

CHAPTER 325E

REGULATION OF TRADE PRACTICES

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325E.027 DISCRIMINATION PROHIBITION.

(a) No dealer or distributor of liquid propane gas or number 1 or number 2 fuel oil who has signed a low-income home energy assistance program vendor agreement with the Department of Commerce may refuse to deliver liquid propane gas or number 1 or number 2 fuel oil to any person located within the dealer's or distributor's normal delivery area who receives direct grants under the low-income home energy assistance program if:

- (1) the person has requested delivery;
- (2) the dealer or distributor has product available;
- (3) the person requesting delivery is capable of making full payment at the time of delivery; and
- (4) the person is not in arrears regarding any previous fuel purchase from that dealer or distributor.

(b) A dealer or distributor making delivery to a person receiving direct grants under the low-income home energy assistance program may not charge that person any additional costs or fees that would not be charged to any other customer and must make available to that person any discount program on the same basis as the dealer or distributor makes available to any other customer.

History: 2007 c 57 art 3 s 41

325E.028 UTILITY PAYMENT ARRANGEMENTS FOR MILITARY SERVICE PERSONNEL.

Subdivision 1. **Restriction on disconnection; payment schedules.** (a) A municipal utility, cooperative electric association, or public utility must not disconnect the utility service of a residential customer if a member of the household has been issued orders into active duty, for deployment, or for a permanent change in duty station during the period of active duty, deployment, or change in duty station if such a residential customer:

(1) has a household income below the state median household income or is receiving energy assistance and enters into an agreement with the municipal utility, cooperative electric association, or public utility under which the residential customer pays ten percent of the customer's gross monthly income toward the customer's bill and the residential customer remains reasonably current with those payments; or

(2) has a household income above the state median household income and enters into an agreement with the municipal utility, cooperative electric association, or public utility establishing a reasonable payment schedule that considers the financial resources of the household and the residential customer remains reasonably current with payments under the payment schedule.

(b) For purposes of this subdivision, “household income” means household income measured after the date of the orders specified in paragraph (a).

Subd. 2. Annual notice to all customers; inability to pay forms. (a) A municipal utility, cooperative electric association, or public utility must notify all residential customers annually of the provisions of this section.

(b) A municipal utility, cooperative electric association, or public utility must provide a form to a residential customer to request the protections of this section upon the residential customer’s request.

Subd. 3. Application to service limiters. For the purposes of this section, “disconnection” includes a service or load limiter or any device that limits or interrupts electric service in any way.

Subd. 4. Income verification. Verification of income may be conducted by the local energy assistance provider or the municipal utility, cooperative electric association, or public utility unless the customer is automatically eligible for protection against disconnection as a recipient of any form of public assistance, including energy assistance that uses income eligibility in an amount at or below the income eligibility in subdivision 1, clause (1).

Subd. 5. Appeal process. (a) The municipal utility, cooperative electric association, or public utility shall provide the residential customer with a commission–approved written notice of the right to appeal to the commission or other appropriate governing body when the utility and residential customer are unable to agree on the establishment, reasonableness, or modification of a payment schedule, or on the reasonable timeliness of the payments under a payment schedule, provided for by this section. Any appeal must be made within seven working days after the residential customer’s receipt of personally served notice, or within ten working days after the utility has deposited first class mail notice in the United States mail.

(b) The utility shall not disconnect service while a payment schedule is pending appeal, or until any appeal involving payment schedules has been determined by the commission.

Subd. 6. Enforcement. This section may be enforced pursuant to chapter 216B.

History: 2007 c 111 s 1

325E.031 IMMIGRATION SERVICES.

Subdivision 1. Definitions. (a) For the purpose of this section, the terms in this subdivision have the meanings given.

(b) “Immigration matter” means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Citizenship and Immigration Services, the United States Department of Labor, or the United States Department of State.

(c) “Immigration assistance service” means any advice, guidance, information, or action provided or offered to customers or prospective customers relating to any immigration matter and for which a fee is charged.

Subd. 2. Notice. (a) Any person who provides or offers immigration assistance services in this state shall post a notice at that person’s place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance services. Each language must be on a separate sign and posted in a location visible to customers. Each sign must be at least 11 inches by 17 inches and must contain the following statements:

(1) “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

(2) “I AM NOT ACCREDITED TO REPRESENT YOU BEFORE THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES AND THE IMMIGRATION BOARD OF APPEALS.”

