

## CHAPTER 325F

## CONSUMER PROTECTION; PRODUCTS AND SALES

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**325F.245 LANDSCAPE APPLICATION CONTRACTS.**

**Subdivision 1. Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "Landscape application" means pesticide applications, fertilizer applications, and other chemical applications of any kind for grass, turf, shrubs, or ornamental plants.

(b) "Commercial application company" means a person or business that provides landscape application for hire.

**Subd. 2. Written contract required.** (a) A contract for landscape application must be in writing, and must be signed by both the commercial application company and the property owner or the owner's agent. The contract must, at a minimum, contain the following information:

- (1) the name, address, and phone number of the commercial application company;
- (2) the total number of the regularly scheduled landscape applications to be performed each year;
- (3) the cost of each regularly scheduled application and the yearly cost for all landscape applications; and
- (4) the ending date of the contract.

(b) The commercial application company shall provide the property owner with a copy of the written contract.

**Subd. 3. Ending date.** (a) Every contract must contain a stated ending date.

(b) To extend service beyond the stated ending date, the commercial application company and property owner must enter into a separate written contract. The contract must conform in all respects to the requirements of this section.

**Subd. 4. Annual notice to property owner.** If a contract is for more than one year, then the commercial application company shall each year provide written notice to the property owner that the contract remains in effect and that landscape applications will resume according to the terms of the contract. The written notice must be provided to the property owner at least 15 days prior to the first landscape application of the year.

**Subd. 5. Cancellation of contract.** (a) A contract shall be canceled by the property owner upon the sale of the property that is the subject of the contract. To cancel the contract, the property owner shall notify the commercial application company that the property owner is canceling the contract.

(b) The commercial application company shall provide written notice to the property owner, in the contract or in another manner, that the contract must be canceled upon the sale of the property.

(c) A contract between a commercial application company and a property owner may not be enforced by the commercial application company against any subsequent owner of the property.

**Subd. 6. Exclusions.** This section does not apply to:

(1) pesticide, fertilizer, or chemical applications for the purpose of producing agricultural commodities or any commodity for sale;

(2) pesticide applications around or near the foundation of a building for the purpose of structural or indoor pest control; or

(3) any single or isolated landscape application where the property owner or its agent verbally consents to the single or isolated application.

Subd. 7. **Penalties and remedies.** A person who violates this section is subject to the penalties and remedies, including a private right of action, as provided in section 8.31.

**History:** 1989 c 42 s 1

**NOTE:** This section is effective January 1, 1991. Written landscape contracts entered into before this date remain in force according to their terms. See Laws 1989, chapter 42, section 2.

### 325F.662 SALE OF USED MOTOR VEHICLES.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given to them.

(a) "Consumer" means the purchaser, other than for purposes of resale, of a used motor vehicle used primarily for personal, family, or household purposes.

(b) "Dealer" means a motor vehicle dealer or lessor, as defined in section 168.27, subdivisions 2, 3, and 4, whether licensed or unlicensed, or the dealer's or lessor's agent, who is engaged in the business of selling or arranging the sale of used motor vehicles in this state; except that, the term does not include a bank or financial institution, a business selling a used motor vehicle to an employee of that business, a lessor selling, either directly or indirectly, a leased used motor vehicle to that vehicle's lessee or a family member or employee of the lessee, or a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

(c) "Motor vehicle" means a passenger automobile, as defined in section 168.011, subdivision 7, including pickup trucks and vans.

(d) "Used motor vehicle" means any motor vehicle which has been driven more than the limited use necessary in moving or road testing a new motor vehicle prior to delivery to a consumer. The term does not include a new motor vehicle sold by a dealer franchised to sell the vehicle if the vehicle was driven for demonstration purposes using dealer plates and if, when the vehicle was sold, it carried a manufacturer's express warranty which provides coverage at least as broad with respect to covered components and duration as that required by this section.

(e) "Express warranty" means a dealer's written statement, as defined in section 325G.17, subdivision 5, provided to a consumer in connection with the sale of a used motor vehicle.

(f) "Buyer's Guide" means the window form required by the Federal Trade Commission's "Used Motor Vehicle Trade Regulation Rule," Code of Federal Regulations, title 16, section 455.2.

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

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

(1) vehicles sold for a total cash sale price of less than \$3,000, including the trade-in value of any vehicle traded in by the consumer, but excluding tax, license fees, registration fees, and finance charges;

(2) vehicles with engines designed to use diesel fuel;

(3) vehicles with gross weight, as defined in section 168.011, subdivision 16, in excess of 9,000 pounds;

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

(5) vehicles that are eight years of age or older, as calculated from the first day in January of the designated model year of the vehicle;

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

(7) vehicles having 75,000 miles or more at time of sale;

(8) vehicles that are not manufactured in compliance with applicable federal emission standards in force at the time of manufacture as provided by the Clean Air Act, United States Code, title 42, sections 7401 through 7642, and regulations adopted pursuant thereto, and safety standards as provided by the National Traffic and Motor Safety Act, United States Code, title 15, sections 1381 through 1431, and regulations adopted pursuant thereto; and

(9) a vehicle which, when it is sold, is unrepaired and would be classified as a class C total loss vehicle under section 168A.151, or has unrepaired damage in excess of \$5,000.

