

CHAPTER 325E

REGULATION OF TRADE PRACTICES

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325E.025 DELINQUENT BILLINGS.

Subdivision 1. Definitions. For purposes of this section, "utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in its production and retail sale. The term "utility" includes municipalities and cooperative electric associations, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service. This section is not applicable to the sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale.

"Customer" means any person, firm, association, or corporation, or any agency of the federal, state, or local government being supplied with service by a utility.

[For text of subd 2, see M.S.1988]

History: 1989 c 356 s 15

325E.026 UNAUTHORIZED USE OF UTILITY METERS.

Subdivision 1. Definitions. When used in this section, the terms defined in section 216B.02 have the same meanings. Other terms used in this section have the following meanings:

(a) "Bypassing" means the act of attaching, connecting, or otherwise affixing a wire, cord, socket, pipe, hose, motor, or other instrument or device to utility or customer-owned facilities or equipment so that service provided by the utility is transmitted, supplied, or used without passing through a meter authorized by the utility for measuring or registering the amount of service provided.

(b) "Tampering" means damaging, altering, adjusting, or obstructing the operation of a meter or submeter provided by a utility for measuring or registering the amount of electricity, natural gas, or other utility service passing through the meter.

(c) "Unauthorized connection" means the physical connection or physical reconnection of utility service by a person without the authorization or consent of the utility.

(d) "Unauthorized metering" means removing, installing, connecting, reconnecting, or disconnecting a meter, submeter, or metering device for service by a utility, by a person other than an authorized employee or agent of the utility.

(e) "Utility" means a public utility defined in section 216B.02, subdivision 4; a municipal utility; or a cooperative electric association organized under chapter 308A.

[For text of subds 2 to 4, see M.S.1988]

History: 1989 c 356 s 16

325E.06 REPURCHASE OF FARM MACHINERY, IMPLEMENTS, ATTACHMENTS AND PARTS UPON TERMINATION OF CONTRACT.

Subdivision 1. Obligation to repurchase. Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written or oral contract, sales agreement, or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distribu-

tor of farm implements, machinery, attachments or repair parts to maintain a stock of parts or complete or whole machines, or attachments, and thereafter the written or oral contract, sales agreement, or security agreement is terminated, canceled, or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to 100 percent of the net cost of all unused complete farm implements, machinery, and attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer, or distributor within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the contract, including transportation charges which have been paid by the retailer, or invoiced to retailer's account by the wholesaler, manufacturer, or distributor and the following:

(a) 85 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the wholesaler, manufacturer, or distributor or its predecessor on the date of the termination, cancellation, or discontinuance of the contract;

(b) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the retailer has an invoice which parts had previously been purchased by the retailer from the wholesaler, manufacturer, or distributor and are held by the retailer on the date of the termination, cancellation, or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer, or distributor; and

(c) 50 percent of the most recently published price of all other parts provided the price list or catalog is not more than ten years old as of the date of the cancellation or discontinuance of the contract.

The wholesaler, manufacturer, or distributor shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the prices required to be paid or credited by this subdivision for all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the retailer's account of the sum required by this subdivision, the title to the farm implements, farm machinery, attachments or repair parts shall pass to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor shall be entitled to the possession of the farm implements, machinery, attachments or repair parts. However, this section shall not in any way affect any security interest which the wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Payment required to be made under this subdivision must be made not later than 90 days from the date the farm implements, machinery, attachments, and repair parts are returned by the retailer, and if not by then paid, the amount payable by the wholesaler, manufacturer, or distributor bears interest at the rate of 1-1/2 percent per month from the date the contract was terminated, canceled, or discontinued until the date payment is received by the retailer.

In lieu of the return of the farm implements, machinery, attachments, and repair parts to the wholesaler, manufacturer, or distributor, the retailer may advise the wholesaler, manufacturer, or distributor that the retailer has implements, machinery, attachments, or repair parts that the retailer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of implements, machinery, attachments, or repair parts and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of the machinery and parts and where the machinery and parts may be inspected and the list of farm implements, machinery, attachments, or repair parts may be verified. The notice must also state the name and business address of the person or business who has

the authority to serve as the escrow agent of the retailer, to accept payment or a credit to the retailer's account on behalf of the retailer, and to release the machinery and parts to the wholesaler, manufacturer, or distributor. The notice constitutes the appointment of the escrow agent to act on the retailer's behalf. The wholesaler, manufacturer, or distributor has 30 days from the date of the mailing of the notice, which shall be by certified mail, in which to inspect the machinery and parts and verify the accuracy of the retailer's list. The wholesaler, manufacturer, or distributor shall, within ten days after inspection:

- (1) pay the escrow agent;
- (2) give evidence that a credit to the account of the retailer has been made if the retailer has outstanding sums due the wholesaler, manufacturer, or distributor; or
- (3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the machinery or parts to the wholesaler, manufacturer, or distributor that are acceptable as returns.

If the wholesaler, manufacturer, or distributor sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns shall accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the retailer or the credit list with payment, the title to the farm implements, farm machinery, attachments, or repair parts acceptable as returns passes to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor is entitled to keep the farm implements, machinery, attachments, or repair parts. The escrow agent shall ship or cause to be shipped the machinery and parts acceptable as returns to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to personally perform the inventorying, packing and loading of the machinery and parts. When the machinery or parts have been received by the wholesaler, manufacturer, or distributor, notice of the receipt of the machinery or parts shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the retailer. The escrow agent shall keep the balance of the funds in the retailer's escrow account until it is notified that an agreement has been reached as to the nonreturnables after which the escrow agent shall disburse the remaining funds and dispose of any remaining parts or machinery as provided in the settlement. If no settlement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

[For text of subds 2 and 3, see M.S.1988]

Subd. 4. Failure to pay sums specified on cancellation of contracts; liability. In the event that any manufacturer, wholesaler, or distributor of farm implements, machinery, attachments and repair parts, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler, or distributor, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by the retailer or the retailer's heir or heirs for (a) 100 percent of the net cost of the farm implements, machinery, and attachments, (b) transportation charges which have been paid by the retailer, (c) 85 percent of the current net price of repair parts, 100 percent of invoiced prices and 50 percent of the price of all other parts as provided in subdivision 1, and (d) five percent for handling, packing and loading, if applicable.