(b) Any person who advertises immigration assistance services in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and the language in which the advertisement appears that contains the language in paragraph (a), clause (1).

[For text of subds 3 to 6, see M.S.2006]

History: 2007 c 13 art 1 s 25

325E.0952 MANDATORY AIR BAG REPLACEMENT.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Motor vehicle" means a self-propelled vehicle designed for use on the public highways and originally equipped with an air bag.

(c) "Person" means an individual, firm, partnership, incorporated or unincorporated association, or any other legal or commercial entity.

(d) "Air bag" means any inflatable restraint system installed in a motor vehicle to comply with safety standards established for the motor vehicle by federal law or regulation.

(e) "Collision repair" means restoration or repair of damage to a motor vehicle resulting from collision or other occurrence.

Subd. 2. **Prohibited acts.** (a) A person with actual knowledge that a motor vehicle's air bag has deployed or is missing may not perform collision repair of that motor vehicle unless any deployed or missing air bag is replaced with an air bag designed for the make, model, and year of the vehicle.

(b) A person may not knowingly install or reinstall any object in lieu of an airbag designed for the make, model, and year of the vehicle, as part of a vehicle inflatable restraint system.

Subd. 3. **Exclusion.** Subdivision 2, paragraph (a), does not apply to a motor vehicle that is a model year more than seven years prior to the year that the repair is performed.

Subd. 4. **Penalty.** A person who violates this section is guilty of a misdemeanor.

History: 2007 c 71 s 1

325E.127 NOTICE FOR FLUORESCENT LAMPS CONTAINING MERCURY.

(a) A person who sells fluorescent lamps at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer examining fluorescent lamps offered for sale.

(b) The notice must be in 36-point type or larger and state:

"Fluorescent bulbs save energy and reduce environmental pollution. Note: Fluorescent bulbs contain a small amount of mercury and must be recycled at the end of their use. Contact your county or utility for recycling options."

(c) A retailer may include additional language in the notice in order to promote the sale of fluorescent lamps, provided that the language in paragraph (b) is present.

History: 2007 c 109 s 17

NOTE: This section, as added by Laws 2007, chapter 109, section 17, is effective July 1, 2008. Laws 2007, chapter 109, section 17, the effective date.

325E.21 DEALERS IN SCRAP METAL; RECORDS, REPORTS, AND REGISTRATION.

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

(b) "Law enforcement agency" or "agency" means a duly authorized municipal, county, state, or federal law enforcement agency.

(c) "Person" means an individual, partnership, limited partnership, limited liability company, corporation, or other entity.

(d) “Scrap metal” means:

(1) wire and cable commonly and customarily used by communication and electric utilities; and

(2) copper, aluminum, or any other metal purchased primarily for its reuse or recycling value as raw metal, including metal that is combined with other materials at the time of purchase.

(e) “Scrap metal dealer” or “dealer” means a person engaged in the business of buying or selling scrap metal, or both, but does not include a person engaged exclusively in the business of buying or selling new or used motor vehicles or motor vehicle parts, paper or wood products, rugs or furniture, or secondhand machinery.

Subd. 1a. Purchase or acquisition record required. (a) Every scrap metal dealer, including an agent, employee, or representative of the dealer, shall keep a written record at the time of each purchase or acquisition of scrap metal. The record must include:

(1) an accurate account or description, including the weight if customarily purchased by weight, of the scrap metal purchased or acquired;

(2) the date, time, and place of the receipt of the scrap metal purchased or acquired;

(3) the name and address of the person selling or delivering the scrap metal;

(4) the number of the check or electronic transfer used to purchase the scrap metal;

(5) the number of the seller’s or deliverer’s driver’s license, Minnesota identification card number, or other identification document number of an identification document issued for identification purposes by any state, federal, or foreign government if the document includes the person’s photograph, full name, birth date, and signature; and

(6) the license plate number and description of the vehicle used by the person when delivering the scrap metal, and any identifying marks on the vehicle, such as a business name, decals, or markings, if applicable.

(b) The record, as well as the scrap metal purchased or received, shall at all reasonable times be open to the inspection of any law enforcement agency.

(c) No record is required for property purchased from merchants, manufacturers or wholesale dealers, having an established place of business, or of any goods purchased at open sale from any bankrupt stock, but a bill of sale or other evidence of open or legitimate purchase of the property shall be obtained and kept by the person, which must be shown upon demand to any law enforcement agency.

