

## CHAPTER 325F

## CONSUMER PROTECTION; PRODUCTS AND SALES

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## CRIB SAFETY

## 325F.171 CRIB SAFETY.

Subdivision 1. **Definitions.** (a) "Commercial user" means any person who deals in cribs or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to cribs, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing cribs in the stream of commerce.

(b) "Infant" means any person less than 35 inches tall and less than three years of age.

(c) "Crib" means a bed or containment designed to accommodate an infant.

(d) "Full-size crib" means a full-size crib as defined in Code of Federal Regulations, title 16, section 1508.3, regarding the requirements for full-size cribs.

(e) "Non-full-size crib" means a non-full-size crib as defined in Code of Federal Regulations, title 16, section 1509.2, regarding the requirements for non-full-size cribs.

(f) "Place in the stream of commerce" means to sell, offer for sale, give away, offer to give away, or allow to use.

Subd. 2. **Unsafe cribs prohibited.** (a) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place any unsafe crib in the stream of commerce on or after January 1, 2006.

(b) On or after January 1, 2006, no person operating a hotel, motel, or lodging establishment shall provide any unsafe crib to any guest, either with or without charge, for use during the guest's stay. For the purposes of this paragraph, "hotel," "motel," and "lodging establishment" have the meanings given them in section 157.15.

(c) A crib is presumed to be unsafe for purposes of this section if it does not conform to the standards endorsed or established by the United States Consumer Product Safety Commission, including but not limited to Code of Federal Regulations, title 16, and ASTM International, as follows:

(1) Code of Federal Regulations, title 16, part 1508, and any regulations adopted to amend or supplement the regulations;

(2) Code of Federal Regulations, title 16, part 1509, and any regulations adopted to amend or supplement the regulations;

(3) Code of Federal Regulations, title 16, part 1303, and any regulations adopted to amend or supplement the regulations;

(4) the following standards and specifications of ASTM International for corner posts of baby cribs and structural integrity of baby cribs:

(i) ASTM F 966 (corner post standard);

(ii) ASTM F 1169 (structural integrity of full-size baby cribs);

(iii) ASTM F 1822 (non-full-size cribs).

(d) A crib is exempt from the provisions of this section if it is not intended for use by an infant; and at the time of selling, contracting to resell, leasing, subletting, or otherwise placing the crib in the stream of commerce, the commercial user attaches a

written notice to the crib declaring that it is not intended to be used for an infant and is unsafe for use by an infant. A commercial user who complies with this paragraph is not liable for use of the crib contrary to the notice provided.

Subd. 3. **Retrofits.** (a) An unsafe crib, as determined under subdivision 2, may be retrofitted if the retrofit has been approved by the United States Consumer Product Safety Commission. A retrofitted crib may be sold if it is accompanied at the time of sale by a notice stating that it is safe to use for a child under three years of age. The commercial user is responsible for ensuring that the notice is present with the retrofitted crib at the time of sale. The notice must include:

- (1) a description of the original problem that made the crib unsafe;
- (2) a description of the retrofit that explains how the original problem was eliminated and declares that the crib is now safe to use for a child under three years of age; and
- (3) the name and address of the commercial user who accomplished the retrofit certifying that the work was done along with the name and model number of the crib.

(b) A retrofit is exempt from this section if:

- (1) the retrofit is for a crib that requires assembly by the consumer, the approved retrofit is provided with the product by the commercial user, and the retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or
- (2) the seller of a previously unsold product accomplishes the retrofit prior to sale.

Subd. 4. **Exception.** A commercial user does not violate this section if the crib placed in the stream of commerce by the commercial user was not included on the Consumer Product Safety Commission's list during the entire 14-day period before this placement.

*History: 2005 c 139 s 2*

#### **325F.40 VIOLATIONS; PENALTIES.**

Any person, company, or corporation violating any of the provisions of sections 325F.35 to 325F.39 is guilty of a misdemeanor.

*History: 2005 c 10 art 3 s 17*

#### **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, exclusive of the actual cost incurred to repair, replace, or reinstall inflatable safety restraints and other vehicle components that must be replaced due to the deployment of the inflatable safety restraints.

(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.

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, exclusive of any costs to repair, replace, or reinstall air

bags and other components that were replaced due to deployment of air bags, in excess of 70 percent actual cash value.”

