of the business.

(i) "Default" means a preselected option adopted by the business for the online service, product, or feature.

(j) "Deidentified" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such person, provided that the business that possesses the data:

1. takes reasonable measures to ensure that the data cannot be associated with a natural person;
2. publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and
3. contractually obligates any recipients of the data to comply with all provisions of this paragraph.

(k) "Likely to be accessed by children" means an online service, product, or feature that it is reasonable to expect would be accessed by children based on any of the following indicators:

1. the online service, product, or feature is directed to children, as defined by the Children's Online Privacy Protection Act, United States Code, title 15, section 6501 et seq.;
2. the online service, product, or feature is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by a significant number of children;
3. the online service, product, or feature contains advertisements marketed to children;
4. the online service, product, or feature is substantially similar or the same as an online service, product, or feature subject to clause (2);
5. the online service, product, or feature has design elements that are known to be of interest to children, including but not limited to games, cartoons, music, and celebrities who appeal to children; or
6. a significant amount of the audience of the online service, product, or feature is determined, based on internal company research, to be children.
"Online service, product, or feature" does not mean any of the following:

1. telecommunications service, as defined in United States Code, title 47, section 153;
2. broadband service, as defined in section 116J.39, subdivision 1; or
3. the sale, delivery, or use of a physical product.

"Personal data" means any information that is linked or reasonably linkable to an identified or identifiable natural person. Personal data does not include deidentified data or publicly available information. For purposes of this paragraph, "publicly available information" means information that (1) is lawfully made available from federal, state, or local government records or widely distributed media, and (2) a controller has a reasonable basis to believe a consumer has lawfully made available to the general public.

"Precise geolocation" means any data that is derived from a device and that is used or intended to be used to locate a consumer within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet, except as prescribed by regulations.

"Process" or "processing" means any operation or set of operations that are performed on personal data or on sets of personal data, whether or not by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

"Profiling" means any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable natural person's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

"Sale," "sell," or "sold" means the exchange of personal data for monetary or other valuable consideration by a business to a third party. Sale does not include the following:

1. the disclosure of personal data to a third party who processes the personal data on behalf of the business;
2. the disclosure of personal data to a third party with whom the consumer has a direct relationship for purposes of providing a product or service requested by the consumer;
3. the disclosure or transfer of personal data to an affiliate of the business;
4. the disclosure of data that the consumer intentionally made available to the general public via a channel of mass media and did not restrict to a specific audience; or
5. the disclosure or transfer of personal data to a third party as an asset that is part of a completed or proposed merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business's assets.

"Share" means sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means a consumer's personal data by the business to a third party for cross-context behavioral
advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged. (a) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer or the business.

Sec. 26. [325O.03] SCOPE; EXCLUSIONS.

(a) A business is subject to this chapter if the business:

(1) collects consumers' personal data or has consumers' personal data collected on the business's behalf by a third party;

(2) alone or jointly with others, determines the purposes and means of the processing of consumers' personal data;

(3) does business in Minnesota; and

(4) satisfies one or more of the following thresholds:

(i) has annual gross revenues in excess of $25,000,000, as adjusted every odd-numbered year to reflect the Consumer Price Index;

(ii) alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal data of 50,000 or more consumers, households, or devices; or

(iii) derives 50 percent or more of its annual revenues from selling consumers' personal data;

(b) This chapter does not apply to:

(1) protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Code of Federal Regulations, title 45, parts 160 and 164, established pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5;

(2) a covered entity governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Code of Federal Regulations, title 45, parts 160 and 164, established pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, to the extent the provider or covered entity maintains patient information in the same manner as medical information or protected health information as described in clause (1); or

(3) information collected as part of a clinical trial subject to the federal policy for the protection of human subjects, also known as the common rule, pursuant to good clinical practice;
practice guidelines issued by the International Council for Harmonisation or pursuant to human subject protection requirements of the United States Food and Drug Administration.

Sec. 27. [325O.04] BUSINESS OBLIGATIONS.

Subdivision 1. Requirements for businesses. A business that provides an online service, product, or feature likely to be accessed by children must:

(1) before any new online services, products, or features are offered to the public, complete a data protection impact assessment for any online service, product, or feature likely to be accessed by children and maintain documentation of this assessment as long as the online service, product, or feature is likely to be accessed by children;

(2) biennially review all data protection impact assessments;

(3) document any risk of material detriment to children that arises from the data management practices of the business identified in the data protection impact assessment required by clause (1) and create a timed plan to mitigate or eliminate the risk before the online service, product, or feature is accessed by children;

(4) within three business days of a written request by the attorney general, provide to the attorney general a list of all data protection impact assessments the business has completed;

(5) within five business days of a written request by the attorney general, provide the attorney general with a copy of any data protection impact assessment;

(6) estimate the age of child users with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business or apply the privacy and data protections afforded to children to all consumers;

(7) configure all default privacy settings provided to children by the online service, product, or feature to settings that offer a high level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children;

(8) provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that online service, product, or feature;

(9) if the online service, product, or feature allows a child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, provide an obvious signal to the child when the child is being monitored or tracked;

(10) enforce published terms, policies, and community standards established by the business, including but not limited to privacy policies and those concerning children; and

(11) provide prominent, accessible, and responsive tools to help children, or if applicable their parents or guardians, exercise their privacy rights and report concerns.
Subd. 2. Data protection impact assessments; requirements. (a) A data protection impact assessment required by this section must:

1. identify the purpose of the online service, product, or feature; how it uses children's personal data; and the risks of material detriment to children that arise from the data management practices of the business; and
2. address, to the extent applicable:
   (i) whether algorithms used by the online product, service, or feature could harm children;
   (ii) whether the design of the online product, service, or feature could lead to children experiencing or being targeted by harmful, or potentially harmful, contacts on the online product, service, or feature;
   (iii) whether the design of the online product, service, or feature could permit children to witness, participate in, or be subject to harmful, or potentially harmful, conduct on the online product, service, or feature;
   (iv) whether the design of the online product, service, or feature could allow children to be party to or exploited by a harmful, or potentially harmful, contact on the online product, service, or feature;
   (v) whether targeted advertising systems used by the online product, service, or feature could harm children;
   (vi) whether and how the online product, service, or feature uses system design features to increase, sustain, or extend use of the online product, service, or feature by children, including the automatic playing of media, rewards for time spent, and notifications; and
   (vii) whether, how, and for what purpose the online product, service, or feature collects or processes personal data of children.

(b) A data protection impact assessment conducted by a business for the purpose of compliance with any other law complies with this section if the data protection impact assessment meets the requirements of this chapter.

(c) A single data protection impact assessment may contain multiple similar processing operations that present similar risks only if each relevant online service, product, or feature is addressed.

Subd. 3. Prohibitions on businesses. A business that provides an online service, product, or feature likely to be accessed by children must not:

1. use the personal data of any child in a way that the business knows, or has reason to know, is materially detrimental to the physical health, mental health, or well-being of a child.
(2) profile a child by default unless both of the following criteria are met:

(i) the business can demonstrate it has appropriate safeguards in place to protect children;

and

(ii) either of the following is true:

(A) profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which a child is actively and knowingly engaged; or

(B) the business can demonstrate a compelling reason that profiling is in the best interests of children;

(3) collect, sell, share, or retain any personal data that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, or as described below, unless the business can demonstrate a compelling reason that the collecting, selling, sharing, or retaining of the personal data is in the best interests of children likely to access the online service, product, or feature;

(4) if the end user is a child, use personal data for any reason other than a reason for which that personal data was collected, unless the business can demonstrate a compelling reason that use of the personal data is in the best interests of children;

(5) collect, sell, or share any precise geolocation information of children by default, unless the collection of that precise geolocation information is strictly necessary for the business to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation information is necessary to provide the service, product, or feature;

(6) collect any precise geolocation information of a child without providing an obvious sign to the child for the duration of that collection that precise geolocation information is being collected;

(7) use dark patterns to lead or encourage children to provide personal data beyond what is reasonably expected to provide that online service, product, or feature to forego privacy protections, or to take any action that the business knows, or has reason to know, is materially detrimental to the child's physical health, mental health, or well-being; or

(8) use any personal data collected to estimate age or age range for any purpose other than to fulfill the requirements of subdivision 1, clause (6), or retain that personal data longer than necessary to estimate age. Age assurance must be proportionate to the risks and data practice of an online service, product, or feature.

Subd. 4. Data practices. (a) A data protection impact assessment collected or maintained by the attorney general under subdivision 1 is classified as nonpublic data or private data on individuals under section 13.02, subdivisions 9 and 12.
(b) To the extent any information contained in a data protection impact assessment
disclosed to the attorney general includes information subject to attorney-client privilege
or work product protection, disclosure pursuant to this section does not constitute a waiver
of the privilege or protection.

Sec. 28. [325O.05] ATTORNEY GENERAL ENFORCEMENT.

(a) A business that violates this chapter may be subject to an injunction and liable for a
civil penalty of not more than $2,500 per affected child for each negligent violation, or not
more than $7,500 per affected child for each intentional violation, which may be assessed
and recovered only in a civil action brought by the attorney general in accordance with
section 8.31. If the state prevails in an action to enforce this chapter, the state may, in addition
to penalties provided by this paragraph or other remedies provided by law, be allowed an
amount determined by the court to be the reasonable value of all or part of the state's litigation
expenses incurred.

(b) Any penalties, fees, and expenses recovered in an action brought under this chapter
must be deposited in an account in the special revenue fund and are appropriated to the
attorney general to offset costs incurred by the attorney general in connection with
enforcement of this chapter.

(c) If a business is in substantial compliance with the requirements of section 325O.04,
subdivision 1, clauses (1) to (5), the attorney general must, before initiating a civil action
under this section, provide written notice to the business identifying the specific provisions
of this chapter that the attorney general alleges have been or are being violated. If, within
90 days of the notice required by this paragraph, the business cures any noticed violation
and provides the attorney general a written statement that the alleged violations have been
cured, and sufficient measures have been taken to prevent future violations, the business is
not liable for a civil penalty for any violation cured pursuant to this section.

(d) Nothing in this chapter provides a private right of action under this chapter, section
8.31, or any other law.

Sec. 29. EFFECTIVE DATE.

(a) Sections 1 and 24 to 28 are effective July 1, 2024.

(b) By July 1, 2025, and as required by section 27, a business must complete a data
protection impact assessment for any online service, product, or feature likely to be accessed
by children offered to the public before July 1, 2024, unless that online service, product, or
feature is exempt under paragraph (c).

(c) Sections 24 to 28 do not apply to an online service, product, or feature that is not
offered to the public on or after July 1, 2024.