(d) Except as otherwise provided in this section, a scrap metal dealer or the dealer’s agent, employee, or representative may not disclose personal information concerning a customer without the customer’s consent unless the disclosure is made in response to a request from a law enforcement agency. A scrap metal dealer must implement reasonable safeguards to protect the security of the personal information and prevent unauthorized access to or disclosure of the information. For purposes of this paragraph, “personal information” is any individually identifiable information gathered in connection with a record under paragraph (a).

Subd. 2. Retention required. Records required to be maintained by subdivision 1a shall be retained by the scrap metal dealer for a period of three years.

Subd. 3. Payment by check or electronic transfer required. A scrap metal dealer or the dealer’s agent, employee, or representative shall pay for all scrap metal purchases only by check or electronic transfer.

Subd. 4. Registration required. (a) Every scrap metal dealer shall register with and participate in the criminal alert network described in section 299A.61. The dealer shall ensure that the dealer’s system for receiving incoming notices from the network is in proper working order and ready to receive incoming notices. The dealer shall check the system for incoming notices twice each day the business is open, once upon opening and then again before closing. The dealer shall inform all employees involved in the purchasing or receiving of scrap metal of alerts received relating to scrap metal of the type that might be conceivably

sold to the dealer. In addition, the dealer shall post copies of the alerts in a conspicuous location.

(b) The scrap metal dealer shall pay to the commissioner of public safety a \$50 annual fee to participate in the criminal alert network and for the educational materials described in section 299C.25.

(c) The commissioner shall notify the scrap metal dealer if a message sent to the dealer is returned as undeliverable or is otherwise not accepted for delivery by the dealer's system. The dealer shall take action necessary to ensure that future messages are received.

Subd. 5. Training. Each scrap metal dealer shall review the educational materials provided by the superintendent of the Bureau of Criminal Apprehension under section 299C.25 and ensure that all employees do so as well.

Subd. 6. Criminal penalty. A scrap metal dealer, or the agent, employee, or representative of the dealer, who intentionally violates a provision of this section, is guilty of a misdemeanor.

Subd. 7. Exemption. A scrap metal dealer may purchase aluminum cans without complying with this section.

Subd. 8. Property held by law enforcement. (a) Whenever a law enforcement official from any agency has probable cause to believe that property in the possession of a scrap metal dealer is stolen or is evidence of a crime and notifies the dealer not to sell the item, the item may not be sold or removed from the premises. This investigative hold remains in effect for 90 days from the date of initial notification, or until it is canceled or a seizure order is issued, whichever comes first.

(b) If an item is identified as stolen or evidence in a criminal case, the law enforcement official may:

(1) physically seize and remove it from the dealer, pursuant to a written order from the law enforcement official; or

(2) place the item on hold or extend the hold as provided in this section and leave it in the shop.

(c) When an item is seized, the person doing so shall provide identification upon request of the dealer, and shall provide the dealer the name and telephone number of the seizing agency and investigator, and the case number related to the seizure.

(d) A dealer may request seized property be returned in accordance with section 626.04.

(e) When an order to hold or seize is no longer necessary, the law enforcement official shall so notify the dealer.

Subd. 9. Video security cameras required. (a) Each scrap metal dealer shall install and maintain at each location video surveillance cameras, still digital cameras, or similar devices positioned to record or photograph a frontal view showing the face of each seller or prospective seller of scrap metal who enters the location. The scrap metal dealer shall also photograph the seller's or prospective seller's vehicle, including license plate, either by video camera or still digital camera, so that an accurate and complete description of it may be obtained from the recordings made by the cameras. The video camera or still digital camera must be kept in operating condition. The camera must record and display the accurate date and time. The video camera must be turned on at all times when the location is open for business and at any other time when scrap metal is purchased.

(b) If the scrap metal dealer does not purchase some or any scrap metal at a specific business location, the dealer need not comply with this subdivision with respect to those purchases.

History: 2007 c 54 art 7 s 21

325E.311 DEFINITIONS.

[For text of subds 1 to 5, see M.S.2006]

Subd. 6. **Telephone solicitation.** “Telephone solicitation” means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing–announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber’s prior express invitation or permission; or

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship.

Telephone solicitation also does not include communications if the caller is identified by a caller identification service and the call is:

(i) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law, unless the organization is a debt management services provider defined in section 332A.02;

(ii) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser; or

(iii) by a political party as defined under section 200.02, subdivision 6.

History: 2007 c 57 art 3 s 42

325E.37 TERMINATION OF SALES REPRESENTATIVES.