**History:** 2005 c 94 s 3, 4.

### 325F.69 UNLAWFUL PRACTICES.

*[For text of subs 1 to 5, see M.S.2004]*

**Subd. 6. Deceptive use of financial institution name.** No person shall include the name, trade name, logo, or tagline of a financial institution as defined in section 49.01, subdivision 2, in a written solicitation for financial services directed to a customer who has obtained a loan from the financial institution without written permission from the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or tagline in the solicitation, including on an envelope or through an envelope window containing the solicitation. For purposes of this section, the term “financial institution” includes a financial institution’s affiliates and subsidiaries. This subdivision shall not prohibit the use of a financial institution name, trade name, logo, or tagline of a financial institution if the use of that name is part of a fair and accurate comparison of like products or services.

**History:** 2005 c 118 s 17

### 325F.694 FALSE OR MISLEADING COMMERCIAL ELECTRONIC MAIL MESSAGES.

**Subdivision 1. Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) “Commercial electronic mail message” means an electronic mail message sent through an Internet service provider’s facilities located in this state to a resident of this state for promoting real property, goods, or services for sale or lease.

(c) “Electronic mail address” means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(d) “Electronic mail service provider” means a business, nonprofit organization, educational institution, library, or government entity that provides a set of users the ability to send or receive electronic mail messages via the Internet.

(e) “Initiate the transmission” refers to the action by the original sender of an electronic mail message, not to the action by an intervening Internet service provider or electronic mail service provider that may handle or retransmit the message.

(f) “Internet service provider” means a business or person who provides users authenticated access to, or presence on, the Internet by means of a switched or dedicated telecommunications channel upon which the provider provides transit routing of Internet Protocol (IP) packets for and on behalf of the user.

(g) “Internet domain name” refers to a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost string specifying the top of the hierarchy.

**Subd. 2. False or misleading messages prohibited.** No person may initiate the transmission of a commercial electronic mail message that:

(1) uses a third party’s Internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(2) contains false or misleading information in the subject line.

**Subd. 3. Subject disclosure.** The subject line of a commercial electronic mail message must include “ADV” as the first characters. If the message contains information that consists of material of a sexual nature that may only be viewed by an

individual 18 years of age and older, the subject line of the message must include "ADV-ADULT" as the first characters.

For purposes of this subdivision, "commercial electronic mail message" does not include a message:

- (1) if the recipient has consented to receive or has solicited electronic mail messages from the initiator;
- (2) from an organization using electronic mail to communicate exclusively with its members;
- (3) from an entity which uses electronic mail to communicate exclusively with its employees or contractors; or
- (4) if there is a business or personal relationship between the initiator and the recipient.

For purposes of this subdivision, "business relationship" means a prior or existing relationship formed between the initiator and the recipient, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or use by the recipient of or regarding products, information, or services offered by the initiator or an affiliate or agent of the initiator. For purposes of this paragraph, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with a specified person.

**Subd. 4. Toll-free number.** (a) A sender initiating the transmission of a commercial electronic mail message must establish a toll-free telephone number, a valid sender-operated return electronic mail address, or another easy-to-use electronic method that the recipient of the commercial electronic mail message may call or access by electronic mail or other electronic means to notify the sender not to transmit by electronic mail any further unsolicited commercial electronic mail messages. The notification process may include the ability for the commercial electronic mail messages recipient to direct the initiator to transmit or not transmit particular commercial electronic mail messages based upon products, services, divisions, organizations, companies, or other selections of the recipients's choice.

(b) A commercial electronic mail message must include a statement informing the recipient of a toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or access by electronic mail or another electronic method established by the initiator, notifying the sender not to transmit to the recipient any further unsolicited commercial electronic mail messages to the electronic mail address, or addresses, specified by the recipient, and explaining the manner in which the recipient may specify what commercial electronic mail messages the recipient does and does not wish to receive.

**Subd. 5. Blocking receipt or transmission.** No electronic mail service provider may be held liable in an action by a recipient for any act voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail message that the electronic mail service provider reasonably believes is, or will be, sent in violation of this section.

**Subd. 6. Defenses.** (a) A person is not liable for a commercial electronic mail message sent in violation of this section if the person can show by a preponderance of the evidence that the commercial electronic mail message was not initiated by the person or was initiated in a manner and form not subject to the control of the person.

(b) In an action under this section it is a defense that the defendant has established and implemented reasonable practices and procedures to prevent violations of this section.

**Subd. 7. Damages.** (a) A person injured by a violation of this section may recover damages caused by the violation as specified in this subdivision.

(b) An injured person, other than an electronic mail service provider, may recover:

- (1) the lesser of \$25 for each commercial electronic mail message received that violates subdivision 2, or \$35,000 per day; or

(2) the lesser of \$10 for each commercial electronic mail message received that violates subdivision 3, or \$25,000 per day.

