CHAPTER 325E
TRADE PRACTICES

325E.001 MS 2006 [Renumbered 15.001]

FUEL DELIVERY TICKETS

325E.01 DELIVERY TICKETS TO ACCOMPANY EACH FUEL DELIVERY.

No person, firm, or corporation shall deliver any domestic heating fuel without such delivery being accompanied by a delivery ticket, on which shall be distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, the net quantity or quantities of fuel contained in the cart, wagon, vehicle or compartment thereof, bag, sack or container used in such deliveries when sold by weight; or the number of gallons or cubic feet that is being delivered when sold by measure, with the name of the purchaser thereof and the name of the dealer from whom purchased. The delivery ticket shall also clearly state the name, type, kind and grade of fuel being delivered. When the buyer carries away the purchase, a delivery ticket showing the actual amount delivered to the purchaser must be given to the purchaser at the time the sale is made.

Sales of wood for fuel direct from producer to consumer shall be exempt from the provisions of this section. This section shall not apply to deliveries in quantities of ten gallons or less.

Whoever violates any provision of this section is guilty of a misdemeanor.

History: *1943 c 328*

UTILITIES; CUSTOMER DEPOSITS

325E.015 [Repealed, 2004 c 216 s 4]

325E.02 CUSTOMER DEPOSITS.

Any customer deposit required before commencement of service by a privately or publicly owned water, gas, telephone, cable television, electric light, heat, or power company shall be subject to the following:

(a) Upon termination of service with all bills paid, the deposit shall be returned to the customer within 45 days, less any deductions made in accordance with paragraph (c).

(b) Interest shall be paid on deposits in excess of $20. The rate of interest must be set annually and be equal to the weekly average yield of one-year United States Treasury securities adjusted for constant maturity for the last full week in November. The interest rate must be rounded to the nearest tenth of one percent. By December 15 of each year, the commissioner of commerce shall announce the rate of interest that must be paid on all deposits held during all or part of the subsequent year. The company may, at its option, pay the interest at intervals it chooses but at least annually, by direct payment, or as a credit on bills.

(c) At the time the deposit is made the company shall furnish the customer with a written receipt specifying the conditions, if any, the deposit will be diminished upon return.

(d) Advance payments or prepayments shall not be construed as being a deposit.

History: *1974 c 424 s 1; 1997 c 121 s 1; 2004 c 261 art 2 s 2*

325E.021 UTILITY DELINQUENCY CHARGES.

A public utility as defined by section 216B.02, a municipality or cooperative electric association, or telephone company as defined by section 237.01 shall, if that utility adopts a policy of imposing a charge or fee upon delinquent residential and farm accounts, provide that each billing shall clearly state the terms and conditions of any penalty in the form of the monthly percentage rate.

History: *1980 c 579 s 31*

325E.025 LANDLORDS AND TENANTS; UTILITY BILLS.

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

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

Subd. 2. **Payment responsibility for utility service.** A utility shall not: (1) recover or attempt to recover payment for a tenant's outstanding bill or charge from a landlord, property owner or manager, or manufactured home park owner, as defined in section 327C.01, or manufactured home dealer, as defined in section 327B.01, who has not contracted for the service; (2) condition service on payment of an outstanding bill or other charge for utility service due upon the outstanding account of a previous customer or customers when all of the previous customers have vacated the property; or (3) place a lien on the landlord's or owner's property for a tenant's outstanding bill or charge whether created by local ordinance or otherwise. A utility may recover or attempt to recover payment for a tenant's outstanding bill or charge from a property owner where the manager, acting as the owner's agent, contracted for the utility service.

History: *1985 c 135 s 1; 1986 c 473 s 9; 1989 c 356 s 15*

325E.026 UNAUTHORIZED USE OF UTILITY METERS.

Subdivision 1. **Definitions.** When used in this section, the terms defined in section 216B.02

have the same meanings. Other terms used in this section have the following meanings:

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

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

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

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

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

Subd. 2. **Civil actions; remedies.** A utility may bring a civil action for damages against a person who: (1) deliberately commits, authorizes, attempts, solicits, aids, or abets bypassing, tampering, unauthorized connection, or unauthorized metering that results in damages to the utility; or (2) knowingly receives service provided as a result of bypassing, tampering, unauthorized connection, or unauthorized metering. The utility may recover double the costs of the service provided; the costs and expenses for investigation, disconnection, reconnection, service calls, equipment, and employees; and the trial costs and witness fees.

Subd. 3. **Damages to benefit ratepayers.** Damages recovered under this section in excess of the actual damages sustained by a public utility regulated by the commission must be taken into account by the commission and applied for the benefit of the public utility's ratepayers in establishing utility rates.

Subd. 4. **Additional remedies.** The remedies provided in this section are supplemental and additional to other remedies or powers conferred by law and not in limitation of other civil or criminal statutory or common law remedies.

History: *1987 c 272 s 1; 1989 c 356 s 16*

PROPANE GAS DISCRIMINATION

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*

UTILITY PAYMENTS FOR MILITARY

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*

METAL BEVERAGE CONTAINERS

325E.03 SALE OF BEVERAGE CONTAINERS HAVING DETACHABLE PARTS.

Subdivision 1. **Restriction.** No person shall sell or offer for sale in this state a carbonated soft drink, beer, other malt beverage, or tea in liquid form and intended for human consumption contained in an individual sealed metal container designed and constructed so that a part of the container is detached in the process of opening the container.

Subd. 2. **Criminal penalty.** A violation of subdivision 1 is a misdemeanor and each day of violation is a separate offense.

History: *1975 c 308 s 1,2; 1977 c 226 s 1*

IMMIGRATION SERVICES

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).

Subd. 3. **Prohibited activities.** Any person who provides or offers to provide immigration assistance services may not do any of the following:

(1) give any legal advice concerning an immigration matter or perform an act constituting the practice of immigration law as defined in Code of Federal Regulations, title 8, section 1.1 (i), (j), (k), or (m);

(2) represent, hold out or advertise, in connection with the provision of assistance in immigration matters, other titles or credentials in any language, including, but not limited to, "notary public" or "immigration consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter;

(3) make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage;

(4) retain any compensation for service not performed; or

(5) refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer even if subject to a fee dispute.

Subd. 4. **Written contract.** Except as otherwise provided in this section, before providing an immigration assistance service a person shall provide the customer with a written contract that includes the following:

(1) an explanation of the services to be performed;

(2) identification of all compensation and costs to be charged to the customer for the services to be performed; and

(3) a statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs.

The written contract must be in both English and in the language of the customer. A copy of the contract must be provided to the customer upon the customer's execution of the contract. A customer has the right to rescind a contract within 72 hours after signing the contract. Any documents prepared on behalf of, or paid for by the customer, must be returned upon demand of the customer.

This subdivision does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse

the organization's or clinic's reasonable costs relating to providing immigration services to that client.

Subd. 5. **Exemptions.** This section does not apply to:

(1) an attorney licensed to practice law in any state or territory of the United States, or in any foreign country when authorized by the Minnesota Supreme Court, to the extent the attorney renders immigration assistance service in the course of practicing as an attorney;

(2) a nonlawyer assistant, as described by the rules of the Minnesota Supreme Court, employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the assistant's employment;

(3) a not-for-profit organization recognized by the Board of Immigration Appeals under Code of Federal Regulations, title 8, section 292.2(a), and employees of those organizations accredited under Code of Federal Regulations, title 8, section 292.2(d), and designated entities as defined under Code of Federal Regulations, title 8, section 245a.1; and

(4) an organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom the advice or assistance is provided.

Subd. 6. **Penalty and remedies.** A person who violates this section is guilty of a misdemeanor. The penalties and remedies of section 8.31 apply to violations of this section, including a private cause of action.

History: *1996 c 401 s 1; 2007 c 13 art 1 s 25*

325E.035 [Repealed, 1Sp1989 c 1 art 20 s 30]

SAMPLES; DISTRIBUTION

325E.04 FREE SAMPLES; DISTRIBUTION.