[For text of subs 1 to 5, see M.S.2006]

Subd. 6. **Scope; limitations.** (a) This section applies to a sales representative who, during some part of the period of the sales representative agreement:

(1) is a resident of Minnesota or maintains that person’s principal place of business in Minnesota; or

(2) whose geographical territory specified in the sales representative agreement includes part or all of Minnesota.

(b) To be effective, any demand for arbitration under subdivision 5 must be made in writing and delivered to the principal on or before one year after the effective date of the termination of the agreement.

(c) A provision in any contract between a sales representative dealing in plumbing equipment or supplies and a principal purporting to waive any provision of Laws 2007, chapters 135 or 140, whether by express waiver or by a provision stipulating that the contract is subject to the laws of another state, shall be void.

History: 2007 c 135 art 3 s 18; 2007 c 140 art 6 s 1

325E.385 PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHER.

Subdivision 1. **Definitions.** For the purposes of sections 325E.386 to 325E.388, the terms in this section have the meanings given them.

Subd. 2. **Commercial decabromodiphenyl ether.** “Commercial decabromodiphenyl ether” means the chemical mixture of decabromodiphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

Subd. 3. **Commissioner.** “Commissioner” means the commissioner of the Pollution Control Agency.

Subd. 4. **Manufacturer.** “Manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a non-comestible product containing polybrominated diphenyl ethers.

Subd. 5. **Polybrominated diphenyl ethers or PBDE's.** "Polybrominated diphenyl ethers" or "PBDE's" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl ether.

Subd. 6. **Retailer.** "Retailer" means a person who offers a product for sale at retail through any means, including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

Subd. 7. **Used product.** "Used product" means any product that has been previously owned, purchased, or sold in commerce. Used product does not include any product manufactured after January 1, 2008.

History: 2007 c 57 art 1 s 149

325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.

Subdivision 1. **Penta- and octabromodiphenyl ethers.** Except as provided in subdivision 3, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. **Exemptions.** The following products containing polybrominated diphenyl ethers are exempt from subdivision 1 and section 325E.387, subdivision 2:

(1) the sale or distribution of any used transportation vehicle with component parts containing polybrominated diphenyl ethers;

(2) the sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain polybrominated diphenyl ethers;

(3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used primarily for military or federally funded space program applications. This exemption does not cover consumer-based goods with broad applicability;

(4) the sale or distribution by a business, charity, public entity, or private party of any used product containing polybrominated diphenyl ethers;

(5) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing more than one-tenth of one percent polybrominated diphenyl ether;

(6) medical devices; or

(7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of telecommunications equipment containing polybrominated diphenyl ethers used by entities eligible to hold authorization in the Public Safety Pool under Code of Federal Regulations, title 47, part 90.

In-state retailers in possession of products on January 1, 2008, that are banned for sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in this section restricts the ability of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers through the state, or storing such products in the state for later distribution outside the state.

History: 2007 c 57 art 1 s 150

325E.387 REVIEW OF DECABROMODIPHENYL ETHER.

Subdivision 1. **Commissioner duties.** The commissioner in consultation with the commissioners of health and public safety shall review uses of commercial decabromodiphenyl ether, availability of technically feasible and safer alternatives, fire safety, and any evidence regarding the potential harm to public health and the environment posed by commercial de-

cabromodiphenyl ether and the alternatives. The commissioner must consult with key stakeholders. The commissioner must also review the findings from similar state and federal agencies and must report their findings and recommendations to the appropriate committees of the legislature no later than January 15, 2008.

Subd. 2. State procurement. By January 1, 2008, the commissioner of administration shall make available for purchase and use by all state agencies equipment, supplies, and other products that do not contain polybrominated diphenyl ethers, unless exempted under section 325E.386, subdivision 2.

History: 2007 c 57 art 1 s 151

325E.388 PENALTIES.

A manufacturer who violates sections 325E.386 to 325E.388 is subject to a civil penalty not to exceed \$1,000 for each violation in the case of a first offense. A manufacturer is subject to a civil penalty not to exceed \$5,000 for each repeat offense. Penalties collected under this section must be deposited in an account in the special revenue fund and are appropriated in fiscal years 2008 and 2009 to the commissioner to implement and enforce this section.

History: 2007 c 57 art 1 s 152

325E.389 ITEMS CONTAINING LEAD PROHIBITED.

Subdivision 1. Definitions. For purposes of this section, the following definitions apply.

