

CHAPTER 325G

CONSUMER PROTECTION; SOLICITATION OF SALES

325G.01 UNSOLICITED GOODS

Effect of delivery.

325G.02 CREDIT CARDS

Definitions.

Unsolicited credit cards.

Lost or stolen credit cards.

Disputed accounts.

325G.05 HOME SOLICITATION SALES

Definitions.

Buyer's right to cancel.

Writing required; notice of right to cancel; notice of cancellation.

Return of payments or goods.

Penalties for violation.

Damages.

325G.11 PERSONAL SOLICITATION OF SALES

Definitions.

Disclosure obligation.

Penalties; remedies.

325G.15 CONSUMER CREDIT SALES

Definitions.

Restrictions.

325G.17 CONSUMER WARRANTS

Definitions.

Implied warranties.

Express warranties.

Remedies.

CONSUMER TRANSACTIONS:

DEFICIENCY JUDGMENTS

325G.21 Deficiency judgments; consumer transactions; definitions.

325G.22 Restrictions on deficiency judgments.

CLUB CONTRACTS

325G.23 Definitions.

325G.24 Right of cancellation.

325G.25 Notice to members.

325G.26 Limitation on membership period.

325G.27 Bond.

325G.28 Duties of attorney general; penalties; remedies.

PLAIN LANGUAGE CONTRACT ACT

325G.29 Citation.

325G.30 Definitions.

325G.31 Plain language required.

325G.32 Exceptions.

325G.33 Remedies.

325G.34 Limits on remedies.

325G.35 Review by the attorney general.

325G.36 Waivers void.

325G.37 Effective date.

UNSOLICITED GOODS

325G.01 EFFECT OF DELIVERY.

Unless otherwise agreed, where unsolicited goods are addressed to and sent to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. The receipt of such unsolicited goods shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

History: 1969 c 609 s 1

CREDIT CARDS

325G.02 DEFINITIONS.

Subdivision 1. For purposes of sections 325G.02 to 325G.04 the terms defined in this section shall have meanings given them.

Subd. 2. "Credit card" means any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which authorizes the holder to obtain credit or to purchase or lease property or services on the credit of the issuer or of the obligor, but does not mean a telephone company credit card.

Subd. 3. "Person" includes an individual or family, and in the absence of agreement to the contrary, a partnership, association, corporation or other legal or commercial entity.

Subd. 4. "Issuer" means a person or firm which issues a credit card.

History: 1969 c 1004 s 1

325G.03 UNSOLICITED CREDIT CARDS.

No person in whose name a credit card is issued shall be liable for any amount resulting from use of that card from which he or a member of his family

MINNESOTA STATUTES 1982

325G.03 CONSUMER PROTECTION; SOLICITATION OF SALES

6178

or household derives no benefit unless he has accepted the card by (1) signing or using the card, or (2) authorizing the use of the card by another. A mere failure to destroy or return an unsolicited credit card is not such an acceptance.

History: 1969 c 1004 s 2

325G.04 LOST OR STOLEN CREDIT CARDS.

Subdivision 1. No person in whose name a credit card has been issued which he has accepted as provided in section 325G.03 shall be liable for any amount in excess of \$50 resulting from the unauthorized use of the card from which he or a member of his family or household derives no benefit; provided, however, that the limitation on liability of this subdivision shall be effective only if the issuer is notified of any unauthorized charges contained in a bill within 60 days of receipt of the bill by the person in whose name the card is issued.

Subd. 2. No person in whose name a credit card is issued shall be liable for any amount resulting from the unauthorized use of such credit card after receipt by the issuer of notice that the card has been lost or stolen and from which such person or a member of his family or household derives no benefit.

History: 1969 c 1004 s 3

325G.05 DISPUTED ACCOUNTS.

Subdivision 1. **Billing information.** Every credit card issuer shall include on each billing statement the name, address, and telephone number of the department designated by it to receive requests by the customer account holder to correct mistakes or make adjustments to the billing statement.

Subd. 2. **Required response.** Every credit card issuer, within 30 days of receipt from a customer account holder, in writing at the address specified in subdivision 1, of a questioned or disputed charge, shall conduct an individual inquiry into the facts and send to the customer account holder an explanatory response in clear and definite terms.

Subd. 3. **Violation.** A violation of this section shall be treated as a violation of section 325F.69.

History: 1973 c 460 s 1

HOME SOLICITATION SALES

325G.06 DEFINITIONS.