Subdivision 1. **Restrictions.** It shall be unlawful to cause to be delivered indiscriminately door to door to residences, other than through the United States mail, any advertising, sample of merchandise, or promotional material which is contained in a plastic film outer bag any dimension of which exceeds seven inches and which contains less than one hole, one-half inch in diameter, for each 25 square inch area, or any samples of drugs, medicines, razor blades, or aerosol cans regardless of how packaged. This subdivision shall not apply to plastic bags with an average thickness of more than .0015 of an inch.

Subd. 2. **Criminal penalty.** Any person who is found to have violated this section shall be guilty of a misdemeanor.

History: *1971 c 832 s 1,2; 1974 c 85 s 1*

SALE AND LABELING OF PLASTICS

325E.042 PROHIBITING SALE OF CERTAIN PLASTICS.

Subdivision 1. **Plastic can.** (a) A person may not sell, offer for sale, or give to consumers in this state a beverage packaged in a plastic can.

(b) A plastic can subject to this subdivision is a single serving beverage container composed of plastic and metal excluding the closure mechanism.

Subd. 2. **Nondegradable plastic.** A person may not sell, offer for sale, or give to consumers beverages or motor oil containers held together by connected rings made of nondegradable plastic material.

Subd. 3. **Penalty.** A person who violates subdivision 1 or 2 is guilty of a misdemeanor.

History: *1988 c 685 s 26; 1991 c 337 s 57*

325E.044 PLASTIC CONTAINER LABELING.

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

(a) "Distributor" means a person engaged in business that ships or transports products to retailers in this state to be sold by those retailers.

(b) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(c) "Manufacturer" means any manufacturer offering for sale and distribution a product packaged in a container.

(d) "Plastic container" means an individual, separate, plastic bottle, can, or jar with a capacity of 16 ounces or more.

Subd. 2. **Labeling rules required.** By March 31, 1989, the board shall adopt rules requiring labeling of plastic containers. The rules adopted under this subdivision must allow a manufacturer of plastic containers, a person who places products in plastic containers, and a person who sells products in plastic containers to choose an appropriate method of labeling plastic containers. The board shall adopt rules as consistent as practicable with national industrywide plastic container coding systems. The rules may exempt plastic containers of a capacity of less than a specified minimum size from the labeling requirements.

Subd. 3. **Prohibition.** A person may not manufacture or bring into the state for sale in this state a plastic container that does not comply with the labeling rules adopted under subdivision 2.

Subd. 4. **Enforcement; civil penalty; injunctive relief.** (a) After being notified that a plastic container does not comply with the rules under subdivision 2, any manufacturer or distributor who violates subdivision 3 is subject to a civil penalty of $50 for each violation up to a maximum of $500 and may be enjoined from such violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 3 in the manner provided in section 8.31, subdivision 2b.

History: *1988 c 685 s 27*

325E.045 Subdivision 1. [Repealed, 1991 c 337 s 90]

Subd. 2. [Repealed, 1991 c 337 s 90]

Subd. 3. [Repealed, 1990 c 597 s 73; 1990 c 604 art 10 s 32; 1991 c 337 s 90]

Subd. 4. [Repealed, 1990 c 597 s 73; 1990 c 604 art 10 s 32; 1991 c 337 s 90]

325E.046 STANDARDS FOR LABELING PLASTIC BAGS.

Subdivision 1. **"Biodegradable" label.** A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "biodegradable," "degradable," or any form of those terms, or in any way imply that the bag will chemically decompose into innocuous elements in a reasonably short period of time in a landfill, composting, or other terrestrial environment unless a scientifically based standard for biodegradability is developed and the bags are certified as meeting the standard.

Subd. 2. **"Compostable" label.** A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "compostable" unless, at the time of sale, the bag meets the ASTM Standard Specification for Compostable Plastics (D6400). Each bag must be labeled to reflect that it meets the standard. For purposes of this subdivision, "ASTM" has the meaning given in section 296A.01, subdivision 6.

Subd. 3. **Enforcement; civil penalty; injunctive relief.** (a) A manufacturer, distributor, or wholesaler who violates subdivision 1 or 2 is subject to a civil penalty of $100 for each prepackaged saleable unit offered for sale up to a maximum of $5,000 and may be enjoined from those violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 1 or 2 in the manner provided in section 8.31, subdivision 2b.

History: *2009 c 37 art 1 s 57*

FARM EQUIPMENT DEALERSHIPS

325E.05 AGRICULTURAL IMPLEMENT DEALERSHIPS; RETURN OF STOCK.

If a franchised agricultural machinery or implement dealership is discontinued for economic reasons, the firm, company, person, or successor in interest issuing the franchise to the dealer shall purchase all listed parts in the dealer's stock purchased originally from firm, company, or person issuing franchise at a price agreeable to the franchised dealer and such firm, company, person, or successor in interest.

History: *1959 c 398 s 1; 1988 c 502 s 1*

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

Subdivision 1. **Obligation to repurchase.** Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written or oral contract, sales agreement, or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments or repair parts or outdoor power equipment, attachments, or repair parts to maintain a stock of parts or complete or whole machines, or attachments, and thereafter the written or oral contract, sales agreement, or security agreement is terminated, canceled, or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to 100 percent of the net cost of all unused complete farm

implements, machinery, and attachments or outdoor power equipment and attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer, or distributor within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the contract, including transportation charges and reasonable assembly charges which have been paid by the retailer, or invoiced to retailer's account by the wholesaler, manufacturer, or distributor and the following:

(a) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the wholesaler, manufacturer, or distributor or its predecessor on the date of the termination, cancellation, or discontinuance of the contract;

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

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

(d) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(e) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor, except that specialized repair tools and signage that has never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor the specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

The wholesaler, manufacturer, or distributor shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the prices required to be paid or credited by this subdivision for all parts, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to perform inventorying, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage itself. Upon the payment or allowance of credit to the retailer's account of the sum required by this subdivision, the title to the farm implements, farm machinery, attachments or repair parts, or outdoor power equipment and repair parts for outdoor power equipment, data processing and communications hardware and software, and specialized repair tools and signage shall pass to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor shall be entitled to the possession of the farm implements, machinery, attachments

or repair parts, or outdoor power equipment and repair parts for outdoor power equipment, data processing and communications hardware and software, and specialized repair tools and signage. However, this section shall not in any way affect any security interest which the wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Payment required to be made under this subdivision must be made not later than 60 days from the date the farm implements, machinery, attachments, repair parts, outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage are received by the manufacturer, and if not by then paid, the amount payable by the wholesaler, manufacturer, or distributor bears interest at the maximum rate allowed by law from the date the contract was terminated, canceled, or discontinued until the date payment is received by the retailer.

In lieu of the return of the farm implements, machinery, attachments, and repair parts, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage to the wholesaler, manufacturer, or distributor, the retailer may advise the wholesaler, manufacturer, or distributor that the retailer has implements, machinery, attachments, or repair parts, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage that the retailer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of implements, machinery, attachments, or repair parts, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of the machinery and parts and where the machinery and parts may be inspected and the list of farm implements, machinery, attachments, or repair parts, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage may be verified. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the retailer, to accept payment or a credit to the retailer's account on behalf of the retailer, and to release the machinery and parts to the wholesaler, manufacturer, or distributor. The notice constitutes the appointment of the escrow agent to act on the retailer's behalf. The wholesaler, manufacturer, or distributor has 30 days from the date of the mailing of the notice, which shall be by certified mail, in which to inspect the machinery and parts and verify the accuracy of the retailer's list. The wholesaler, manufacturer, or distributor shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the retailer has been made if the retailer has outstanding sums due the wholesaler, manufacturer, or distributor; or

(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the machinery or parts to the wholesaler, manufacturer, or distributor that are acceptable as returns.

