

CHAPTER 325G

CONSUMER PROTECTION; SOLICITATION OF SALES

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325G.04 LOST OR STOLEN FINANCIAL TRANSACTION CARDS.

[For text of subs 1 and 2, see M.S.1986]

Subd. 3. For purposes of subdivisions 1 and 2, "unauthorized use" means a use by a person other than the customer who does not have actual, implied, or apparent authority for the use.

History: 1987 c 349 art 1 s 37

325G.051 SURCHARGES ON CREDIT CARDS.

Subdivision 1. **Limitation; prohibition.** (a) A seller of goods or services may impose a surcharge on a purchaser who elects to use a credit card in lieu of payment by cash, check, or similar means, provided (1) the seller informs the purchaser of the surcharge both orally at the time of sale and by a sign conspicuously posted on the seller's premises, and (2) the surcharge does not exceed five percent of the purchase price.

(b) A seller of goods or services that establishes and is responsible for its own customer credit card may not impose a surcharge on a purchaser who elects to use that credit 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 upon a buyer that increases the price of goods or services to the buyer because the buyer uses a credit card to purchase the goods or services. The term does not include a discount offered by a seller to a buyer who makes payment for goods or services by cash, check, or similar means not involving a credit card if the discount is offered to all prospective buyers and its availability is clearly and conspicuously disclosed to all prospective buyers.

Subd. 2. **Penalty.** A seller who violates this section is subject to a civil penalty of not more than \$500 and shall refund the surcharge to each buyer.

History: 1987 c 172 s 1

325G.23 DEFINITIONS.

[For text of subs 1 to 3, see M.S.1986]

Subd. 4. "Health club" means any corporation, partnership, unincorporated association, or other business enterprise having the primary purpose of offering one or more facilities for instruction, training, encouragement, or assistance in physical fitness, in return for the payment of a fee entitling the member to the use of the facilities. The term does not include any nonprofit organizations, any private club owned and operated by its members, or any facility operated by the state or any of its political subdivisions.

[For text of subs 5 to 7, see M.S.1986]

Subd. 8. "Prepayment" means any payment over \$50 for service or merchandise

made before the service is rendered or the merchandise is received. The term "prepayment" includes, but is not limited to, the payment of any service fee, initiation fee, application fee, administrative fee, deposit fee, processing fee, enrollment fee, maintenance fee, or similar fee no matter how the fee is denominated. 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.

[For text of subd 9, see M.S.1986]

Subd. 10. "Outstanding liabilities" means the amount of prepayment actually received from club members less the amount of the prepayment as prorated over the duration of any contract for services rendered by the club.

History: 1987 c 367 s 1-3

325G.27 REGISTRATION REQUIREMENTS, SURETY BOND REQUIREMENT, ALTERNATIVE SECURITY.

Subdivision 1. **Registration requirement.** (a) Every buying, health, or social referral club doing business in this state shall register with the attorney general and provide all information requested on forms the attorney general provides. The person shall furnish the full name and address of each business location where the club's memberships are sold as well as any other registration information the attorney general considers appropriate.

(b) Each registrant under this section shall pay a registration fee of \$250 at the time of registration.

On September 1 of each year following the initial registration, each registrant shall pay a renewal fee of \$150 to the attorney general.

(c) The attorney general may bring an action for mandamus against a club to require the club to register or to have and maintain the surety required by this section.

Subd. 2. **Surety bond requirement; alternative security.** (a) Every club shall maintain a surety bond issued by a surety company admitted to do business in this state in an amount not less than the aggregate value of outstanding liabilities to members as defined in section 325G.23, subdivision 10. In the case of a renewed lifetime contract, the outstanding liabilities shall be calculated on a prorated basis for not more than 36 months. A copy of the bond shall be filed with the attorney general.

(b) No club shall be required to file with the attorney general a bond, letter of credit, or cash in excess of \$200,000, regardless of the number of facilities.

(c) The amount of the bond shall be based upon a financial statement covering the immediately preceding 12-month period of the club, and shall be executed under the penalty of perjury by any two duly constituted officers of the corporation, describing the club's outstanding liabilities to the members using generally accepted accounting principles.

The financial statement shall be submitted at the time of initial registration and updated at each renewal under subdivision 1.

(d) If a club's outstanding liabilities to the members exceed the amount of the bond, and the club has failed to increase the bond, then the club shall immediately stop selling club memberships and shall refrain from selling club memberships until the requirements of this subdivision have been satisfied.

(e) An irrevocable letter of credit in a form acceptable to the attorney general, or a cash deposit, may be filed with the attorney general instead of a surety bond where evidence is presented that a surety bond cannot be obtained.

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

Subd. 3. **Claims.** (a) A member of a club who suffers or sustains any loss of prepayments of membership fee by reason of the closing of a facility or bankruptcy by the seller of the club membership agreement shall file a claim with the surety and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In the case of a letter of credit or cash deposit that has been filed with the attorney general, the member may file a claim with the attorney general.

(b) Any claim under paragraph (a) shall be filed no later than one year from the date on which the facility closed or bankruptcy was filed.

(c) The attorney general may file a claim with the surety on behalf of any member. The surety shall pay the amount of the claims to the attorney general for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(d) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(e) If the claims filed exceeds the amount of the surety bond, the surety shall pay the amount of the bond to the attorney general for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

Subd. 4. **Registration and surety bond for planned facility or facility under construction.** (a) Each club that sells club memberships to be offered at a planned facility or a facility under construction shall:

(1) register under subdivision 1 before conducting sales activities; and

(2) maintain a surety bond, irrevocable letter of credit, or cash deposit filed with the attorney general, in an amount not less than \$25,000 until the value of obligations to consumers exceeds that amount.