Subdivision 1. As used in sections 325G.06 to 325G.11, the terms defined in this section have the meanings given them.

Subd. 2. "Home solicitation sale" means a sale of goods or services, by a seller who regularly engages in transactions of the same kind, purchased primarily for personal, family or household purposes, and not for agricultural purposes, with a purchase price of more than \$25, in which the seller or a person acting for him personally solicits the sale, and when the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller, except as otherwise provided in this subdivision. It does not include:

(a) a sale made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(b) a sale in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer and the buyer furnishes the seller with a separate dated and signed statement not furnished by the seller describing the situation requiring immediate

remedy and expressly acknowledging and waiving the right to cancel the sale. This exclusion shall only apply where (i) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and, (ii) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer; or

(c) a sale in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(d) a sale in which the buyer has initiated the contact either by oral, telephone, or written request (other than on a form provided by the seller), and requested the seller to visit his home for the purpose of negotiating the purchase of the specific good or service requested. This exclusion shall only apply where the buyer furnishes the seller with a separate dated and signed statement in the buyer's handwriting expressly acknowledging and waiving his right to cancel the sale; or

(e) a sale of insurance, securities, or real property; or a sale by public auction; or

(f) a sale of a motor vehicle, as defined in section 168.011, subdivision 4, when the buyer's agreement or offer to purchase is made at a place other than the buyer's place of residence.

Subd. 3. "Sale" includes a lease or rental.

Subd. 4. "Seller" includes a lessor or anyone offering goods for rent, or an assignee of the seller.

Subd. 5. "Buyer" includes a lessee or anyone who gives a consideration for the privilege of using goods or services.

Subd. 6. "Business day" means any day other than a Saturday, Sunday, or holiday as defined in section 645.44.

History: 1973 c 443 s 1; 1979 c 128 s 1

325G.07 BUYER'S RIGHT TO CANCEL.

In addition to any other rights the buyer may have, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the home solicitation sale occurs. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the seller and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the home solicitation sale.

History: 1973 c 443 s 2

325G.08 WRITING REQUIRED; NOTICE OF RIGHT TO CANCEL; NOTICE OF CANCELLATION.

Subdivision 1. In a home solicitation sale, at the time the sale occurs, the seller shall:

(a) inform the buyer orally of his right to cancel;

(b) furnish the buyer with a fully completed receipt or copy of a contract pertaining to the sale which shows the date of the transaction, contains the name and address of the seller, and in immediate proximity to the space reserved in the

MINNESOTA STATUTES 1982

contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this purchase at any time prior to midnight of the third business day after the date of this purchase. See attached notice of cancellation form for an explanation of this right."; and

(c) furnish each buyer a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in bold face type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION
(enter type of goods or services purchased)

.....

(goods or services)

(enter date of transaction)

.....

(date)

If you do not want the goods or services described above, you may cancel your purchase by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (Name of seller), at (Address of Seller's Place of Business) not later than midnight of (Date). If you cancel, any payments made by you under the contract or sale, any property traded in, and any instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the written instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller does not pick up the goods within 20 days of the date of your notice of cancellation, you may retain or dispose of them without any further obligation.

I HEREBY CANCEL THIS TRANSACTION.

.....

(Date)

....."

(Buyer's signature)

Subd. 2. In lieu of the notice of cancellation required by subdivision 1, the seller may provide a notice which conforms to applicable federal law or regulation so long as it provides the information required by subdivision 1. Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

History: 1973 c 443 s 3

325G.09 RETURN OF PAYMENTS OR GOODS.

Subdivision 1. Within ten days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must also be tendered by the seller in as good condition as when received by the seller. If the seller fails to tender said goods, the buyer may, if he so elects, recover from the seller an amount equal to the trade-in allowance stated in the agreement.

Subd. 2. Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of the goods delivered to him by the seller.

Subd. 3. Except as provided in subdivision 2, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale. The buyer is not obligated to tender at any place other than his residence.

Subd. 4. If the seller fails to demand possession of goods within 20 days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

Subd. 5. The buyer has the duty to take reasonable care of the goods in his possession before cancellation or revocation and during the time provided in subdivision 4 for the seller to demand possession, during which time the goods are otherwise at the seller's risk.

Subd. 6. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

History: 1973 c 443 s 4

325G.10 PENALTIES FOR VIOLATION.