If the wholesaler, manufacturer, or distributor sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns shall accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the retailer or the credit list with payment, the title to the farm implements, farm machinery, attachments, or repair parts, outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools

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

Subd. 2. **Provisions of contract supplemented.** The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of farm implements, machinery, attachments and repair parts. The retailer can elect to pursue either the retailer's contract remedy or the remedy provided herein, and an election by the retailer to pursue the contract remedy shall not bar the retailer's right to the remedy provided herein as to those farm implements, machinery, attachments and repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a manufacturer, wholesaler or distributor to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law.

Subd. 3. **Death of dealer; repurchase from heirs.** In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements, machinery, attachments or repair parts therefor, the manufacturer, wholesaler or distributor shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the retail dealership, it shall be deemed a cancellation or discontinuance of the contract by the retailer under the provisions of subdivision 1.

Subd. 4. **Failure to pay sums specified on cancellation of contracts; liability.** In the event that any manufacturer, wholesaler, or distributor of farm implements, machinery, attachments and repair parts, or outdoor power equipment and attachments and repair parts, data processing and communications hardware and software, and specialized repair tools and signage, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler, or distributor, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by the retailer or the retailer's heir or heirs for (a) 100 percent of the net cost of the farm implements, machinery, and attachments, (b) transportation charges and reasonable assembly which have been paid by the retailer, (c) 95 percent of the current net price of repair parts, 100 percent of invoiced prices and 50 percent of the price of all other parts as provided in subdivision 1, and (d) five percent for handling, packing and loading, if applicable.

Subd. 5. **Exceptions.** Unless a retailer has delivered parts to an escrow agent pursuant to subdivision 1, this section shall not require the repurchase from a retailer of a repair part where the retailer previously has failed to return the repair part to the wholesaler, manufacturer, or distributor after being offered a reasonable opportunity to return the repair part at a price not less than (a) 95 percent of the net price of the repair part as listed in the then current price list or catalog, (b) 100 percent of the invoiced price, and (c) 50 percent of the most recent published price as provided in subdivision 1. This section shall not require the repurchase from a retailer of repair parts which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them.

Subd. 6. **Definition.** (a) For the purposes of this section "farm implements" mean every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways.

(b) For the purposes of this section, "outdoor power equipment" does not include motorcycles, boats, personal watercraft, snowmobiles, or all-terrain vehicles designed for recreation.

Subd. 7. **Successor in interest.** The obligations under this section of a wholesaler, manufacturer, or distributor apply to its successor in interest or assignee. A successor in interest includes a purchaser of assets or stock, a surviving corporation resulting from a merger or liquidation, a receiver, and a trustee of the original wholesaler, manufacturer, or distributor.

History: *1974 c 158 s 1 subds 1-6; 1985 c 155 s 1; 1986 c 444; 1988 c 502 s 2-5; 1989 c 76 s 1-3; 2001 c 72 s 1-4*

325E.061 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.061 to 325E.065, the terms defined in this section have the meanings given them.

Subd. 2. **Farm equipment.** "Farm equipment" means equipment and parts for equipment including, but not limited to, tractors, trailers, combines, tillage implements, balers, skid steer loaders, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

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

Subd. 4. **Farm equipment dealer or dealership.** "Farm equipment dealer" or "farm equipment dealership" means a person, partnership, corporation, association, or other form of business enterprise engaged in acquiring farm equipment from a manufacturer and reselling the

farm equipment at wholesale or retail.

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

History: *1988 c 511 s 1; 1991 c 70 s 1-3*

325E.062 TERMINATIONS OR CANCELLATIONS.

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

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

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

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

(4) the farm equipment dealer has defaulted under a chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the farm equipment manufacturer;

(5) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;

(6) the farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;

(7) the dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare; or

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

Subd. 2. **Notice.** Except as otherwise provided in this subdivision, a farm equipment

manufacturer shall provide a farm equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (1) to (7).

History: *1988 c 511 s 2*

325E.063 VIOLATIONS.

(a) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to coerce a farm equipment dealer to accept delivery of farm equipment which the farm equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to:

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

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

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

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

History: *1988 c 511 s 3; 1991 c 70 s 4*

325E.0631 WARRANTIES.

Subdivision 1. **Application.** The requirements of this section apply to all warranty claims submitted by a dealer to a farm equipment manufacturer in which the farm equipment dealer has complied with the reasonable policies and procedures contained in the farm equipment manufacturer's warranty.

Subd. 2. **Prompt payment.** Claims filed for payment under warranty agreements must be approved or disapproved within 30 days of receipt by the farm equipment manufacturer. Unless the farm equipment dealer agrees to a later date, approved claims for payment must be paid within 30 days of their approval. When a claim is disapproved, the farm equipment manufacturer shall notify the dealer within the 30-day period stating the specific grounds on which the disapproval is based. Any claim not specifically disapproved within 30 days of receipt is deemed approved and must be paid within 30 days.

Subd. 3. **Posttermination claims.** If, after termination of a contract, a dealer submits a warranty claim for warranty work performed before the effective date of the termination, the farm equipment manufacturer shall approve or disapprove the claim within 30 days of receipt.

Subd. 4. **Compensation for warranty work.** Warranty work performed by the dealer must be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours multiplied by the dealer's established customer hourly retail labor rate, which the dealer shall communicate to the farm equipment manufacturer before performing the warranty work.

Subd. 5. **Expenses.** Expenses expressly excluded under the farm equipment manufacturer's warranty to the customer must not be included in claims and are not required to be paid on requests for compensation from the dealer for warranty work performed.

Subd. 6. **Compensation for parts.** All parts used by the dealer in performing warranty work must be paid to the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of 15 percent to reimburse the dealer for reasonable costs of doing business in performing warranty service on the farm equipment manufacturer's behalf, including but not limited to freight and handling costs.

Subd. 7. **Adjustment for errors.** The farm equipment manufacturer may adjust for errors discovered during audit, and if necessary, to adjust claims paid in error.

Subd. 8. **Alternate terms and conditions.** A dealer may choose to accept alternate reimbursement terms and conditions in lieu of the requirements of subdivisions 2 to 7, provided there is a written dealer agreement between the farm equipment manufacturer and the dealer providing for compensation to the dealer for warranty labor costs either as: (1) a discount in the pricing of the equipment to the dealer; or (2) a lump-sum payment to the dealer. The discount or lump sum must be no less than five percent of the suggested retail price of the equipment. If the requirements of this subdivision are met and alternate terms and conditions are in place, subdivisions 2 to 7 do not apply and the alternate terms and conditions are enforceable.

History: *2003 c 78 s 1*

325E.064 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied, including a choice of law provision, which is inconsistent with the terms of sections 325E.061 to 325E.065 or that purports to waive a farm equipment manufacturer's compliance with sections 325E.061 to 325E.065 is void and unenforceable and does not waive any rights which are provided to a person by sections 325E.061 to 325E.065.

History: *1988 c 511 s 4; 1991 c 70 s 5*

325E.065 REMEDIES.

If a farm equipment manufacturer violates sections 325E.061 to 325E.065, a farm equipment dealer may bring an action against the manufacturer in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney's fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or

substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: *1988 c 511 s 5*

325E.066 CITATION.

Sections 325E.061 to 325E.065 may be cited as the "Minnesota Agricultural Equipment Dealership Act."

History: *1988 c 511 s 6*

325E.067 APPLICABILITY.

The provisions of sections 325E.061 to 325E.065 are effective April 14, 1988, and apply to all dealership agreements now in effect which have no expiration date and which are continuing contracts, and all other contracts entered into, amended, or renewed after April 14, 1988. Any contract in force and effect on April 14, 1988, which by its terms will terminate on a date subsequent thereto and which is not renewed is governed by the law as it existed before April 14, 1988.

History: *1988 c 511 s 7*

HEAVY AND UTILITY EQUIPMENT MANUFACTURERS AND DEALERS

325E.068 DEFINITIONS.