(a) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(b) "Children" means children age six and younger.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children. For purposes of this section, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) is represented in its packaging, display, or advertising as appropriate for use by children;

(2) is sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(3) is sized for children and not intended for use by adults; or

(4) is sold in any of the following:

(i) a vending machine;

(ii) retail store, catalog, or Web site in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) a discrete portion of a retail store, catalog, or Web site in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(d) "Class 1 material" means any of the following materials:

(1) stainless or surgical steel;

(2) karat gold;

(3) sterling silver;

(4) platinum, palladium, iridium, ruthenium, rhodium, or osmium;

(5) natural or cultured pearls;

(6) glass, ceramic, or crystal decorative components including cat's eye; cubic zirconia, including cubic zirconium or CZ; rhinestones; and cloisonne;

(7) a gemstone that is cut and polished for ornamental purposes, except that the following gemstones are not Class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite;

(8) elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a Class 2 material;

(9) all natural decorative material including amber, bone, coral, feathers, fur, horn, leather, shell, and wood that is in its natural state and is not treated in a way that adds lead; or
 (10) adhesive.

(e) "Class 2 material" means any of the following materials:

(1) electroplated metal that meets the following standards:

(i) on and before August 30, 2009, a metal alloy with less than ten percent lead by weight that is electroplated with suitable under and finish coats; or

(ii) on and after August 31, 2009, a metal alloy with less than six percent lead by weight that is electroplated with suitable under and finish coats;

(2) unplated metal with less than 1.5 percent lead that is not otherwise listed as a Class 1 material;

(3) plastic or rubber including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(i) on and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight; and

(ii) on and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight; and

(4) a dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(f) "Class 3 material" means any portion of jewelry that meets both of the following criteria:

(1) is not a Class 1 or Class 2 material; and

(2) contains less than 0.06 percent (600 parts per million) lead by weight.

(g) "Component" means any part of jewelry.

(h) "EPA reference methods 3050B (Acid Digestion of Sediments, Sludges, and Soils) or 3051 (Microwave Assisted Digestion/Sludge, Soils)" means those test methods incorporated by reference in Code of Federal Regulations, title 40, section 260.11, paragraph (11), subdivision (a).

(i) "Jewelry" means:

(1) any of the following ornaments worn by a person: anklet, arm cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accessories, earring, necklace, pin, ring, or body piercing jewelry; or

(2) any bead, chain, link, pendant, or other component of such an ornament.

(j) "Surface coating" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. Surface coating does not include a printing ink or a material that actually becomes a part of the substrate including, but not limited to, pigment in a plastic article or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

Subd. 2. Sale prohibited. (a) No person shall manufacture any jewelry that is offered for sale in Minnesota unless the jewelry is made entirely from a Class 1, Class 2, or Class 3 material, or any combination thereof.

(b) No person shall offer for sale, sell, label, or distribute for free any jewelry represented to contain safe levels of lead, unless the jewelry is made entirely from a Class 1, Class 2, or Class 3 material, or any combination thereof.

(c) Notwithstanding paragraph (a), no person shall manufacture any children's jewelry that is offered for sale in Minnesota unless the children's jewelry is made entirely from one or more of the following materials:

(1) a nonmetallic material that is a Class 1 material;

(2) a nonmetallic material that is a Class 2 material;

(3) a metallic material that is either a Class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight;

(4) glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead;

(5) printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight; or

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(d) Notwithstanding paragraph (b), no person shall offer for sale, sell, distribute for free, or label any jewelry as children's jewelry represented to contain safe levels of lead, unless the jewelry is made entirely from one or more of the following materials:

(1) a nonmetallic material that is a Class 1 material;

(2) a nonmetallic material that is a Class 2 material;

(3) a metallic material that is either a Class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight;

(4) glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead;

(5) printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight; or

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(e) Notwithstanding paragraph (a), no person shall manufacture any body piercing jewelry that is offered for sale in Minnesota unless the body piercing jewelry is made of one or more of the following materials:

(1) surgical implant stainless steel; or

(2) surgical implant grade of titanium, niobium (Nb), solid 14-karat or higher white or yellow nickel-free gold, solid platinum, or a dense low-porosity plastic including, but not limited to, Tygon or polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

(f) No person shall offer for sale, sell, label, or distribute for free any body piercing jewelry represented to contain safe levels of lead unless the body piercing jewelry is made of one or more of the following materials:

(1) surgical implant stainless steel; or

(2) surgical implant grade of titanium, niobium (Nb), solid 14-karat or higher white or yellow nickel-free gold, solid platinum, or a dense low-porosity plastic including, but not limited to, Tygon or polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

(g) The prohibitions under this section do not apply to sales or free distribution of jewelry by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code or to isolated and occasional sales of jewelry not made in the normal course of business.