Any person who is found to have violated sections 325G.06 to 325G.09 shall be subject to the penalties provided in section 8.31.

History: 1973 c 443 s 5

325G.11 DAMAGES.

Any person injured by a violation of sections 325G.06 to 325G.09 may recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

History: 1973 c 443 s 6

PERSONAL SOLICITATION OF SALES

325G.12 DEFINITIONS.

Subdivision 1. As used in sections 325G.12 to 325G.14, the terms defined in this section have the meanings given them.

Subd. 2. "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind, to sell goods or services which are primarily for personal, family, or household purposes, and not for agricultural purposes, when either the seller or a person acting for him, contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) An attempted sale in which the buyer personally knows the identity of the seller, the name of the business firm or organization he represents, and the identity or kinds of goods or services offered for sale; or

(b) An attempted sale in which the buyer has initiated the contact with the seller; or

(c) An attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and sale of the newspaper.

Subd. 3. "Sale" includes a lease or rental.

Subd. 4. "Seller" includes a lessor or anyone offering goods for rent, or an assignee of a seller.

Subd. 5. "Buyer" includes a lessee or anyone who gives a consideration for the use of goods or services.

History: 1975 c 372 s 1; 1976 c 239 s 92

325G.13 DISCLOSURE OBLIGATION.

Before any personal solicitation every seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose: the individual seller's name, the name of the business firm or organization he represents, the identity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: 1975 c 372 s 2

325G.14 PENALTIES; REMEDIES.

Any person who is found to have violated section 325G.13 shall be subject to the penalties and remedies provided in section 8.31.

History: 1975 c 372 s 3

CONSUMER CREDIT SALES

325G.15 DEFINITIONS.

Subdivision 1. As used in this section and section 325G.16, the following terms shall have the meanings assigned to them.

Subd. 2. "Consumer credit sale" means a sale of goods or services in which

(a) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a natural person; and

(c) the goods or services are purchased primarily for a personal, family or household purpose, and not for commercial, agricultural, or business purpose.

Subd. 3. "Goods" means all tangible personal chattels, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described. The term includes such chattels which are furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

Subd. 4. "Services" means work, labor, or services of any kind.

Subd. 5. "Sale of goods" includes, without limitation, any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement. The term also includes a contract in the form of a terminable bailment or lease of goods if: (a) the bailee or lessee has the option to renew the contract by making the payments specified in the contract; (b) the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee with his obligations under the contract including any obligation incurred by reason of the exercise of an option by the bailee or lessee to renew the contract; and (c) the

MINNESOTA STATUTES 1982

6183

CONSUMER PROTECTION; SOLICITATION OF SALES 325G.17

payments contracted for by the bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved.

History: 1971 c 275 s 1; 1981 c 10 s 1

325G.16 RESTRICTIONS.

Subdivision 1. **Instruments.** In a consumer credit sale, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section.

Subd. 2. **Provision restrictions.** No contract or obligation relating to a consumer credit sale shall contain any provision by which:

(a) The consumer agrees not to assert against an assignee any claim or defense arising out of the transaction;

(b) In the absence of consumer's default, the holder may arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(c) A power of attorney is given to confess judgment in this state, or an assignment of wages is given;

(d) The seller or holder of the contract or obligation, or a person acting on his behalf, is given authority to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of the goods;

(e) The consumer waives any right of action against the seller or holder of the contract or obligation, or any other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or obligation or in the repossession of goods;

(f) The consumer relieves the seller from any liability for any legal remedy which the consumer may have against the seller under the contract or obligation or any separate instrument executed in connection therewith.

Subd. 3. **Claims and defenses.** Any assignee of the contract or obligation relating to the consumer credit sale shall be subject to all claims and defenses of the consumer against the seller arising from the sale, notwithstanding any agreement to the contrary. Provided, however, that the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The rights of the consumer under this subdivision can only be asserted as a matter of defense to or set off against a claim by the assignee.

Subd. 4. **Interest retained by bailor or lessor.** Any lease or bailment of goods which constitutes a consumer credit sale shall be deemed to be a sale for all purposes. The interest retained by the bailor or lessor in any such transaction shall be a security interest only.

Subd. 5. **Mandatory provision.** All contracts or obligations in the form of terminable bailment or lease of goods relating to consumer credit sales shall specify whether the goods which are the subject of the sale are new or used.

History: 1971 c 275 s 2; 1981 c 10 s 2,3

CONSUMER WARRANTS

325G.17 DEFINITIONS.