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

Subd. 2. **Heavy and utility equipment.** "Heavy and utility equipment," "heavy equipment," or "equipment" means equipment and parts for equipment including but not limited to:

(1) excavators, crawler tractors, wheel loaders, compactors, pavers, backhoes, hydraulic hammers, cranes, fork lifts, compressors, generators, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in all types of construction of buildings, highways, airports, dams, or other earthen structures or in moving, stock piling, or distribution of materials used in such construction;

(2) trucks and truck parts; or

(3) equipment used for, or adapted for use in, mining or forestry applications.

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

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

wholesale or retail.

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

Subd. 6. **Truck.** "Truck" means a motor vehicle designed and used for carrying things other than passengers, a truck-tractor as defined in section 168.002, subdivision 38, and a semitrailer as defined in section 168.002, subdivision 30. "Truck" does not include a pickup truck or van with a manufacturer's nominal rated carrying capacity of three-fourths ton or less.

Subd. 7. **Truck parts.** "Truck parts" means all parts of a truck, including body parts.

History: *1989 c 267 s 1; 1991 c 70 s 6-8; 1993 c 199 s 1-3; 1996 c 291 s 1; 2003 c 78 s 2*

325E.0681 TERMINATIONS OR CANCELLATIONS.

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

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

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

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

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

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

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

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

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

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

Subd. 3. **Obligation to repurchase.** If a dealership agreement is terminated, canceled, or discontinued, the equipment manufacturer shall pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent of the net cost of all unused heavy and utility equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. This amount must include transportation and reasonable assembly charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right.

Subd. 4. **Repair parts.** (a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held by the dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date;

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement;

(4) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(5) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor. Specialized repair tools or signage that have never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be

in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor such specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account, if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage back to the manufacturer unless the manufacturer elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the heavy and utility equipment passes to the manufacturer. However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Subd. 5. **Payment; interest.** Payment required to be made under this section must be made not later than 60 days from the date the heavy and utility equipment is received by the manufacturer, and if not by then paid, the amount payable by the manufacturer bears interest at the maximum rate allowed by law from the date the agreement was terminated, canceled, or discontinued until the date payment is received by the dealer.

Subd. 6. **Notice of intent to return.** In lieu of returning the heavy and utility equipment to the manufacturer, the dealer may advise the manufacturer that the dealer has heavy and utility equipment that the dealer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of heavy and utility equipment and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of them and where they may be inspected. The list may be verified by the manufacturer. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the heavy and utility equipment to the manufacturer. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf.

Subd. 7. **Manufacturer inspection.** (a) The manufacturer has 30 days from the date of the mailing of the notice under subdivision 6, which must be by certified mail, in which to inspect the heavy and utility equipment and verify the accuracy of the dealer's list.

(b) The manufacturer shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the dealer has been made if the dealer has an outstanding amount due the manufacturer; or

(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the heavy and utility equipment to the manufacturer that are acceptable as returns.

Subd. 8. **Payment or credit requirements.** If the manufacturer sends a credit list as provided under subdivision 7 to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns must accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the dealer, or the

credit list with payment, the title to and the right to possess the heavy and utility equipment acceptable as returns passes to the manufacturer. The escrow agent shall ship or cause to be shipped the heavy and utility equipment acceptable as returns to the manufacturer unless the manufacturer elects to personally perform the inventorying, packing, and loading of the heavy and utility equipment. When they have been received by the manufacturer, notice of their receipt shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until it is notified that an agreement has been reached as to the nonreturnables. After being notified of the agreement, the escrow agent shall disburse the remaining funds and dispose of any remaining heavy and utility equipment as provided in the agreement. If no agreement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

Subd. 9. **Provisions of contract supplemented.** This section is supplemental to an agreement between the dealer and the manufacturer covering the return of heavy and utility equipment. The dealer may elect to pursue either the dealer's contract remedy or the remedy provided in this section. An election by the dealer to pursue the contract remedy does not bar the dealer's right to the remedy provided in this section as to the heavy and utility equipment not affected by the contract remedy. Notwithstanding anything contained in this section, the rights of a manufacturer to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods is not affected.

Subd. 10. **Death of dealer; repurchase from heirs.** In the event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer under subdivision 1.

Subd. 11. **Failure to pay sums specified on cancellation of contracts; liability.** In the event that a manufacturer, upon the cancellation of a dealership agreement, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer is liable in a civil action to be brought by the dealer or the dealer's heir or heirs for: (1) 100 percent of the net cost of the heavy or utility equipment; (2) transportation and reasonable assembly charges which have been paid by the dealer; (3) 95 percent of the current net price of repair parts, 100 percent of invoiced prices, and 50 percent of the price of all other parts as provided in subdivision 1; (4) payment for data processing and communication hardware and software, or specialized repair tools or signage as outlined in subdivision 1, paragraph (d); and (5) five percent for handling, packing, and loading, if applicable.

Subd. 12. **Exceptions.** Unless a dealer has delivered parts to an escrow agent pursuant to subdivision 1, this section does not require the repurchase from a dealer of a repair part where the dealer previously has failed to return the repair part to the manufacturer after being offered a reasonable opportunity to return the repair part at a price not less than: (1) 100 percent of the net price of the repair part as listed in the then current price list or catalog; (2) 100 percent of the invoiced price; and (3) 50 percent of the most recent published price as provided in subdivision 1.

This section does not require the repurchase from a dealer of repair parts that have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets, and batteries,

unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them.

History: *1989 c 267 s 2; 1991 c 71 s 1-10; 1993 c 13 art 2 s 10; 2001 c 72 s 5-9*

325E.0682 VIOLATIONS.

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

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

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

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

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

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

History: *1989 c 267 s 3; 1991 c 70 s 9*

325E.0683 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied, including a choice of law provision, that is inconsistent with the terms of sections 325E.068 to 325E.0684 or that purports to waive an equipment manufacturer's compliance with sections 325E.068 to 325E.0684 is void and unenforceable and does not waive any rights that are provided to a person by sections 325E.068 to 325E.0684.

History: *1989 c 267 s 4; 1991 c 70 s 10*

325E.0684 REMEDIES.

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

change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: *1989 c 267 s 5*

CIGARETTE VENDING MACHINES

325E.07 CIGARETTE VENDING MACHINES, NOTICE RELATING TO SALES.

Subdivision 1. **Required posting.** In a conspicuous place on each cigarette vending machine in use within the state, there shall be posted, and kept in easily legible form and repair, by the owner, lessee, or person having control thereof, a warning to persons under 18 years of age which shall be printed in bold type letters each of which shall be at least one-half inch high and which shall read as follows:

"Any Person Under 18 Years of Age Is Forbidden By Law To Purchase Cigarettes From This Machine."

Subd. 2. **Criminal penalty.** Any owner, any lessee, and any person having control of any cigarette vending machine which does not bear the warning required by this section shall be guilty of a misdemeanor.

History: *1963 c 545 s 1*

325E.075 [Repealed, 1997 c 227 s 8]

GASOLINE STATIONS; DISABILITY SERVICE

325E.08 SERVICE FOR DISABLED PERSONS AT GASOLINE STATIONS.

All gasoline service stations which offer both full service and self-service gasoline dispensing operations shall provide an attendant to dispense gasoline at the self-service price into vehicles bearing disability plates or a disability parking certificate issued pursuant to section 168.021.

History: *1979 c 160 s 1; 2005 c 56 s 1*

MOTOR FUEL SALES; COMPUTATION BY SMALL RETAILERS

325E.09 [Repealed, 1992 c 575 s 54]

325E.095 COMPUTATION OF SALES BY SMALL RETAILERS.

A retail business selling less than 50,000 gallons of motor vehicle fuel per year may compute fuel pump sales by the half gallon.

This section supersedes any contrary provision of law.

History: *1983 c 106 s 1*

MOTOR VEHICLES; AIR POLLUTION

CONTROL SYSTEMS

325E.0951 MOTOR VEHICLE AIR POLLUTION CONTROL SYSTEMS.

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

(a) **Motor vehicle.** "Motor vehicle" means any self-propelled vehicle powered by an internal combustion engine and designed for use on the public highways, such as automobiles, trucks, and buses.