Subd. 3. Testing methods. (a) The testing methods for determining compliance with this section must be conducted using EPA reference method 3050B or 3051 for the material being tested, except as otherwise provided in subdivision 4 and in accordance with all of the following procedures:

(1) when preparing a sample, the laboratory shall make every effort to ensure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the component to be tested;

(2) all component samples must be washed before testing using standard laboratory detergent, rinsed with laboratory reagent-grade deionized water, and dried in a clean ambient environment;

(3) if a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping must be made of stainless steel and washed and rinsed before each use and between samples;

(4) a sample must be digested in a container that is known to be free of lead and with the use of an acid that is not contaminated by lead, including analytical reagent-grade digestion acids and reagent-grade deionized water;

(5) method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, must be tested with each group of 20 or fewer samples tested; and

(6) the results for the method blanks must be reported with each group of sample results and must be below the stated reporting limit for sample results to be considered valid.

(b) A material does not meet an applicable lead standard set forth in this section if any of the following occurs:

(1) the mean lead level of one or two samples of the material exceeds 300 percent of the applicable limit for a component;

(2) the mean lead level of three samples of the material exceeds 200 percent of the applicable limit for a component; or

(3) the mean lead level of four or more samples of the material exceeds the applicable limit for a component.

Subd. 4. **Additional testing procedures.** In addition to the requirements of subdivision 3, the following procedures must be used for testing the following materials:

(1) for testing a metal plated with suitable undercoats and finish coats, the following protocols must be observed:

(i) digestion must be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide;

(ii) the sample size must be 0.050 gram to one gram;

(iii) the digested sample may require dilution prior to analysis;

(iv) the digestion and analysis must achieve a reported detection limit no greater than 0.1 percent for samples; and

(v) all necessary dilutions must be made to ensure that measurements are made within the calibrated range of the analytical instrument;

(2) for testing unplated metal and metal substrates that are not a Class I material, the following protocols must be observed:

(i) digestion must be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide;

(ii) the sample size must be 0.050 gram to one gram;

(iii) the digested sample may require dilution prior to analysis;

(iv) the digestion and analysis must achieve a reported detection limit no greater than 0.01 percent for samples; and

(v) all necessary dilutions must be made to ensure that measurements are made within the calibrated range of the analytical instrument;

(3) for testing polyvinyl chloride (PVC), the following protocols must be observed:

(i) the digestion must be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide;

(ii) the sample size must be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and must be chopped or comminuted prior to digestion;

(iii) digested samples may require dilution prior to analysis;

(iv) digestion and analysis must achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples; and

(v) all necessary dilutions must be made to ensure that measurements are made within the calibrated range of the analytical instrument;

(4) for testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols must be observed:

(i) the digestion must be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide;

(ii) the sample size must be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and must be chopped or comminuted prior to digestion;

(iii) plastic beads or stones must be crushed prior to digestion;

(iv) digested samples may require dilution prior to analysis;

(v) digestion and analysis must achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples; and

(vi) all necessary dilutions must be made to ensure that measurements are made within the calibrated range of the analytical instrument;

(5) for testing coatings on glass and plastic pearls, the following protocols must be observed:

(i) the coating of glass or plastic beads must be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The substrate pearl material must not be included in the scrapings;

(ii) the razor blade or sharp instrument must be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples;

(iii) the scrapings must be weighed and not less than 50 micrograms of scraped coating must be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample must be scraped and composited to obtain a sufficient sample amount;

(iv) the number of pearls used to make the composite must be noted;

(v) the scrapings must be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead analysis;

(vi) the digestate must be diluted in the minimum volume practical for analysis;

(vii) the digested sample must be analyzed according to specification of an approved and validated methodology for inductively coupled plasma mass spectrometry;

(viii) a reporting limit of 0.001 percent (10 parts per million) in the coating must be obtained for the analysis; and

(ix) the sample result must be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample must be diluted and reanalyzed within the calibrated range of the instrument;

(6) for testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols must be observed:

(i) the digestion must use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide;

(ii) the sample size must be not less than 0.050 gram, and must be chopped or comminuted prior to digestion;

(iii) the digested sample may require dilution prior to analysis;

(iv) the digestion and analysis must achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples; and

(v) all necessary dilutions must be made to ensure that measurements are made within the calibrated range of the analytical instrument; and

(7) for testing glass and crystal used in children's jewelry, the following testing protocols for determining weight must be used:

(i) a component must be free of any extraneous material, including adhesive, before it is weighed;

(ii) the scale used to weigh a component must be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the Na-

tional Institute of Standards and Technology (NIST) of the United States Department of Commerce; and

(iii) the calibration of the scale must be accurate to within 0.01 gram.