Subdivision 1. As used in sections 325G.17 to 325G.20, the terms defined in this section have the meanings given them.

Subd. 2. "Consumer sale" means a sale of new goods, or as regards an express warranty, any goods, purchased primarily for personal, family, or household purposes, and not for agricultural or business purposes.

Subd. 3. "Goods" are as defined in section 325G.15.

Subd. 4. "New goods" mean those goods which are purchased for the first time other than for purposes of resale.

Subd. 5. "Express warranty" means a written statement arising out of a consumer sale pursuant to which the manufacturer, distributor, or retailer undertakes (1) to preserve or maintain the utility or performance of the goods or provide compensation or replacement if there is a failure in utility or performance; or (2) declares that in the event of any sample or model, that the whole of the goods conforms to the sample or model. It is not necessary to the creation of an express warranty that formal words such as "warrant" or "guarantee" be used or that a specific intention to make a warranty be present, but an affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty.

History: 1973 c 692 s 1

325G.18 IMPLIED WARRANTIES.

Subdivision 1. Unless disclaimed in the manner prescribed in subdivision 2, every consumer sale in this state shall be accompanied by an implied warranty that the goods are merchantable, and, in a consumer sale where the seller has reason to know that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, an implied warranty of fitness. A seller may, however, limit damages or remedies for breach of implied warranties as provided in chapter 336.

Subd. 2. No consumer sale on an "as is" or "with all faults" basis shall be effective to disclaim the implied warranty of merchantability, or, where applicable, the implied warranty of fitness, unless a conspicuous writing clearly informs the buyer, prior to the sale, in simple and concise language each of the following:

- (1) The goods are being sold on an "as is" or "with all faults" basis; and
- (2) The entire risk as to the quality and performance of the goods is with the buyer.

In event of a consumer sale by means of a mail order catalog, the catalog may contain the required writing in lieu of the requirement of notification prior to the sale.

History: 1973 c 692 s 2

325G.19 EXPRESS WARRANTIES.

Subdivision 1. **Disclaimers.** No express warranty arising out of a consumer sale of new goods shall disclaim implied warranties of merchantability, or, where applicable, of fitness.

Subd. 2. **Honoring of express warranties.** The maker of an express warranty arising out of a consumer sale in this state shall honor the terms of the express warranty. In a consumer sale, the manufacturer shall honor an express warranty made by the manufacturer; the distributor shall honor an express warranty made by the distributor; and the retail seller shall honor an express warranty made by the retail seller.

Subd. 3. **Liability of manufacturer to retailer.** Every manufacturer who makes an express warranty pursuant to a consumer sale, who authorizes a retail seller within this state to perform services or repairs under the terms of the express warranty shall be liable to the retail seller in an amount equal to that which is

MINNESOTA STATUTES 1982

6185

CONSUMER PROTECTION; SOLICITATION OF SALES 325G.22

charged by the retail seller for like service or repairs rendered to retail consumers who are not entitled to warranty protection.

History: 1973 c 692 s 3

325G.20 REMEDIES.

A violation of sections 325G.17 to 325G.20 shall be treated as a violation of section 325F.69. The remedies provided by sections 325G.17 to 325G.20 are cumulative and shall not be construed as restricting any remedy that is otherwise available.

History: 1973 c 692 s 4

CONSUMER TRANSACTIONS; DEFICIENCY JUDGMENTS

325G.21 DEFICIENCY JUDGMENTS; CONSUMER TRANSACTIONS; DEFINITIONS.

Subdivision 1. As used in section 325G.22, the following terms shall have the meanings assigned to them.

Subd. 2. "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate the purchase of personal property, in which (a) credit is granted by a seller or a lender who regularly engages as a seller or lender in credit transactions of the same kind; (b) the buyer is a natural person; (c) the personal property is purchased primarily for a personal, family or household purpose, and not for a commercial, agricultural, or business purpose; and (d) a security interest is retained by the seller or lender. It does not include a transaction pursuant to an open end credit plan authorized by sections 334.16 to 334.18.

Subd. 3. "Personal property" includes goods. It does not include real property, or personal property which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom.

Subd. 4. "Seller or lender" includes an assignee of either.

History: 1977 c 180 s 1

325G.22 RESTRICTIONS ON DEFICIENCY JUDGMENTS.