(c) An injured electronic mail service provider may recover actual damages or elect, in lieu of actual damages, to recover:

(1) the lesser of \$25 for each commercial electronic mail message received that violates subdivision 2, or \$35,000 per day; or

(2) the lesser of \$10 for each commercial electronic mail message received that violates subdivision 3, or \$25,000 per day.

(d) At the request of any party to an action brought under this section, the court may, at its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

(e) Costs, disbursements, and reasonable attorney fees may be awarded to a party awarded damages for a violation of this section. No class action shall be brought under this section.

(f) Except as otherwise provided in this subdivision, the remedies in this subdivision are in addition to remedies available under section 8.31, 325F.70, or other law.

**Subd. 8. Relationship to federal law.** If federal law is enacted that regulates false, misleading, or unsolicited commercial electronic mail messages but does not preempt state law on the subject, the federal law supersedes any conflicting provisions of this section.

**History:** 2002 c 395 art 2 s 1

**NOTE:** This section, as added by Laws 2002, chapter 395, article 2, section 1, is effective March 1, 2003, and expires on the effective date of federal legislation that preempts state regulation of false, misleading, or unsolicited commercial mail messages. Laws 2002, chapter 395, article 2, section 2.

## TOBACCO PRODUCT DELIVERY SALES

### 325F.781 REQUIREMENTS; TOBACCO PRODUCT DELIVERY SALES.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given, unless the language or context clearly provides otherwise.

(b) "Consumer" means an individual who purchases, receives, or possesses tobacco products for personal consumption and not for resale.

(c) "Delivery sale" means:

(1) a sale of tobacco products to a consumer in this state when:

(i) the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the Internet or other online service; or

(ii) the tobacco products are delivered by use of the mail or other delivery service; or

(2) a sale of tobacco products that satisfies the criteria in clause (1), item (i), regardless of whether the seller is located inside or outside of the state.

A sale of tobacco products to an individual in this state must be treated as a sale to a consumer, unless the individual is licensed as a distributor or retailer of tobacco products.

(d) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(e) "Distributor" means a person, whether located inside or outside of this state, other than a retailer, who sells or distributes tobacco products in the state. Distributor does not include a tobacco products manufacturer, export warehouse proprietor, or importer with a valid permit under United States Code, title 26, section 5712 (1997), if the person sells or distributes tobacco products in this state only to distributors who

hold valid and current licenses under the laws of a state, or to an export warehouse proprietor or another manufacturer. Distributor does not include a common or contract carrier that is transporting tobacco products under a proper bill of lading or freight bill that states the quantity, source, and destination of tobacco products, or a person who ships tobacco products through this state by common or contract carrier under a bill of lading or freight bill.

(f) "Retailer" means a person, whether located inside or outside this state, who sells or distributes tobacco products to a consumer in this state.

(g) "Tobacco products" means:

- (1) cigarettes, as defined in section 297F.01, subdivision 3; and
- (2) smokeless tobacco as defined in section 325F.76.

**Subd. 2. Requirements for accepting order for delivery sale.** (a) This subdivision applies to acceptance of an order for a delivery sale of tobacco products.

(b) When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

- (1) a copy of a valid government-issued document that provides the person's name, current address, photograph, and date of birth; and
- (2) an original written statement signed by the person documenting that the person:
  - (i) is of legal age to purchase tobacco products in the state;
  - (ii) has made a choice whether to receive mailings from a tobacco retailer;
  - (iii) understands that providing false information may be a violation of law; and
  - (iv) understands that it is a violation of law to purchase tobacco products for subsequent resale or for delivery to persons who are under the legal age to purchase tobacco products.

(c) If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping.

(d) Prior to shipping the tobacco products, the tobacco retailer shall verify the information provided under paragraph (b) against a commercially available database. Any such database or databases may also include age and identity information from other government or validated commercial sources, if that additional information is regularly used by government and businesses for the purpose of identity verification and authentication, and if the additional information is used only to supplement and not to replace the government-issued identification data in the age and identity verification process.

**Subd. 3. Requirements for shipping a delivery sale.** (a) This subdivision applies to a tobacco retailer shipping tobacco products pursuant to a delivery sale.

(b) The tobacco retailer shall clearly mark the outside of the package of tobacco products to be shipped "tobacco products - adult signature required" and to show the name of the tobacco retailer.