*[For text of subds 4 to 11, see M.S.1988]*

**History:** 1989 c 34 s 1,2

### **325F.664 NEW MOTOR VEHICLE DAMAGE DISCLOSURES.**

**Subdivision 1. Definition.** For the purposes of this section, the term "new motor vehicle" means a motor vehicle as defined in section 80E.03, subdivision 7, including vehicles driven for demonstration purposes.

**Subd. 2. Disclosure of damage exceeding four percent of retail price.** (a) Before the sale of a new motor vehicle, a dealer must disclose and describe to the buyer, in a clear and conspicuous written statement and orally in the course of the sales presentation, any damage to the vehicle of which the dealer had actual knowledge, if the dealer's cost of repairs exceeded four percent of the manufacturer's suggested retail price, or \$500, whichever is greater.

(b) A manufacturer, distributor, or importer must disclose and describe to its franchised dealers, in a clear and conspicuous written statement, any repaired damage exceeding four percent of the manufacturer's suggested retail price, or \$500, whichever is greater.

(c) Damaged or stolen glass, tires, wheels, bumpers, radios, and in-dash audio components are excluded from the disclosure requirements of this subdivision if the damaged or stolen parts are replaced with identical manufacturer's original equipment.

**History:** 1989 c 188 s 5

### **325F.6641 DISCLOSURE OF MOTOR VEHICLE DAMAGE.**

**Subdivision 1. Damage.** (a) If a motor vehicle has sustained damage by collision or other occurrence which exceeds 70 percent of its actual cash value so that the vehicle becomes a class C total loss vehicle, the seller must disclose that fact to the buyer, if the seller has actual knowledge of the damage.

(b) The disclosure required under this subdivision must be made in writing on the application for title and registration or other transfer document, in a manner prescribed by the registrar of motor vehicles. The registrar shall revise the certificate of title form, including the assignment by seller (transferor) and reassignment by licensed dealer sections of the form, the separate application for title forms, and other transfer documents to accommodate this disclosure. If the seller is a motor vehicle dealer licensed pursuant to section 168.27, the disclosure required by this section must be made orally by the dealer to the prospective buyer in the course of the sales presentation.

**Subd. 2. Form of disclosure.** The disclosure required in this section must be made in substantially the following form: "To the best of my knowledge, this vehicle has ..... has not ..... sustained damage in excess of 70 percent actual cash value."

**History:** 1989 c 188 s 6

**NOTE:** This section is effective July 1, 1990. See Laws 1989, chapter 188, section 10.

**325F.6642 TITLE BRANDING.**

Subdivision 1. **Flood damage.** If the application for title and registration indicates that the vehicle has been classified as a class B or C total loss vehicle because of water or flood damage, the registrar of motor vehicles shall record the term "flood damaged" on the certificate of title and all subsequent certificates of title issued for that vehicle.

Subd. 2. **Class C vehicles.** Upon transfer and application for title to all class C total loss vehicles, the registrar of motor vehicles shall record the term "rebuilt" on the first Minnesota certificate of title and all subsequent Minnesota certificates of title used for that vehicle.

Subd. 3. **Out-of-state vehicles.** (a) Upon transfer and application for title of all repaired vehicles with out-of-state titles that bear the term "damaged," "salvage," "rebuilt," "reconditioned," or any similar term, the registrar of motor vehicles shall record the term "rebuilt" on the first Minnesota certificate of title and all subsequent Minnesota certificates of title used for that vehicle.

(b) The registrar shall mark "rebuilt" on the first Minnesota certificate of title and all subsequent certificates of title issued for any vehicle which came into the state unrepaired and for which a salvage certificate of title was issued unless the person applying for the Minnesota title offers proof satisfactory to the registrar that the vehicle did not sustain damage equivalent to the 70 percent standard set forth in this section. The proof shall include photographs of the vehicle and either an insurance adjuster's written report or a written repair estimate which details the parts and labor required to repair the vehicle. The photographs and other documents submitted as proof under this subdivision must be filed and retained by the registrar so as to permit verification of the proof offered.

(c) For vehicles with out-of-state titles which bear the term "flood damaged," the registrar of motor vehicles shall record the term "flood damaged" on the first Minnesota certificate of title and all subsequent Minnesota certificates of title issued for that vehicle.