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

(c) **Air pollution control system.** "Air pollution control system" means any device or element of design installed on or in a motor vehicle or motor vehicle engine in order to comply with pollutant emission restrictions established for the motor vehicle or motor vehicle engine by federal statute or regulation.

Subd. 2. **Prohibited acts.** (a) A person may not knowingly tamper with, adjust, alter, change, or disconnect any air pollution control system on a motor vehicle or on a motor vehicle engine.

(b) A person may not manufacture, advertise, offer for sale, sell, use, or install a device that causes any air pollution control system not to be functional as designed.

(c) A person may not sell or transfer a motor vehicle with knowledge that any air pollution control system is either not in place or is not functional.

Subd. 3. **Repairs.** This section does not prevent the service, repair, or replacement of any air pollution control system.

Subd. 3a. [Repealed, 2008 c 287 art 1 s 126]

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

Subd. 5. [Repealed, 1995 c 220 s 141]

Subd. 6. **Nonapplication.** This section does not apply to a sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying it.

History: *1Sp1985 c 14 art 19 s 36; 1988 c 487 s 1; 1988 c 634 s 11; 1990 c 446 s 4; 1995 c 247 art 1 s 44*

MANDATORY AIR BAG REPLACEMENT

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*

USED MOTOR OIL

325E.10 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.11 to 325E.112 and this section, the terms defined in this section have the meanings given them.

Subd. 2. **Motor oil.** "Motor oil" means oil used as a lubricant or hydraulics in a transmission or internal combustion engine motor vehicle as defined in section 168.002, subdivision 18.

Subd. 2a. **Motor oil filter.** "Motor oil filter" means any filter used in combination with motor oil.

Subd. 3. **Used motor oil.** "Used motor oil" means motor oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Subd. 4. **Person.** "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, or other entity.

Subd. 5. **Used motor oil filter.** "Used motor oil filter" means a motor oil filter which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History: *1977 c 68 s 1; 1995 c 220 s 118; 1997 c 216 s 130-132; 2003 c 128 art 2 s 44*

325E.11 COLLECTION FACILITIES; NOTICE.

(a) Any person selling at retail or offering motor oil or motor oil filters for retail sale in this state shall:

(1) post a notice indicating the nearest location where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse, post a toll-free telephone number that may be called by the public to determine a convenient location, or post a listing of locations where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse; or

(2) if the person is subject to section 325E.112, subdivision 1, paragraph (b), post a notice informing customers purchasing motor oil or motor oil filters of the location of the used motor oil and used motor oil filter collection site established by the retailer in accordance with section

325E.112, subdivision 1, paragraph (b), where used motor oil and used motor oil filters may be returned at no cost.

(b) A notice under paragraph (a) shall be posted on or adjacent to the motor oil and motor oil filter displays, be at least 8-1/2 inches by 11 inches in size, contain the universal recycling symbol with the following language:

(1) "It is illegal to put used oil and used motor oil filters in the garbage.";

(2) "Recycle your used oil and used motor oil filters."; and

(3)(i) "There is a free collection site here for your used oil and used motor oil filters.";

(ii) "There is a free collection site for used oil and used motor oil filters located at (name of business and street address).";

(iii) "For the location of a free collection site for used oil and used motor oil filters call (toll-free phone number)."; or

(iv) "Here is a list of free collection sites for used oil and used motor oil filters."

(c) The Division of Weights and Measures in the Department of Commerce shall enforce compliance with this section as provided in section 239.54. The Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072 in coordination with the Division of Weights and Measures.

History: *1977 c 68 s 2; 1987 c 348 s 37; 1995 c 220 s 119; 1997 c 216 s 133; 1999 c 231 s 182; 1Sp2001 c 4 art 6 s 72*

325E.112 USED MOTOR OIL AND USED MOTOR OIL FILTER COLLECTION.

Subdivision 1. **Collection.** (a) Motor oil and motor oil filter manufacturers and retailers shall seek to provide by May 31, 2001:

(1) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a five-mile radius of any resident in the seven-county metropolitan area; and

(2) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a city or town with a population of greater than 1,500 outside the seven-county metropolitan area. The commissioner of the Pollution Control Agency shall determine by June 30, 2001, whether these goals have been met.

(b) If the commissioner of the Pollution Control Agency determines that motor oil and motor oil filter manufacturers and retailers have not met the goals in paragraph (a) by May 31, 2001, then beginning July 1, 2001, all retailers that sell at an individual location more than 1,000 motor oil filters per calendar year at retail for off-site installation must provide for collection of used motor oil and used motor oil filters from the public. Retailers who do not collect the used motor oil and used motor oil filters at their individual locations may meet the requirement by entering into a written agreement with another party whose location is:

(1) within two miles of the retailer's location if the retailer is located:

(i) within the Interstate Highway 494/694 beltway;

(ii) in a home rule charter or statutory city or a town contiguous to the Interstate Highway 494/694 beltway; or

(iii) in a home rule charter or statutory city of over 30,000 population within the metropolitan area as defined in section 473.121; or

(2) within five miles of the retailer's location if the retailer is not in an area described in clause (1).

(c) The written agreement under paragraph (b) must specify that the other party will accept from the public up to ten gallons of used motor oil and ten used motor oil filters per person per month during normal hours of operation unless:

(1) the used motor oil is known to be contaminated with antifreeze, other hazardous waste, or other materials which may increase the cost of used motor oil management and disposal;

(2) the storage equipment for that particular waste is temporarily filled to capacity; or

(3) the used motor oil or used motor oil filters are from a business.

(d) Persons accepting used motor oil from the public in accordance with this subdivision shall presume that the used motor oil is not contaminated with hazardous waste, provided the person offering the used motor oil is acting in good faith and the person accepting the used motor oil does not have evidence to the contrary. Persons collecting used motor oil from the public must take precautions to prevent contamination of used motor oil storage equipment. Precautions may include, but are not limited to, keeping a log of persons dropping off used motor oil, securing access to used motor oil storage equipment, or posting signage at the site indicating the proper use of the equipment.

(e) Persons accepting used motor oil and used motor oil filters under paragraph (b), including persons accepting the oil and filters on behalf of the retailer, may not charge a fee when accepting ten gallons or less of used motor oil or ten or fewer used motor oil filters per person per month.

(f) Persons that receive contaminated used motor oil may manage the used motor oil as household hazardous waste through publicly administered household hazardous waste collection programs, with approval from the household hazardous waste program. Used motor oil contaminated with hazardous waste from the public that cannot be managed through a household hazardous waste collection program must be managed as a hazardous waste in accordance with rules adopted by the Pollution Control Agency.

Subd. 2. **Reimbursement program.** A contaminated used motor oil reimbursement program is established to provide reimbursement of the costs of disposing of contaminated used motor oil. In order to receive reimbursement, persons who accept used motor oil from the public or parties that they have contracted with to accept used motor oil must provide to the commissioner of the Pollution Control Agency proof of contamination, information on methods the person used to prevent the contamination of used motor oil at the site, a copy of the billing for disposal costs incurred because of the contamination and proof of payment, and a copy of the hazardous waste manifest or shipping paper used to transport the waste. The commissioner shall reimburse a recipient of contaminated used motor oil 100 percent of the costs of properly disposing of the contaminated used motor oil. The commissioner may not reimburse persons who intentionally place contaminants or do not take precautions to prevent contaminants from being placed in used motor oil, or operate a private collection site that:

(1) is not publicly promotable or listed with the agency;

(2) does not accept up to five gallons of used motor oil and five used motor oil filters per person per day without charging a fee; or

(3) does not control access to the site during times when the site is closed.

A person operating a collection site may refuse to accept any used motor oil or used motor oil filter:

(1) that is from a business;

(2) that appears to be contaminated with antifreeze, hazardous waste, or other materials that may increase the cost of used motor oil management and disposal; or

(3) when the storage equipment for that particular waste is temporarily filled.

Persons operating government collection sites are eligible for reimbursement of the costs of disposing of contaminated used motor oil. Reimbursements made under this subdivision are limited to the money available in the contaminated used motor oil reimbursement account.