Subdivision 1. If the seller or lender repossesses or voluntarily accepts surrender of personal property in which he has a security interest arising out of a consumer credit transaction and the aggregate amount of the credit extended in the transaction was \$3,000 or less, the buyer is not personally liable to the seller or lender for the unpaid balance of the debt arising from the consumer credit transaction, and the seller or lender is not obligated to resell the collateral.

Subd. 2. The buyer may be liable in damages to the seller or lender if the buyer has wrongfully damaged the collateral or wrongfully failed to make the collateral available to the seller or lender.

Subd. 3. If the seller or lender elects to bring an action against the buyer for a debt arising from a consumer credit transaction, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment (a) he may not repossess the collateral, and (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

History: 1977 c 180 s 2

CLUB CONTRACTS

325G.23 DEFINITIONS.

Subdivision 1. As used in sections 325G.23 to 325G.28, the terms defined in this section have the meanings given them.

Subd. 2. "Club" means any health club, social referral club or buying club.

Subd. 3. "Contract" means any agreement by which one becomes a member of a club.

Subd. 4. "Health club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit having the primary purpose of engaging in instruction, training, encouragement or assistance in physical fitness, body building, exercising, reducing, figure development or any other such activities, or furnishing the use of facilities for such activities.

Subd. 5. "Social referral club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit with the primary purpose of matching members of the opposite sex, by the use of computer or any other means, to facilitate dating or general social contact.

Subd. 6. "Buying club" means any corporation, partnership, unincorporated association or other business enterprise organized for profit with the primary purpose of providing benefits to members from the cooperative purchase of services or merchandise.

Subd. 7. "Member" means a status by which any natural person is entitled to any of the benefits of a club.

Subd. 8. "Prepayment" means any payment over \$25 for service or merchandise made before the service is rendered or the merchandise is received. It is not a prepayment if a payment for service is made on the same day the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

Subd. 9. "Business day" means any day other than a Saturday, Sunday, or holiday as defined in section 645.44.

History: 1974 c 418 s 1

325G.24 RIGHT OF CANCELLATION.

Any person who has elected to become a member of a club may cancel such membership by giving written notice of cancellation any time before midnight of the third business day following the date on which membership was attained. Notice of cancellation may be given personally or by mail. If given by mail, the notice is effective upon deposit in a mailbox, properly addressed and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the member not to be bound by the contract. Cancellation shall be without liability on the part of the member and the member shall be entitled to a refund, within ten days after notice of cancellation is given, of the entire consideration paid for the contract. Rights of cancellation may not be waived or otherwise surrendered.

History: 1974 c 418 s 2

325G.25 NOTICE TO MEMBERS.

Subdivision 1. A copy of every contract shall be delivered to the member at the time the contract is signed. Every contract must be in writing, must be signed by the member, must designate the date on which the member signed the contract

MINNESOTA STATUTES 1982

6187

CONSUMER PROTECTION; SOLICITATION OF SALES 325G.27

and must state, clearly and conspicuously in bold face type of a minimum size of fourteen points, the following:

"MEMBERS' RIGHT TO CANCEL"

"If you wish to cancel this contract, you may cancel by delivering or mailing a written notice to the club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to: (Insert name and mailing address of club). If you cancel, the club will return, within ten days of the date on which you give notice of cancellation, any payments you have made."

Subd. 1a. In lieu of the notice of cancellation required by subdivision 1, the seller may provide notice in a manner which conforms to applicable federal law or regulation or section 325G.08 so long as the notice provides the information required by subdivision 1.

Subd. 2. Every contract which does not contain the notice specified in this section may be cancelled by the member at any time by giving notice of cancellation by any means.

History: 1974 c 418 s 3; 1975 c 357 s 1,2

325G.26 LIMITATION ON MEMBERSHIP PERIOD.

No contract shall be valid for a term longer than 18 months from the date upon which the contract is signed. However, a club may allow a member to convert his contract into a contract for a period longer than 18 months after the member has been a member of the club for a period of at least six months. The duration of the contract shall be clearly and conspicuously disclosed in the contract in bold face type of a minimum size of 14 points.

History: 1974 c 418 s 4

325G.27 BOND.

Subdivision 1. Every buying club shall maintain a bond issued by a surety company admitted to do business in this state the principal sum of which shall at all times be at least as great as the sum of (a) the total amount of prepayment received for all contracts of membership entered into after May 31, 1974, and (b) the total of all deposits being held on merchandise ordered or purchased through the club, pursuant to contracts entered into after May 31, 1974.

