

CHAPTER 325F

CONSUMER PROTECTION; PRODUCTS AND SALES

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325F.19 HOME INSULATION; CONSUMER PROTECTION; DEFINITIONS.

[For text of subds 1 to 6, see M.S.1992]

Subd. 7. "Presenting a clear and present danger" means known to cause physical damage to structure or health hazards to occupants through continuing direct contact or release of a hazardous substance as defined in section 115B.02.

[For text of subds 8 and 9, see M.S.1992]

History: 1993 c 367 s 28

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 immediately prior to sustaining damage, the seller must disclose that fact to the buyer, if the seller has actual knowledge of the damage. The amount of damage is determined by the retail cost of repairing the vehicle based on a complete written retail repair estimate or invoice.

(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.

(c) Upon transfer and application for title to a vehicle covered by this subdivision, the registrar shall record the term "rebuilt" on the first Minnesota certificate of title and all subsequent Minnesota certificates of title used for that vehicle.

[For text of subd 2, see M.S.1992]

History: 1993 c 93 s 13

325F.6642 TITLE BRANDING.

Subdivision 1. **Flood damage.** If the application for title and registration indicates that the vehicle has been classified as a 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. **Total loss vehicles.** Upon transfer and application for title to all total loss vehicles, the registrar of motor vehicles shall record the term "prior salvage" 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 "prior salvage" on the first Minnesota certificate of title and all subsequent Minnesota certificates of title used for that vehicle.

(b) The registrar shall mark "prior salvage" 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.

(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.

(d) The registrar shall mark "prior salvage" on the first Minnesota certificate of title and all subsequent certificates of title issued for any vehicle that had a salvage certificate of title issued at any time in the vehicle's history by any other jurisdiction.

[For text of subd 4, see M.S.1992]

Subd. 5. Manner of branding. The designation of "flood damaged," "rebuilt," "prior salvage," 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. Total loss vehicle; definition. For the purposes of this section, "total loss vehicle" means a vehicle damaged by collision or other occurrence, for which a salvage certificate of title has been issued. Total loss vehicle does not include a stolen and recovered vehicle verified by the insurer who declared the vehicle to be a total loss vehicle unless there is more than minimal damage to the vehicle as determined by the registrar.

[For text of subds 7 and 8, see M.S.1992]

History: 1993 c 93 s 14-18

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 16,000 pounds or more or to motorcycles.

History: 1993 c 93 s 19

PRIZES

325F.755 PRIZE NOTICES AND SOLICITATIONS.

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

(a) "Prize" means a gift, award, or other item or service of value that is offered or awarded to a participant in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.

(b) "Retail value" of a prize means:

(1) a price at which the sponsor can substantiate that a substantial number of the prizes have been sold to the public in Minnesota in the preceding year; or

(2) if the sponsor is unable to satisfy the requirement in clause (1), then no more than 1.5 times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller.

(c) "Sponsor" means a corporation, partnership, limited liability company, sole proprietorship, or natural person that requires a person in Minnesota to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a payment is required.

Subd. 2. Disclosures required. (a) No sponsor shall require a person in Minnesota to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about

a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required in paragraphs (b) and (c).

(b) A written prize notice must contain each of the following:

- (1) the true name or names of the sponsor and the address of the sponsor's actual principal place of business;
- (2) the retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;
- (3) a statement of the person's odds of receiving each prize identified in the notice;
- (4) any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;
- (5) if receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;
- (6) any limitations on eligibility; and
- (7) if a sponsor represents that the person is a "winner," is a "finalist," has been "specially selected," is in "first place," or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

(c) The information required by paragraph (b) must be presented in the following form:

- (1) the retail value and the statement of odds required under paragraph (b), clauses (2) and (3), must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize;

(2) the statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form:

"..... (number of prizes) out of notices distributed.";

(3) if a person is required to pay shipping or handling fees or any other charges to obtain a prize, to be eligible to obtain a prize, or participate in a contest, the following statement must appear in immediate proximity to each listing of the prize in the written prize notice, in not less than ten-point boldface type: "YOU MUST PAY \$..... TO RECEIVE THIS ITEM" or "YOU MUST PAY \$..... TO COMPETE FOR THIS ITEM," whichever is applicable; and

(4) a statement required under paragraph (b), clause (7), must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same size and boldness of type as the representation.