Subd. 2a. [Repealed, 1Sp2003 c 21 art 8 s 20]

Subd. 3. [Repealed, 2003 c 128 art 2 s 56]

Subd. 4. **Liability exemption.** Persons who accept used motor oil and used motor oil filters from the public and retailers and manufacturers who contract with such persons for purposes of subdivision 1 are exempt from liability under chapter 115B for the used motor oil, contaminated used motor oil, and used motor oil filters accepted at facilities that accept used motor oil or used motor oil filters from the public free of charge, after the used motor oil, contaminated used motor oil, and used motor oil filters are sent off-site in compliance with rules adopted by the Pollution Control Agency.

Subd. 5. **Enforcement.** The commissioner of the Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072.

History: *1995 c 220 s 120; 1997 c 216 s 134; 1998 c 389 art 16 s 16; 1999 c 231 s 183-185*

325E.113 [Repealed, 2003 c 128 art 2 s 56]

LEAD ACID BATTERIES

325E.115 LEAD ACID BATTERIES; COLLECTION FOR RECYCLING.

Subdivision 1. **Surcharge; collection; notice.** (a) A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in this state shall:

(1) accept, at the point of transfer, lead acid batteries from customers;

(2) charge a fee of at least $10 per battery sold unless the customer returns a used battery to the retailer; and

(3) post written notice in accordance with section 325E.1151.

(b) Any person selling lead acid batteries at wholesale or offering lead acid batteries for sale at wholesale must accept, at the point of transfer, lead acid batteries from customers.

Subd. 2. **Compliance; management.** The Division of Weights and Measures in the Department of Commerce shall enforce compliance of subdivision 1 as provided in section 239.54. The commissioner of the Pollution Control Agency shall inform persons governed by subdivision 1 of requirements for managing lead acid batteries.

History: *1987 c 186 s 15; 1987 c 348 s 38; 1Sp1989 c 1 art 20 s 21; 1991 c 337 s 58; 1Sp2001 c 4 art 6 s 73; 2010 c 258 s 1*

325E.1151 LEAD ACID BATTERY PURCHASE AND RETURN.

Subdivision 1. **Purchasers must return battery or pay surcharge.** (a) A person who purchases a lead acid battery at retail, except a lead acid battery that is designed to provide power for a boat motor that is purchased at the same time as the battery, must:

(1) return a lead acid battery to the retailer; or

(2) pay the retailer a surcharge of at least $10.

(b) A person who has paid a surcharge under paragraph (a) must receive a refund of the surcharge from the retailer if the person returns a lead acid battery with a receipt for the purchase of a new battery from that retailer within 30 days after purchasing a new lead acid battery.

(c) A retailer may keep the unrefunded surcharges for lead acid batteries not returned within 30 days.

Subd. 2. **Retailers must accept batteries.** (a) A person who sells lead acid batteries at retail must accept lead acid batteries from consumers and may not charge to receive the lead acid batteries. A consumer may not deliver more than five lead acid batteries to a retailer at one time.

(b) A retailer of lead acid batteries must recycle the lead acid batteries received from consumers.

(c) A retailer who violates paragraph (b) is guilty of a misdemeanor. Each lead acid battery that is not recycled is a separate violation.

Subd. 3. **Retailers must post notices.** (a) A person who sells lead acid batteries at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least 8-1/2 inches by 11 inches and contain the universal recycling symbol and state:

"NOTICE: USED BATTERIES

This retailer is required to accept your used lead acid batteries, EVEN IF YOU DO NOT PURCHASE A BATTERY. When you purchase a new battery, you will be charged an additional amount of at least $10 unless you return a used battery within 30 days.

It is a crime to put a motor vehicle battery in the garbage."

Subd. 4. **Notices required in newspaper advertisements.** (a) An advertisement for sale of new lead acid batteries at retail in newspapers published in this state must contain the notice in paragraph (b).

(b) The notice must state:

"At least $10 additional charge unless a used lead acid battery is returned. Improper disposal of a lead acid battery is a crime."

History: *1Sp1989 c 1 art 20 s 22; 1991 c 337 s 59; 1993 c 249 s 32; 2010 c 258 s 2-4*

325E.12 PENALTY.

Violation of sections 325E.10 to 325E.1151 is a petty misdemeanor. Sections 325E.10 to 325E.1151 may be enforced under section 115.071.

History: *1977 c 68 s 3; 1993 c 249 s 33*

BATTERIES AND CORDLESS PRODUCTS

325E.125 GENERAL AND SPECIAL PURPOSE BATTERY REQUIREMENTS.

Subdivision 1. **Labeling.** (a) The manufacturer of a button cell battery that is to be sold in this state shall ensure that each battery contains no intentionally introduced mercury or is labeled to clearly identify for the final consumer of the battery the type of electrode used in the battery.

(b) The manufacturer of a rechargeable battery that is to be sold in this state shall ensure that each rechargeable battery is labeled to clearly identify for the final consumer of the battery the type of electrode and the name of the manufacturer. The manufacturer of a rechargeable battery shall also provide clear instructions for properly recharging the battery.

Subd. 2. **Mercury content.** (a) Except as provided in paragraph (c), a manufacturer may not sell, distribute, or offer for sale in this state an alkaline manganese battery that contains more than 0.025 percent mercury by weight.

(b) On application, the commissioner of the Pollution Control Agency may exempt a specific type of battery from the requirements of paragraph (a) or (d) if there is no battery meeting the requirements that can be reasonably substituted for the battery for which the exemption is sought. A battery exempted by the commissioner under this paragraph is subject to the requirements of section 115A.9155, subdivision 2.

(c) Notwithstanding paragraph (a), a manufacturer may not sell, distribute, or offer for sale in this state a button cell nonrechargeable battery not subject to paragraph (a) that contains more than 25 milligrams of mercury.

(d) A manufacturer may not sell, distribute, or offer for sale in this state a dry cell battery containing a mercuric oxide electrode.

(e) After January 1, 1996, a manufacturer may not sell, distribute, or offer for sale in this state an alkaline manganese battery, except an alkaline manganese button cell, that contains mercury unless the commissioner of the Pollution Control Agency determines that compliance with this requirement is not technically and commercially feasible.

Subd. 2a. **Approval of new batteries.** A manufacturer may not sell, distribute, or offer for sale in this state a nonrechargeable battery other than a zinc air, zinc carbon, silver oxide, lithium, or alkaline manganese battery, without first having received approval of the battery from the commissioner of the Pollution Control Agency. The commissioner shall approve only batteries that comply with subdivision 1 and do not pose an undue hazard when disposed of. This subdivision is intended to ensure that new types of batteries do not add additional hazardous or toxic materials to the state's mixed municipal waste stream.

Subd. 3. **Rechargeable tools and appliances.** (a) A manufacturer may not sell, distribute, or offer for sale in this state a rechargeable consumer product unless:

(1) the battery can be easily removed by the consumer or is contained in a battery pack that is separate from the product and can be easily removed; and

(2) the product and the battery are both labeled in a manner that is clearly visible to the consumer indicating that the battery must be recycled or disposed of properly and the battery must be clearly identifiable as to the type of electrode used in the battery.

(b) "Rechargeable consumer product" as used in this subdivision means any product that contains a rechargeable battery and is primarily used or purchased to be used for personal, family, or household purposes.

(c) On application by a manufacturer, the commissioner of the Pollution Control Agency may exempt a rechargeable consumer product from the requirements of paragraph (a) if:

(1) the product cannot be reasonably redesigned and manufactured to comply with the requirements prior to the effective date of Laws 1990, chapter 409, section 2;

(2) the redesign of the product to comply with the requirements would result in significant danger to public health and safety; or

(3) the type of electrode used in the battery poses no unreasonable hazards when placed in and processed or disposed of as part of mixed municipal solid waste.

(d) An exemption granted by the commissioner of the Pollution Control Agency under paragraph (c), clause (1), must be limited to a maximum of two years and may be renewed.