Subd. 2. Every health club or social referral club shall maintain a bond issued by a surety company admitted to do business in this state the principal sum of which shall be at all times at least as great as the total amount of prepayment received for all contracts of membership entered into after May 31, 1974.

Subd. 3. In no event shall any bond required by this section be less than \$25,000.

Subd. 4. The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayment made pursuant to a contract entered into after May 31, 1974, due to insolvency of the club or the cessation of business by the club. A copy of the bond shall be filed with the attorney general. Any person claiming against the bond may maintain an action at law against the club and the surety.

Subd. 5. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

Subd. 6. This section does not apply to any club which files a declaration, executed under penalty of perjury by the owner or manager of such club, with the attorney general stating that the club does not require or in the ordinary course of business receive prepayment for services or merchandise.

History: 1974 c 418 s 5

325G.28 DUTIES OF ATTORNEY GENERAL; PENALTIES; REMEDIES.

Subdivision 1. The attorney general shall investigate violations of sections 325G.23 to 325G.28, and when from information in his possession he has reasonable ground to believe that any person has violated or is about to violate any provision of sections 325G.23 to 325G.28, or that any club is insolvent, he shall be entitled on behalf of the state (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law; (b) to sue for and recover for the state, from any person who is found to have violated any provision of sections 325G.23 to 325G.28, a civil penalty, in an amount to be determined by the court, not in excess of \$25,000; and in case the club has failed to maintain the bond required by sections 325G.23 to 325G.28, or is insolvent or in imminent danger of insolvency, to sue for and have an order appointing a receiver to wind up its affairs. All civil penalties recovered under this subdivision shall be deposited in the general fund of the state treasury.

Subd. 2. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the provisions of sections 325G.23 to 325G.28, may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

History: 1974 c 418 s 6

PLAIN LANGUAGE CONTRACT ACT

325G.29 CITATION.

Sections 325G.29 to 325G.36 may be cited as the "Plain Language Contract Act".

History: 1981 c 274 s 1

NOTE: See section 325G.37.

325G.30 DEFINITIONS.

Subdivision 1. **Terms.** As used in sections 325G.30 to 325G.36, the terms defined in this section have the meanings given them.

Subd. 2. **Consumer.** "Consumer" means any individual who, primarily for personal, family or household purposes: (1) gives consideration for an interest in any services or personal property, including money; (2) transfers or authorizes a security interest on any personal property; or (3) leases residential premises for a term not exceeding three years.

Subd. 3. **Consumer contract.** "Consumer contract" means any written contract with a consumer except: (1) a contract where the price, excluding interest or finance charges, is more than \$50,000; (2) a contract through which a consumer obtains money or credit to be used to purchase or refinance an interest in realty; (3) a contract in which the sale of personal property is merely incidental to the sale of an interest in realty.

History: 1981 c 274 s 2

NOTE: See section 325G.37.

325G.31 PLAIN LANGUAGE REQUIRED.

Except as provided in section 325G.32, every consumer contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall be appropriately divided and captioned by its various sections.

History: 1981 c 274 s 3

NOTE: See section 325G.37.

325G.32 EXCEPTIONS.

Subdivision 1. **Other statutes or regulations.** Section 325G.31 does not apply to any consumer contract for which a federal or state statute, rule or regulation prescribes standards of readability applicable to the entire contract. Section 325G.31 does not apply to particular words, phrases, provisions or forms of agreement specifically required, recommended or endorsed by a state or federal statute, rule or regulation.

Subd. 2. **Customarily used technical terms.** A consumer contract may include technical terms to describe the services or property which are the subject of the contract, if the terms are customarily used by consumers in connection with the services or property.

History: 1981 c 274 s 4

NOTE: See section 325G.37.

325G.33 REMEDIES.

Subdivision 1. **Enforcement authority.** Any violation of section 325G.31 is a violation of a law under section 8.31, subdivision 1. The remedies provided in section 8.31, subdivisions 3 and 3a, are limited as provided in section 325G.34.

Subd. 2. **Reformation.** In addition to the remedies provided in section 8.31, a court reviewing a consumer contract may reform or limit a provision so as to avoid an unfair result if it finds that:

- (1) a material provision of the contract violates section 325G.31;
- (2) the violation caused the consumer to be substantially confused about any of the rights, obligations or remedies of the contract; and
- (3) the violation has caused or is likely to cause financial detriment to the consumer.