History: 2007 c 132 s 1

NOTE: Subdivision 2, paragraphs (a) and (c), as added by Laws 2007, chapter 132, section 1, are effective March 1, 2008. Laws 2007, chapter 132, section 2.

325E.58 SIGN CONTRACTOR; BOND.

(a) A sign contractor may post a compliance bond with the commissioner, conditioned that the sign contractor shall faithfully perform duties and comply with laws, ordinances, rules, and contracts entered into for the installation of signs. The bond must be renewed annually and maintained for so long as determined by the commissioner. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the annual amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days' written notice mailed to the commissioner by United States mail.

(b) The amount of the bond shall be \$8,000. The bond may be drawn upon only by a local unit of government that requires sign contractors to post a compliance bond. The bond is in lieu of any compliance bond required by a local unit of government.

(c) For purposes of this section, "sign" means a device, structure, fixture, or placard using graphics, symbols, or written copy that is erected on the premises of an establishment including the name of the establishment or identifying the merchandise, services, activities, or entertainment available on the premises.

History: 2007 c 140 art 8 s 1

325E.59 USE OF SOCIAL SECURITY NUMBERS.

Subdivision 1. **Generally.** (a) A person or entity, not including a government entity, may not do any of the following:

(1) publicly post or publicly display in any manner an individual's Social Security number. "Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public;

(2) print an individual's Social Security number on any card required for the individual to access products or services provided by the person or entity;

(3) require an individual to transmit the individual's Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted, except as required by titles XVIII and XIX of the Social Security Act and by Code of Federal Regulations, title 42, section 483.20;

(4) require an individual to use the individual's Social Security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site;

(5) print a number that the person or entity knows to be an individual's Social Security number on any materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document to be mailed. If, in connection with a transaction involving or otherwise relating to an individual, a person or entity receives a number from a third party, that person or entity is under no duty to inquire or otherwise determine whether the number is or includes that individual's Social Security number and may print that number on materials mailed to the individual, unless the person or entity receiving the number has actual knowledge that the number is or includes the individual's Social Security number;

(6) assign or use a number as the primary account identifier that is identical to or incorporates an individual's complete Social Security number; or

(7) sell Social Security numbers obtained from individuals in the course of business.

Notwithstanding clauses (1) to (5), Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of the Social Security number. Nothing in this paragraph authorizes inclusion of a Social Security number on the outside of a mailing or in the bulk mailing of a credit card solicitation offer.

(b) A person or entity, not including a government entity, must restrict access to individual Social Security numbers it holds so that only employees who require the numbers in order to perform their job duties have access to the numbers, except as required by titles XVIII and XIX of the Social Security Act and by Code of Federal Regulations, title 42, section 483.20.

(c) This section applies only to the use of Social Security numbers on or after July 1, 2008.

Subd. 2. [Repealed, 2007 c 129 s 58]

[For text of subds 3 to 5, see M.S.2006]

History: 2007 c 129 s 55,57

NOTE: The amendments to subdivision 1 by Laws 2006, chapter 253, section 19, as amended by Laws 2007, chapter 129, section 57, are effective July 1, 2008. Laws 2007, chapter 129, section 57, the effective date.

325E.60 RESTROOM ACCESS.

Subdivision 1. **Short title.** This section may be cited as the Restroom Access Act.

Subd. 2. **Definitions.** For purposes of this section:

(a) “Customer” means an individual who is lawfully on the premises of a retail establishment.

(b) “Eligible medical condition” means Crohn’s disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a restroom facility.

(c) “Retail establishment” means a place of business open to the general public for the sale of goods or services. Retail establishment does not include a filling station or service station with a structure of 800 square feet or less that has an employee restroom facility located within that structure.