Subd. 4. **Rechargeable batteries and products; notice.** (a) A person who sells rechargeable batteries or products powered by rechargeable batteries governed by section 115A.9157 at retail shall post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least four inches by six inches and state:

"ATTENTION USERS OF RECHARGEABLE BATTERIES AND CORDLESS PRODUCTS:

Under Minnesota law, manufacturers of rechargeable batteries, rechargeable battery packs, and products powered by nonremovable rechargeable batteries will provide a special collection system for these items by April 15, 1994. It is illegal to put rechargeable batteries in the garbage. Use the special collection system that will be provided in your area. Take care of our environment.

DO NOT PUT RECHARGEABLE BATTERIES OR PRODUCTS POWERED BY NONREMOVABLE RECHARGEABLE BATTERIES IN THE GARBAGE."

(c) Notice is not required for home solicitation sales, as defined in section 325G.06, or for catalogue sales.

Subd. 5. **Prohibitions.** A manufacturer of rechargeable batteries or products powered by rechargeable batteries that does not participate in the pilot projects and programs required in section 115A.9157 may not sell, distribute, or offer for sale in this state rechargeable batteries or products powered by rechargeable batteries after January 1, 1992.

After January 1, 1992, a person who first purchases rechargeable batteries or products powered by rechargeable batteries for importation into the state for resale may not purchase rechargeable batteries or products powered by rechargeable batteries made by any person other than a manufacturer that participates in the projects and programs required under section 115A.9157.

History: *1990 c 409 s 2; 1991 c 257 s 3-6; 1992 c 593 art 1 s 35; 1993 c 249 s 34*

325E.1251 PENALTY ENFORCEMENT.

Subdivision 1. **Penalty.** Violation of section 325E.125 is a misdemeanor. A manufacturer who violates section 325E.125 is also subject to a minimum fine of $100 per violation.

Subd. 2. **Recovery of costs.** Section 325E.125 may be enforced under section 115.071. In an enforcement action under this section in which the state prevails, the state may recover reasonable administrative expenses, court costs, and attorney fees incurred to take the enforcement action, in an amount to be determined by the court.

History: *1990 c 409 s 3; 1991 c 257 s 7; 1993 c 249 s 35*

NOTICE FOR MERCURY FLUORESCENT LAMPS

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*

ODOMETERS

325E.13 TAMPERING WITH ODOMETERS; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.13 to 325E.16, the terms defined in this section have the meanings given them.

Subd. 2. **Owner.** "Owner" means a person, other than a secured party, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

Subd. 3. **Motor vehicle.** "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks, except snowmobiles and other devices designed and used primarily for the transportation of persons over natural terrain, snow, or ice propelled by wheels, skis, tracks, runners, or whatever other means.

Subd. 4. **Person.** "Person" means an individual, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

History: *1973 c 264 s 1*

325E.14 PROHIBITED ACTS.

Subdivision 1. **Tampering.** No person shall knowingly tamper with, adjust, alter, change, set back, disconnect or, with intent to defraud, fail to connect the odometer of any motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than has actually been driven by the motor vehicle.

Subd. 2. **Operating restriction.** No person shall with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected

or nonfunctional.

Subd. 3. **Sales and use restrictions.** No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage.

Subd. 4. **Sales restriction.** No person shall sell or offer for sale any motor vehicle with knowledge that the mileage registered on the odometer has been altered so as to reflect a lower mileage than has actually been driven by the motor vehicle without disclosing such fact to prospective purchasers.

Subd. 5. **Conspiracy.** No person shall conspire with any other person to violate this section or section 325E.15.

Subd. 6. **Repair or replacement restriction.** Nothing in this section shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a written notice shall be attached to the left door frame of the vehicle by the owner or an agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. No person shall remove or alter such a notice so affixed.

History: *1973 c 264 s 2; 1986 c 444*

325E.15 TRANSFER OF MOTOR VEHICLE; MILEAGE DISCLOSURE.

No person shall transfer a motor vehicle without disclosing in writing to the transferee the true mileage registered on the odometer reading or that the actual mileage is unknown if the odometer reading is known by the transferor to be different from the true mileage. The regulations contained in Code of Federal Regulations, title 49, sections 580.1 to 580.17, as amended through October 1, 1998, implementing Title IV of the Federal Motor Vehicle Information and Cost Savings Act prescribe the manner in which written disclosure must be made in this state and are adopted by reference. No transferor shall violate any regulations adopted under this section or knowingly give a false statement to a transferee in making any disclosure required by the regulations.

History: *1973 c 264 s 3; 2000 c 426 s 30*

325E.16 PENALTIES; REMEDIES.

Subdivision 1. **Criminal penalty.** Any person who is found to have violated sections 325E.13 to 325E.16 shall be guilty of a gross misdemeanor.

Subd. 2. **Civil penalty.** In addition to the penalties provided in subdivision 1, any person who is found to have violated sections 325E.13 to 325E.16 shall be subject to the penalties provided in section 8.31.

Subd. 3. **Civil action.** Any person injured by a violation of sections 325E.13 to 325E.16 shall recover the actual damages sustained together with costs and disbursements, including a reasonable attorney's fee, provided that the court in its discretion may increase the award of damages to an amount not to exceed three times the actual damages sustained or $1,500, whichever is greater.

History: *1973 c 264 s 4*

TRACTOR CLOCK-HOUR METER TAMPERING

325E.165 DEFINITION.

For purposes of sections 325E.165 to 325E.167, "farm tractor" means a self-propelled vehicle that is designed primarily for pulling or propelling agricultural machinery and implements and used principally in the occupation or business of farming, including an implement of husbandry, as defined in section 169.011, subdivision 35, that is self-propelled.

History: *2006 c 211 s 1*

325E.166 CLOCK-HOUR METERS; PROHIBITED ACTS.

Subdivision 1. **Tampering.** No person shall, with intent to defraud, knowingly tamper with, adjust, alter, change, set back, disconnect, or fail to connect the clock-hour meter of a farm tractor, or cause any of the foregoing to occur to a clock-hour meter of a farm tractor, so as to reflect fewer hours than the farm tractor has actually been in operation.

Subd. 2. **Operation with disconnected or nonfunctional meter.** No person shall, with intent to defraud, operate a farm tractor knowing that the clock-hour meter of the farm tractor is disconnected or nonfunctional.

Subd. 3. **Tampering device.** No person shall advertise for sale, sell, use, or install on any part of a farm tractor or on a clock-hour meter in a farm tractor a device that causes the clock-hour meter to register any hours of operation other than the true hours of operation that the clock-hour meter was designed to measure.

Subd. 4. **Disclosure.** No person shall sell or offer for sale or trade in a farm tractor with knowledge that the hours registered on the clock-hour meter have been altered so as to reflect fewer hours than the farm tractor has actually been in operation, without disclosing the fact to prospective purchasers.

Subd. 5. **Conspiracy.** No person shall conspire with another person to violate this section.

History: *2006 c 211 s 2*

325E.167 PENALTIES AND REMEDIES.

Subdivision 1. **Civil penalty.** A person who is found to have violated sections 325E.165 and 325E.166 is subject to the penalties in section 8.31.

Subd. 2. **Private right of action.** A person injured by a violation of sections 325E.165 and 325E.166 may recover the actual damages sustained together with costs and disbursements, including reasonable attorney fees. The court, in its discretion, may increase the award of damages to an amount not to exceed three times the actual damages sustained or $1,500, whichever is greater.

History: *2006 c 211 s 3*

RECORDED MATERIAL

325E.169 DEFINITIONS.

Subdivision 1. **Scope.** For the purpose of sections 325E.169 to 325E.201, the terms defined in this section have the meanings given them.

Subd. 2. **Person.** "Person" means an individual, firm, partnership, limited liability company, corporation, or association.

Subd. 3. **Owner.** "Owner" means the person who owns the sounds or images fixed in a master recording upon which sounds or images are recorded and from which the transferred recorded sounds or images are directly or indirectly derived.

Subd. 4. **Recording.** "Recording" means the tangible medium on which sounds or images are recorded or otherwise stored and includes a phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images may be recorded or stored.