Subd. 3. Prize award required. A sponsor who represents to a person that the person has been awarded a prize shall, not later than 30 days after making the representation, provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or shall provide the person with either of the following items selected by the person:

- (1) any other prize listed in the written prize notice that is available and that is of equal or greater value; or
- (2) the retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

Subd. 4. Advertising media exempt. Nothing in this section creates liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable television system, or other advertising medium arising out of the publication or dissemination of a solicitation, notice, or promotion governed by this section, unless the publisher, owner, agent, or employee had knowledge that the

solicitation, notice, or promotion violated the requirements of this section, or had a financial interest in the solicitation, notice, or promotion.

Subd. 5. Exemptions. This section does not apply to solicitations or representations, in connection with (1) the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the Federal Trade Commission pursuant to Code of Federal Regulations, title 16, part 425.1, concerning use of negative option plans by sellers in commerce; (2) the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription management, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and after the receipt of the goods is given the opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged; or (3) sales by a catalog seller. For purposes of this section "catalog seller" shall mean any entity (and its subsidiaries) or person at least 50 percent of whose annual revenues are derived from the sale of products sold in connection with the distribution of catalogs of at least 24 pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least 250,000.

Subd. 6. Exemptions for regulated activities. This section does not apply to advertising permitted and regulated under chapter 82A, concerning membership camping practices; advertising permitted and regulated under chapter 83, concerning subdivided lands and interests in subdivided lands; pari-mutuel betting on horse racing permitted and regulated under chapter 240; lawful gambling permitted and regulated under chapter 349; or the state lottery created and regulated under chapter 349A.

Subd. 7. Violations. (a) Nothing in this section shall be construed to permit an activity otherwise prohibited by law.

(b) A violation of this section is also a violation of sections 325F.68 to 325F.71 and is subject to section 8.31.

(c) Whoever intentionally violates this section may be fined not more than \$10,000 or imprisoned for not more than two years, or both. It is evidence of intent if the violation occurs after the office of the attorney general has notified a person by certified mail that the person is in violation of this section.

(d) A person suffering pecuniary loss because of an intentional violation of this section may bring an action in any court of competent jurisdiction and shall recover costs, reasonable attorney fees, and the greater of: (1) \$500; or (2) twice the amount of the pecuniary loss.

(e) The relief provided in this section is in addition to remedies or penalties otherwise available against the same conduct under common law or other statutes of this state.

History: 1993 c 178 s 1

PRIVATE LABEL GOODS

325F.985 DEFINITIONS.

Subdivision 1. Scope. For the purpose of sections 325F.986 and 325F.987, the terms defined in this section have the meanings given them.

Subd. 2. Private label goods. "Private label goods" means goods that are the subject of a private label purchase or agreement for private label purchase.

Subd. 3. Private label purchase. "Private label purchase" means a purchase of goods from a manufacturer for resale under a brand, trademark, or other commercial indicia that identifies the private label purchaser or its assignee as the origin of the goods for purposes of their resale.

Subd. 4. Private label purchaser. "Private label purchaser" means a person who makes a private label purchase from a manufacturer.

Subd. 5. **Exclusivity agreement.** "Exclusivity agreement" means an agreement for private label purchases which precludes the manufacturer of the private label goods from selling similar goods as private label goods to any third person within a defined geographical territory.

History: 1993 c 372 s 4

325F.986 EXCLUSIVITY AGREEMENTS.

Subdivision 1. **Writing required.** Every exclusivity agreement must be in writing and signed by the party against whom the agreement is sought to be enforced.

Subd. 2. **Obligation.** A lawful exclusivity agreement imposes, unless otherwise provided in the agreement, an obligation by the private label purchaser to use reasonable efforts in the development and promotion of the sale of the private label goods within the geographical territory covered by that exclusivity agreement.

History: 1993 c 372 s 5

325F.987 LIMITATION ON ACTIONS.

No private label purchaser having the obligation, under section 325F.986 or otherwise, to use reasonable efforts in the development and promotion of the sale of private label goods is entitled, absent the employment of reasonable efforts, to maintain an action, suit, or proceeding at law, in equity, in arbitration, or otherwise, to prevent the manufacturer of private label goods from selling similar goods as private label goods to any third person. This attempt to prevent sales of private label goods by the manufacturer to a third person, in the absence of the purchaser's employment of reasonable efforts, is considered an unreasonable restraint of trade.

History: 1993 c 372 s 6

325F.988 NONAPPLICATION.

Sections 325F.985 to 325F.987 do not apply to private label goods manufactured according to the purchaser's proprietary specifications. Sections 325F.986 and 325F.987 shall not be construed to grant a private label manufacturer any rights of ownership or use of a brand, trademark or commercial indicia that is owned by another person including a private label purchaser or its assignee.

History: 1993 c 372 s 7