Subd. 3. **Retail establishment; customer access to restroom facilities.** A retail establishment that has a restroom facility for its employees shall allow a customer to use that facility during normal business hours if the restroom facility is reasonably safe and all of the following conditions are met:

(1) the customer requesting the use of the employee restroom facility suffers from an eligible medical condition or uses an ostomy device, provided that the existence of the condition or device is documented in writing by the customer’s physician or a nonprofit organization whose purpose includes serving individuals who suffer from the condition;

(2) three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom facility;

(3) the retail establishment does not normally make a restroom available to the public;

(4) the employee restroom facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the establishment; and

(5) a public restroom is not immediately accessible to the customer.

Subd. 4. **Liability.** (a) A retail establishment or an employee of a retail establishment is not civilly liable for an act or omission in allowing a customer who claims to have an eligible medical condition to use an employee restroom facility that is not a public restroom if the act or omission:

(1) is not negligent;

(2) occurs in an area of the retail establishment that is not accessible to the public; and
 (3) results in an injury to or death of the customer or an individual other than an employee accompanying the customer.

(b) This section does not require a retail establishment to make any physical changes to an employee restroom facility.

Subd. 5. Violation. For a first violation of this section, the city or county attorney shall issue a warning letter to the retail establishment or employee informing the establishment or employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a petty misdemeanor. The fine for a first offense must not exceed \$50.

History: 2007 c 135 art 2 s 31

325E.64 ACCESS DEVICES; BREACH OF SECURITY.

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

(b) "Access device" means a card issued by a financial institution that contains a magnetic stripe, microprocessor chip, or other means for storage of information which includes, but is not limited to, a credit card, debit card, or stored value card.

(c) "Breach of the security of the system" has the meaning given in section 325E.61, subdivision 1, paragraph (d).

(d) "Card security code" means the three-digit or four-digit value printed on an access device or contained in the microprocessor chip or magnetic stripe of an access device which is used to validate access device information during the authorization process.

(e) "Financial institution" means any office of a bank, bank and trust, trust company with banking powers, savings bank, industrial loan company, savings association, credit union, or regulated lender.

(f) "Microprocessor chip data" means the data contained in the microprocessor chip of an access device.

(g) "Magnetic stripe data" means the data contained in the magnetic stripe of an access device.

(h) "PIN" means a personal identification code that identifies the cardholder.

(i) "PIN verification code number" means the data used to verify cardholder identity when a PIN is used in a transaction.

(j) "Service provider" means a person or entity that stores, processes, or transmits access device data on behalf of another person or entity.

Subd. 2. Security or identification information; retention prohibited. No person or entity conducting business in Minnesota that accepts an access device in connection with a transaction shall retain the card security code data, the PIN verification code number, or the full contents of any track of magnetic stripe data, subsequent to the authorization of the transaction or in the case of a PIN debit transaction, subsequent to 48 hours after authorization of the transaction. A person or entity is in violation of this section if its service provider retains such data subsequent to the authorization of the transaction or in the case of a PIN debit transaction, subsequent to 48 hours after authorization of the transaction.

Subd. 3. Liability. Whenever there is a breach of the security of the system of a person or entity that has violated this section, or that person's or entity's service provider, that person or entity shall reimburse the financial institution that issued any access devices affected by the breach for the costs of reasonable actions undertaken by the financial institution as a result of the breach in order to protect the information of its cardholders or to continue to provide services to cardholders, including but not limited to, any cost incurred in connection with:

(1) the cancellation or reissuance of any access device affected by the breach;

(2) the closure of any deposit, transaction, share draft, or other accounts affected by the breach and any action to stop payments or block transactions with respect to the accounts;

(3) the opening or reopening of any deposit, transaction, share draft, or other accounts affected by the breach;

(4) any refund or credit made to a cardholder to cover the cost of any unauthorized transaction relating to the breach; and

(5) the notification of cardholders affected by the breach.

The financial institution is also entitled to recover costs for damages paid by the financial institution to cardholders injured by a breach of the security of the system of a person or entity that has violated this section. Costs do not include any amounts recovered from a credit card company by a financial institution. The remedies under this subdivision are cumulative and do not restrict any other right or remedy otherwise available to the financial institution.

History: 2007 c 108 s 1

NOTE: Subdivision 3, as added by Laws 2007, chapter 108, section 1, is effective August 1, 2008, and applies to breaches of the security of a system occurring on or after that date. Laws 2007, chapter 108, section 1, the effective date.

325E.65 SALE OF AMERICAN FLAGS.

No person in the business of offering goods at retail may sell or offer for sale in this state an American flag unless the flag was manufactured in the United States of America.

History: 2007 c 135 art 8 s 2