Subd. 4. **Reconstructed vehicles.** For vehicles that are reconstructed within the meaning of section 168A.15, the registrar shall record the term "reconstructed" on the certificate of title and all subsequent certificates of title.

Subd. 5. **Manner of branding.** The designation of "flood damaged," "rebuilt," or "reconstructed" on a certificate of title shall be made by the registrar of motor vehicles in a clear and conspicuous manner, in a color different from all other writing on the certificate of title.

Subd. 6. **Class C total loss vehicle; definition.** For the purposes of this section, a class C total loss vehicle means a vehicle, damaged by collision or other occurrence, for which a salvage certificate of title has been issued and vehicles with damage of at least 70 percent of the vehicle's actual cash value immediately prior to sustaining the damage based on a written retail repair estimate or invoice, as determined by an insurer or dealer pursuant to section 168A.151 or by comparing an insurer's written retail repair estimate of damage or actual loss payout to the average trade-in value of the vehicle according to the National Automobile Dealers Association's Official Used Car Guide or other similar publication approved by the registrar.

Subd. 7. **Dealer disclosure.** If a licensed motor vehicle dealer offers for sale a vehicle with a branded title, the dealer shall orally disclose the existence of the brand in the course of the sales presentation.

Subd. 8. **Flood damage; dealer lots.** If a motor vehicle, which is part of a licensed motor vehicle dealer's inventory, has been submerged or flooded above the bottom of the dashboard while parked on the dealer's lot, the dealer must disclose that fact in writing to any buyer and must orally disclose that fact in the course of a sales presentation to any prospective buyer. The buyer must also disclose the existence of the flood damage in writing to any subsequent buyer.

**History:** 1989 c 188 s 7

**NOTE:** This section is effective July 1, 1990. See Laws 1989, chapter 188, section 10.

**325F.6643 REMEDIES; PENALTIES.**

(a) A person who violates sections 325F.664 to 325F.6642 is subject to the remedies and penalties, including a private right of action, provided in section 8.31.

(b) A person injured by a violation of sections 325F.664 to 325F.6642 shall recover the actual damages sustained, together with costs and disbursements, including reasonable attorney fees. In its discretion, the court may increase the award of damages to an amount not to exceed three times the actual damages sustained, or \$2,500, whichever is greater.

(c) The relief provided in this section is in addition to any remedies otherwise available under the common law or other statutes of this state.

**History:** 1989 c 188 s 8

**NOTE:** This section is effective July 1, 1990. See Laws 1989, chapter 188, section 10.

**325F.6644 APPLICATION.**

Sections 325F.6641 and 325F.6642 do not apply to vehicles that are six years old or older as calculated from the first day of January of the designated model year or to commercial motor vehicles with a gross vehicle rating of 26,000 pounds or more.

**History:** 1989 c 188 s 9

**NOTE:** This section is effective July 1, 1990. See Laws 1989, chapter 188, section 10.

**325F.665 NEW MOTOR VEHICLE WARRANTIES; MANUFACTURER'S DUTY TO REPAIR, REFUND, OR REPLACE.**

*[For text of subs 1 to 12, see M.S.1988]*

Subd. 13. **Dealer liability.** Nothing in this section imposes liability on a dealer or creates an additional cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this section, unless there is evidence that the related repairs had not been carried out by the dealer in a timely manner or in a manner substantially consistent with the manufacturer's published instructions.

**History:** 1989 c 43 s 1

**325F.71 SENIOR CITIZENS AND HANDICAPPED PERSONS; ADDITIONAL CIVIL PENALTY FOR DECEPTIVE ACTS.**

Subdivision 1. **Definitions.** For the purposes of this section, the following words have the meanings given them:

(a) "Senior citizen" means a person who is 62 years of age or older.

(b) "Handicapped person" means a person who has an impairment of physical or mental function or emotional status that substantially limits one or more major life activities.

(c) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Subd. 2. **Supplemental civil penalty.** (a) In addition to any liability for a civil penalty pursuant to Minnesota Statutes, sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or handicapped persons, is liable for an additional civil penalty not to exceed \$10,000 for each violation, if one or more of the factors in paragraph (b) are present.

(b) In determining whether to impose a civil penalty pursuant to paragraph (a), and the amount of the penalty, the court shall consider, in addition to other appropriate factors, the extent to which one or more of the following factors are present:

(1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens or handicapped persons;

(2) whether the defendant's conduct caused senior citizens or handicapped persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance; substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen or handicapped person;

(3) whether one or more senior citizens or handicapped persons are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct.

**Subd. 3. Restitution to be given priority.** Restitution ordered pursuant to the statutes listed in subdivision 2 shall be given priority over imposition of civil penalties designated by the court under this section.

**Subd. 4. Private remedies.** A person injured by a violation of this section may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

**History:** 1989 c 294 s 2