(c) The tobacco retailer shall utilize a delivery service that imposes the following requirements:

- (1) an adult must sign for the delivery; and
- (2) the person signing for the delivery must show valid government-issued identification that contains a photograph of the person signing for the delivery and indicates that the person signing for the delivery is of legal age to purchase tobacco products and resides at the delivery address.

(d) The retailer must provide delivery instructions that clearly indicate the requirements of this subdivision and must declare that state law requires compliance with the requirements.

(e) No criminal penalty may be imposed on a person for a violation of this section other than a violation described in paragraph (f) or (g). Whenever it appears to the

commissioner that any person has engaged in any act or practice constituting a violation of this section, and the violation is not within two years of any previous violation of this section, the commissioner shall issue and cause to be served upon the person an order requiring the person to cease and desist from violating this section. The order must give reasonable notice of the rights of the person to request a hearing and must state the reason for the entry of the order. Unless otherwise agreed between the parties, a hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days after the receipt of the administrative law judge's report and subsequent exceptions and argument, the commissioner shall issue an order vacating the cease and desist order, modifying it, or making it permanent as the facts require. If no hearing is requested within 30 days of the service of the order, the order becomes final and remains in effect until modified or vacated by the commissioner. All hearings shall be conducted in accordance with the provisions of chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(f) Any person who violates this section within two years of a violation for which a cease and desist order was issued under paragraph (e), is guilty of a misdemeanor.

(g) Any person who commits a third or subsequent violation of this section, including a violation for which a cease and desist order was issued under paragraph (c), within any subsequent two-year period is guilty of a gross misdemeanor.

**Subd. 4. Common carriers.** This section may not be construed as imposing liability upon any common carrier, or officers or employees of the common carrier, when acting within the scope of business of the common carrier.

**Subd. 5. Registration requirement.** Prior to making delivery sales or shipping tobacco products in connection with any sales, an out-of-state retailer must meet the requirements of section 297F.031.

**Subd. 6. Collection of taxes.** (a) Prior to shipping any tobacco products to a purchaser in this state, the out-of-state retailer shall comply with all requirements of chapter 297F and shall ensure that all state excise taxes and fees that apply to such tobacco products have been collected and paid to the state and that all related state excise tax stamps or other indicators of state excise tax payment have been properly affixed to those tobacco products.

(b) In addition to any penalties under chapter 297F, a distributor who fails to pay any tax due according to paragraph (a) shall pay, in addition to any other penalty, a penalty of 50 percent of the tax due but unpaid.

**Subd. 7. Application of state laws.** All state laws that apply to in-state tobacco product retailers shall apply to Internet and mail-order sellers that sell into this state.

**Subd. 8. Forfeiture.** Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of section 297F.21.

**Subd. 9. Civil penalties.** A tobacco retailer or distributor who violates this section or rules adopted under this section is subject to the following fines:

- (1) for the first violation, a fine of not more than \$1,000; and
- (2) for the second and any subsequent violation, a fine of not more than \$5,000.

**Subd. 10. Enforcement.** The attorney general may bring an action to enforce this section and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties, and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Unlawful Trade Practices Act, sections 325D.09 to 325D.16.

**History:** *1Sp2005 c 3 art 6 s 20*

**911 EMERGENCY TELEPHONE REPRESENTATIONS****325F.991 911 EMERGENCY PHONE SERVICE REPRESENTATIONS.**

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

(a) "911 emergency telecommunications system" means a dedicated emergency telecommunications system required by section 403.025.

(b) "Person" means an individual, corporation, firm, or other legal entity.

(c) "Service provider" means a person doing business in Minnesota who provides real time, two-way voice service interconnected with the public switched telephone network using numbers allocated for Minnesota by the North American Numbering Plan Administration.

Subd. 2. **Representations of 911 service.** A person shall not advertise, market, or otherwise represent that the person furnishes a service capable of providing access to emergency services by dialing 911 unless the person provides a service that routes 911 calls through the 911 emergency telecommunications system.

Subd. 3. **Disclosure.** A service provider that does not provide 911 dialing that routes 911 calls through the 911 emergency telecommunications system must disclose that fact in all advertisements, marketing materials, and contracts. The disclosure must be in capital letters, in 12-point font, and on the front page of the advertisement, marketing materials, and contracts. The disclosure must state: "THIS SERVICE DOES NOT ROUTE 911 CALLS THROUGH THE 911 EMERGENCY SYSTEM."

Subd. 4. **Certain calls not 911 calls.** For purposes of this section, 911 calls routed to the general access number at a public safety answering point do not qualify as being routed through a 911 emergency telecommunications system.

**History:** *1Sp2005 c 1 art 4 s 93*