Subd. 5. Exceptions. Unless a retailer has delivered parts to an escrow agent pursuant to subdivision 1, this section shall not require the repurchase from a retailer of a repair part where the retailer previously has failed to return the repair part to the wholesaler, manufacturer, or distributor after being offered a reasonable opportunity to return the repair part at a price not less than (a) 85 percent of the net price of the repair part as listed in the then current price list or catalog, (b) 100 percent of the invoiced price and (c) 50 percent of the most recent published price as provided in

subdivision 1. This section shall not require the repurchase from a retailer of repair parts which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries; repair parts in broken or damaged packages; single repair parts priced as a set of two or more items; and repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

[For text of subds 6 and 7, see M.S.1988]

History: 1989 c 76 s 1-3

NOTE: Subdivisions 1, 4, and 5, as amended by Laws 1989, chapter 76, sections 1 to 3, are effective May 10, 1989, and apply to contracts now in effect that have no expiration date and are a continuing contract and all other contracts entered into or renewed after May 9, 1989. Any contract in force and effect on May 9, 1989, which by its terms will terminate on a later date and which is not renewed, is governed by the law as it existed before May 9, 1989. See Laws 1989, chapter 76, section 4.

325E.068 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.068 to 325E.0684, the terms defined in this section have the meanings given them.

Subd. 2. **Heavy and utility equipment.** "Heavy and utility equipment," "heavy equipment," or "equipment" means equipment including but not limited to excavators, crawler tractors, wheel loaders, compactors, pavers, backhoes, hydraulic hammers, cranes, fork lifts, compressors, generators, and other equipment including attachments and repair parts used in all types of construction of buildings, highways, airports, dams, or other earthen structures or in moving, stock piling, or distribution of materials used in such construction excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

Subd. 3. **Heavy and utility equipment manufacturer.** "Heavy and utility equipment manufacturer," "heavy equipment manufacturer," or "equipment manufacturer" means a person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing, assembly, or wholesale distribution of heavy and utility equipment as defined in subdivision 2. The term also includes a successor in interest of the heavy and utility equipment manufacturer, including a purchaser of assets or stock, a surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a trustee of the original equipment manufacturer.

Subd. 4. **Heavy and utility equipment dealer or dealership.** "Heavy and utility equipment dealer" or "heavy and utility equipment dealership" means a person, partnership, corporation, association, or other form of business enterprise engaged in the retail sale of heavy and utility equipment.

Subd. 5. **Dealership agreement.** "Dealership agreement" means an oral or written agreement of definite or indefinite duration between an equipment manufacturer and an equipment dealer that provides for the rights and obligations of the parties with respect to the purchase or sale of heavy and utility equipment.

History: 1989 c 267 s 1

325E.0681 TERMINATIONS OR CANCELLATIONS.

Subdivision 1. **Good cause required.** No equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. In addition, good cause exists whenever:

(a) Without the consent of the equipment manufacturer who shall not withhold consent unreasonably, (1) the equipment dealer has transferred an interest in the equipment dealership, (2) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (3) there has been a substantial reduction in interest of a partner or major stockholder.

(b) The equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it that has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The equipment dealer has defaulted under a security agreement between the dealer and the equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the equipment manufacturer.

(e) The equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business.

(f) The equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare.

(h) The equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. Notice. Except as otherwise provided in this subdivision, an equipment manufacturer shall provide an equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice must state all reasons constituting good cause for the action and must provide that the dealer has until expiration of the notice period in which to cure a claimed deficiency. If the deficiency is rectified within the notice period, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (a) to (g).

History: 1989 c 267 s 2

325E.0682 VIOLATIONS.

(a) It is a violation of sections 325E.068 to 325E.0684 for an equipment manufacturer to coerce an equipment dealer to accept delivery of heavy and utility equipment, parts, or accessories that the equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 325E.068 to 325E.0684 for an equipment manufacturer to:

(1) condition or attempt to condition the sale of equipment on a requirement that the equipment dealer also purchase other goods or services; except that an equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any equipment used in the trade area and telecommunications necessary to communicate with the equipment manufacturer;

(2) coerce an equipment dealer into a refusal to purchase the equipment manufactured by another equipment manufacturer;

(3) discriminate in the prices charged for equipment of like grade and quality sold by the equipment manufacturer to similarly situated equipment dealers. This clause does not prevent the use of differentials that make only due allowance for difference in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the equipment is sold or delivered, by the equipment manufacturer; or

(4) attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat is based on the results of a natural disaster, a labor dispute, or other circumstance beyond the dealer's control.

History: 1989 c 267 s 3

325E.0683 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied that is inconsistent with the terms of sections 325E.068 to 325E.0684 is void and unenforceable and does not waive any rights that are provided to a person by sections 325E.068 to 325E.0684.

History: 1989 c 267 s 4

325E.0684 REMEDIES.

If an equipment manufacturer violates sections 325E.068 to 325E.0684, an equipment dealer may bring an action against the manufacturer in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney's fees. The dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: 1989 c 267 s 5