

## CHAPTER 325G

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## UNSOLICITED GOODS

### 325G.01 EFFECT OF DELIVERY.

Unless otherwise agreed, where unsolicited goods are addressed to and sent to a person, the person 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 the recipient sees fit without any obligation to the sender.

**History:** 1969 c 609 s 1; 1986 c 444

## 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. "Financial transaction card" means an instrument or device, whether known as a credit card, credit plate, charge plate, courtesy card, bank services card, banking card, check guarantee card, debit card, or by any other name issued with or without fee by an issuer for the use of the holder to obtain credit, money, goods, services, or anything else of value, 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 or its duly authorized agent, that issues a financial transaction card.

**History:** 1969 c 1004 s 1; 1985 c 243 s 1,2

### 325G.03 UNSOLICITED FINANCIAL TRANSACTION CARDS.

No person in whose name a financial transaction card is issued shall be liable for any amount resulting from use of that card from which that person or a member of the person's family or household derives no benefit unless the person 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 financial transaction card is not such an acceptance. Signing or using a card is not acceptance if those acts were performed under duress as defined under section 609.08.

**History:** 1969 c 1004 s 2; 1985 c 243 s 3; 1986 c 444

### 325G.04 LOST OR STOLEN FINANCIAL TRANSACTION CARDS.

Subdivision 1. No person in whose name a financial transaction card has been issued which the person 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 the person or a member of the person's 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 financial transaction card is issued shall be liable for any amount resulting from the unauthorized use of the financial transaction 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 the person's family or household derives no benefit.

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:** 1969 c 1004 s 3; 1985 c 243 s 4; 1986 c 444; 1987 c 349 art 1 s 37

### 325G.041 MARRIED WOMAN; NAME ON CARD.

If a financial transaction card issuer has determined in the normal course of business that it will issue a card to a married woman, the card shall be issued bearing either her current or former surname, as the woman may direct.

Financial transaction card issuers may require that a married woman requesting a card in a former surname open a new account in that name. Refusal to issue a financial transaction card pursuant to this section constitutes an unfair discriminatory practice under section 363.03, subdivision 8.

**History:** 1984 c 533 s 1; 1985 c 243 s 5

### 325G.05 DISPUTED ACCOUNTS.

Subdivision 1. **Billing information.** Every financial transaction 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 financial transaction 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; 1985 c 243 s 6

**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

**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 the seller 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 the buyer's 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 the buyer's 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

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seller with a separate dated and signed statement in the buyer's handwriting expressly acknowledging and waiving the 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; 1986 c 444

## 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 the 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 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

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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 canceled.

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 the intention to cancel.

**History:** 1973 c 443 s 3; 1986 c 444

## 325G.09 RETURN OF PAYMENTS OR GOODS.

Subdivision 1. Within ten days after a home solicitation sale has been canceled 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 elect to 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 the buyer by the seller.

Subd. 3. Except as provided in subdivision 2, within a reasonable time after a home solicitation sale has been canceled 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 the buyer's 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 the buyer's 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; 1986 c 444

**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 the seller, 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 the seller 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; 1986 c 444

**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 the seller represents, the identity or kinds of goods or services the seller wishes to demonstrate or sell, and that the seller 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 represented. 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; 1986 c 444

**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 the bailee's or lessee's 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 the bailee's or lessee's 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 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; 1986 c 444

**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 the holder 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 the seller's or holder's 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 the seller's or holder's 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; 1986 c 444

## CONSUMER WARRANTIES

### 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 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 the seller or lender 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 and obtains judgment against the buyer for a debt arising from a consumer credit transaction, when under this section the seller or lender would not be entitled to a deficiency judgment on repossessing the collateral, (a) the seller or lender 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; 1986 c 444

## 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 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.

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 \$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.

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

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:** 1974 c 418 s 1; 1987 c 367 s 1-3

### **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 and must state, clearly and conspicuously in bold face type of a minimum size of 14 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 canceled 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 a 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; 1986 c 444

### **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 con-**

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**struction.** (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:** 1974 c 418 s 5; 1987 c 367 s 4

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

Subdivision 1. The attorney general shall investigate violations of sections 325G.23 to 325G.28. When the attorney general possesses information providing 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 the attorney general 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; 1986 c 444

## 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

### 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 mortgages an interest in realty or 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; (4) a written agreement involving a

transaction in securities with a broker-dealer or investment advisor registered with the Securities and Exchange Commission; or (5) a transaction in commodities with a futures commission merchant registered with the Commodities Futures Trading Commission.

**History:** 1981 c 274 s 2; 1983 c 216 art 2 s 7; 1983 c 288 s 4; 1984 c 414 s 1

## 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

## 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

## 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

## 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

### 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 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; 1986 c 444

### 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:** 1981 c 274 s 8; 1987 c 349 art 1 s 38

### 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

### 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

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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