(b) Until the time a person opens a club facility, the amount of the surety shall be increased as necessary to take into account increases in the person's outstanding liabilities to the members with a final adjustment to be made at the time of opening.

(c) Upon opening the facility, the person is subject to subdivisions 1 to 3.

History: 1987 c 367 s 4

325G.36 WAIVERS VOID.

Subdivision 1. Any provision of a consumer contract which waives or attempts to waive any provision of sections 325G.29 to 325G.36 is void.

Subd. 2. Any provision of a consumer credit transaction contract which waives or attempts to waive any provision of section 325G.22 is void.

History: 1987 c 349 art 1 s 38

CREDIT CARD DISCLOSURE ACT

325G.40 CITATION.

Sections 325G.40 to 325G.47 may be cited as the "credit card disclosure act."

History: 1987 c 256 s 1

325G.41 DEFINITIONS AND COMPUTATIONS.

Subdivision 1. **Generally.** Except as otherwise provided, the terms used in sections 325G.40 to 325G.47 have the meanings prescribed in Code of Federal Regulations, title 12, part 226. Except as otherwise provided, the computations required under sections 325G.40 to 325G.47 shall be made as provided in Code of Federal Regulations, title 12, part 226.

Subd. 2. **Credit card application.** "Credit card application" means any written form, document, or material distributed by or on behalf of a creditor and designed to be used by a consumer to request or accept the issuance of a credit card.

Subd. 3. **Creditor.** "Creditor" includes any credit card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable in installments.

History: 1987 c 256 s 2

325G.42 CREDIT CARD DISCLOSURES.

Subdivision 1. **Required disclosures.** A credit card application distributed in this state must disclose the following terms of the credit card plan, if applicable:

(1) Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may disclose the rate as of a specific date and indicate that the rate may vary, or may identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate. For purposes of this section, the amount or percentage must be referred to as the "spread." If charges incurred by use of the credit card are due and payable upon receipt of a periodic statement of charges, then that fact must be disclosed.

(2) Any membership, participation, or similar fee that may be imposed as a condition of the issuance or renewal of a credit card, expressed as an annual amount.

(3) Any minimum, fixed, transaction, activity, or similar charge.

(4) Any other fees that may be charged to the account, including late payment fees and charges for exceeding credit limits.

(5) The date or occasion upon which the finance charge, if any, begins to accrue on a transaction.

Subd. 2. **Form of disclosures.** The disclosures required under this section shall be written in plain language, as defined in section 325G.31; shall be in boldface type of a minimum size of ten points; shall be clear and conspicuous; and shall be prominently set apart from the remaining portions of the credit card application or other written material, by the use of margins, enclosures, underlining, contrasting colors, or similar methods.

Subd. 3. **Optional disclosure chart.** A creditor need not present the disclosures required by subdivision 1 in any specific form other than as provided in subdivision 2. However, the disclosures are conclusively presumed to satisfy the requirements of subdivision 1 if the disclosures satisfy the requirements of subdivision 2 and are presented in a chart, substantially similar to the following description:

(1) The chart shall consist of contiguous boxes, and each required disclosure shall appear exclusively within one of the boxes.

(2) The first box shall contain the wording "ANNUAL PERCENTAGE RATE" if the creditor charges a fixed rate, or "VARIABLE RATE INDEX AND SPREAD," if appropriate, underneath which the creditor's rate will appear. If full payment is due upon receipt of a periodic statement of charges, then the first box shall state "Full payment due upon receipt of billing statement."

(3) The second box shall contain the wording "OTHER FEES" and shall disclose all other fees, including late payment penalties and any charges for exceeding the credit limit.

(4) The third box shall contain the wording "ANNUAL FEE," underneath which the appropriate information shall be disclosed.

(5) The fourth box shall contain the wording "TRANSACTION FEE," underneath which the appropriate information shall be disclosed.

(6) The fifth box shall contain the wording "FREE PERIOD" or "GRACE PERIOD," underneath which the appropriate information shall be disclosed. For example, "30 days," or "yes, if full payment is received by next billing date," or "yes, if full new balance is paid by due date."

Subd. 4. **Additional disclosures permitted.** Nothing in this section prohibits a creditor from disclosing additional terms, conditions, or information, whether or not relating to the disclosures required under this section, in conjunction with the disclosures required by this section.

Subd. 5. **Exception.** This section does not apply to any advertisement, catalogue, or other written document or material which does not contain a credit card application.

History: 1987 c 256 s 3

325G.43 PENALTIES.

A person violating section 325G.42 is subject to the penalties provided in section 8.31.

History: 1987 c 256 s 4

325G.44 DAMAGES.

A person injured by a violation of section 325G.42 may recover actual damages in an action other than a class action, together with costs and disbursements, including a reasonable attorney's fee, and receive other equitable relief as determined by the court.

History: 1987 c 256 s 5

325G.45 FEDERAL LAW.

If a creditor becomes required by federal law to make disclosure of the terms required in section 325G.42 in connection with the distribution of a credit card application, then the creditor is considered to have complied with the requirements of section 325G.42 if the creditor complies with the federal disclosure requirement.

History: 1987 c 256 s 6

325G.46 ALTERNATIVE COMPLIANCE.

In lieu of complying with section 325G.42, subdivision 2, a creditor, in connection with the distribution of a credit card application, may disclose the specific terms of section 325G.42 in compliance with Code of Federal Regulations, title 12, part 226.5.

History: 1987 c 256 s 7

325G.47 NOTIFICATION OF ANNUAL FEE.

The customer must be notified of the amount of the annual fee, if any, and the date the fee is payable at least 30 days before the account is charged for the fee, and during that 30-day period the customer may cancel the open-end credit plan without penalty other than payment of any outstanding balance.

History: 1987 c 256 s 8