If the court reforms or limits a provision of a consumer contract, the court shall also make orders necessary to avoid unjust enrichment. Bringing a claim for relief pursuant to this subdivision does not entitle a consumer to withhold performance of an otherwise valid contractual obligation. No relief shall be granted pursuant to this subdivision unless the claim is brought before the obligations of the contract have been fully performed.

History: 1981 c 274 s 5

NOTE: See section 325G.37.

325G.34 LIMITS ON REMEDIES.

Subdivision 1. **Penalties.** In any proceeding in which civil penalties are claimed from a party for a violation of section 325G.31, it is a defense to the claim that the party made a good faith and reasonable effort to comply with section 325G.31.

Subd. 2. **Attorney's fees.** A party who has made a good faith and reasonable effort to comply with section 325G.31 shall not be assessed attorney's fees or costs of investigation in an action for violating section 325G.31.

Subd. 3. **Class action attorney's fees.** In any class action or series of class actions which arise from the use by a person of a particular consumer contract found to violate section 325G.31, the amount of attorney's fees and costs of investigation assessed against that person and in favor of the consumer class or classes may not exceed \$10,000.

Subd. 4. **Limits on consumer actions.** Violation of section 325G.31 is not a defense to a claim arising from a consumer's breach of a consumer contract or to an action for unlawful detainer. A consumer may recover actual damages caused by a violation of section 325G.31 only if the violation caused the consumer to be substantially confused about the rights, obligations or remedies of the contract.

Subd. 5. **Statute of limitations.** Any claim that a consumer contract violates section 325G.31 must be raised within six years of the date the contract is executed by the consumer.

History: 1981 c 274 s 6

NOTE: See section 325G.37.

325G.35 REVIEW BY THE ATTORNEY GENERAL.

Subdivision 1. **Process of review.** Any seller, creditor or lessor may submit a consumer contract to the attorney general for review as to whether the contract complies with the requirements of section 325G.31. After reviewing the contract the attorney general shall: (1) certify that the contract complies with section 325G.31; (2) decline to certify that the contract complies with section 325G.31 and note his objections to the contractual language; (3) decline to review the contract and refer the party submitting the contract to other previously certified contracts of the same type; (4) decline to review the contract because the contract's compliance with section 325G.31 is the subject of pending litigation; or (5) decline to review the contract because the contract is not subject to section 325G.31.

Subd. 2. **Process not reviewable.** Actions of the attorney general pursuant to subdivision 1 are not subject to chapter 14, and are not appealable.

Subd. 3. **Limited effect of certification.** Any consumer contract certified pursuant to subdivision 1 is deemed to comply with section 325G.31. Certification of a consumer contract pursuant to subdivision 1 is not otherwise an approval of the contract's legality or legal effect.

Subd. 4. **Review not required.** Failure to submit a contract to the attorney general for review pursuant to subdivision 1 does not show a lack of good faith nor does it raise a presumption that the contract violates section 325G.31. If pursuant to subdivision 1 the attorney general refers a party to a previously certified contract, that the party chooses not to use the contract does not show a lack of good faith nor does it raise a presumption that a contract used by that party violated section 325G.31.

Subd. 5. **Fee for review.** The attorney general may charge a fee, not to exceed \$50, for the costs of reviewing a consumer contract pursuant to subdivision 1.

History: 1981 c 274 s 7; 1982 c 424 s 130

325G.36 WAIVERS VOID.

Any provision of a consumer contract which waives or attempts to waive any provision of sections 325G.29 to 325G.36 is void.

History: 1981 c 274 s 8

NOTE: See section 325G.37.

MINNESOTA STATUTES 1982

6191

CONSUMER PROTECTION; SOLICITATION OF SALES 325G.37

325G.37 EFFECTIVE DATE.

Sections 325G.29 to 325G.34 and 325G.36 take effect on July 1, 1983. Section 325G.35 takes effect May 29, 1981. Sections 325G.29 to 325G.36 do not affect any consumer contract executed before July 1, 1983. A previously existing consumer contract renewed after July 1, 1983, is subject to sections 325G.29 to 325G.36. No provision for renewal of a consumer contract is invalid merely because compliance with sections 325G.29 to 325G.36 changes the form of the renewal agreement. For the purposes of this section periodic tenancies renew at the commencement of each rental period.

History: 1981 c 274 s 9