History: *1993 c 221 s 1*

325E.17 UNLAWFUL TRANSFERS OR SALES OF RECORDINGS.

Unless exempt under section 325E.19, it is unlawful for any person knowingly:

(1) to transfer or cause to be transferred any sounds or images from one recording to another recording; or

(2) to sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution or circulation, or cause to be sold, distributed or circulated, offered for sale, distribution or circulation, or possessed for sale, distribution or circulation, any recording without the consent of the owner of the master recording.

History: *1973 c 579 s 1; 1993 c 221 s 2*

325E.18 IDENTITY OF TRANSFEROR.

It is unlawful for any person for commercial purposes to sell, distribute, circulate, offer for sale, distribution or circulation, or possess for the purpose of sale, distribution or circulation, any recording unless the recording bears the actual name and address of the transferor of the sounds or images in a prominent place on its outside face, label, or package.

History: *1973 c 579 s 2; 1993 c 221 s 3*

325E.19 EXEMPTIONS.

Sections 325E.169 to 325E.201 do not apply to any person who transfers or causes to be transferred any recordings (a) intended for or in connection with radio or television broadcast transmission or related uses, (b) for archival purposes, (c) for library purposes, (d) for educational purposes, or (e) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

History: *1973 c 579 s 3; 1993 c 221 s 4*

325E.20 [Repealed, 1993 c 221 s 7]

325E.201 VIOLATIONS; PUNISHMENT.

A violation of section 325E.17 or 325E.18 is a felony and is punishable upon conviction by:

(1) a fine of not more than $100,000, or imprisonment for not more than two years, or both, if the violation is a first offense involving more than 100 but not more than 1,000 sound recordings or more than seven but not more than 65 audio-visual recordings;

(2) a fine of not more than $250,000, or imprisonment for not more than five years, or both, if the violation is a second or subsequent offense, or involves more than 1,000 sound recordings or more than 65 audio-visual recordings; or

(3) a fine of not more than $25,000, or imprisonment for not more than a year and a day, or both, for any other violation.

History: *1993 c 221 s 5*

SCRAP METAL; PURCHASE AND SALE

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, rags 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. 2a. **Purchase or receipt of beer kegs.** A scrap metal dealer, or the dealer's agent, employer, or representative, shall not purchase or receive a refillable metal beer keg from anyone except the manufacturer of the beer keg, the brewer of the beer that was sold or provided in the keg, or an authorized representative of the manufacturer or brewer.

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: *(10225) 1907 c 228 s 1; 1957 c 960 s 1; 1973 c 123 art 5 s 7; 1986 c 444; 2005 c 10 art 2 s 4; 2007 c 54 art 7 s 21; 2008 c 259 s 1*

325E.22 [Repealed, 2009 c 83 art 3 s 24]

OUTDOOR ADVERTISING; DISCRIMINATION

325E.23 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.23 to 325E.25 the terms defined in this section have the meanings given them.

Subd. 2. **Advertising device.** "Advertising device" means any billboard, sign, notice, poster, display emblem or similar item located out of doors which is intended to be viewed by

the public from a highway or street and includes any structure used for the display of any such outdoor advertising device.

Subd. 3. **Business of outdoor advertising.** "Business of outdoor advertising" means the business conducted for direct profit through rentals, or other compensation received from the erection or maintenance of advertising devices.

Subd. 4. **Person.** "Person" means an individual, partnership, firm, association, or corporation.

History: *1965 c 531 s 1*

325E.24 FURNISHING OF SPACE; EXCEPTIONS.

Subdivision 1. **Unlawful discrimination prohibited.** It is unlawful for any person engaged in the business of outdoor advertising to directly or indirectly discriminate on the basis of race, color, creed or political affiliation in the furnishing of advertising or advertising service or space for advertisements on advertising devices. This shall not be construed as making mandatory the assignment of space immediately adjacent to previously leased space for the promotion of conflicting services or ideas.

Subd. 2. **Limits on duty to furnish.** The person engaged in the business of outdoor advertising does not have to accept a request for advertising space from any person not willing to pay the prescribed rates or charges and the advertising of any material prohibited by law.

History: *1965 c 531 s 2*

325E.25 VIOLATIONS.

Any person violating the provisions of sections 325E.23 to 325E.25 is guilty of a misdemeanor.

History: *1965 c 531 s 3*

AUTOMATIC DIALING-ANNOUNCING DEVICES

325E.26 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 325E.26 to 325E.30 have the meanings given them in this section.

Subd. 2. **Automatic dialing-announcing device.** "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

Subd. 3. **Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line.

Subd. 4. **Commercial telephone solicitation.** "Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in

Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e).

Subd. 5. **Subscriber.** "Subscriber" means a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person.

Subd. 6. **Message.** "Message" means any call, regardless of its content.

History: *1987 c 294 s 1; 1994 c 534 art 2 s 1; 2003 c 2 art 1 s 38*

325E.27 USE OF PRERECORDED OR SYNTHESIZED VOICE MESSAGES.

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 325E.30 do not apply to (1) messages from school districts to students, parents, or employees, (2) messages to subscribers with whom the caller has a current business or personal relationship, or (3) messages advising employees of work schedules. This section does not apply to messages from a nonprofit tax-exempt charitable organization sent solely for the purpose of soliciting voluntary donations of clothing to benefit disabled United States military veterans and containing no request for monetary donations or other solicitations of any kind.

History: *1987 c 294 s 2; 2009 c 178 art 1 s 60*

325E.28 REQUIREMENTS ON AUTOMATIC DIALING-ANNOUNCING DEVICES.

A caller shall not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber.

History: *1987 c 294 s 3*

325E.29 MESSAGE REQUIREMENTS.

Where the message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose:

(1) the name of the business, firm, organization, association, partnership, or entity for which the message is being made;

(2) the purpose of the message;

(3) the identity or kinds of goods or services the message is promoting; and

(4) if applicable, the fact that the message intends to solicit payment or commitment of funds.

History: *1987 c 294 s 4*

325E.30 TIME OF DAY LIMIT.

A caller shall not use an automatic dialing-announcing device nor make any commercial telephone solicitation before 9:00 a.m. or after 9:00 p.m.

History: *1987 c 294 s 5*

325E.31 REMEDIES.

A person who is found to have violated sections 325E.27 to 325E.30 is subject to the penalties and remedies, including a private right of action to recover damages, as provided in section 8.31.

History: *1987 c 294 s 6*

TELEPHONE SOLICITATION

325E.311 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.311 to 325E.316, the terms in subdivisions 2 to 6 have the meanings given them.

Subd. 2. **Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a residential subscriber in this state by using a telephone or a telephone line.

Subd. 3. **Caller identification service.** "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5. **Residential subscriber.** "Residential subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person.

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 or a debt settlement services provider defined in section 332B.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: *2002 c 367 s 1; 1Sp2005 c 1 art 4 s 92; 2007 c 57 art 3 s 42; 2009 c 37 art 4 s 5*

325E.312 TELEPHONE SOLICITATIONS.

Subdivision 1. **Persons included in no-call list.** No caller shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who is on the no-call list established and maintained under section 325E.313.

Subd. 2. **Identification of caller.** Any caller who makes a telephone solicitation to a residential subscriber in this state shall state the caller's identity clearly at the beginning of the call and, if requested, the caller's telephone number.

Subd. 3. **Interference with caller identification.** No caller who makes a telephone solicitation to a residential subscriber in this state shall knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

History: *2002 c 367 s 2*

325E.313 NO-CALL LIST.

Subdivision 1. **Establishment of list.** The commissioner shall establish and maintain a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The commissioner may fulfill the requirements of this subdivision by contracting with an agent for the establishment and maintenance of the list. The list must be established by January 1, 2003.

Subd. 2. **Operation and maintenance of list.** (a) Each local exchange company must inform its residential subscribers of the opportunity to provide notification to the commissioner or its contractor that the subscriber objects to receiving telephone solicitations. The notification must be made in the manner prescribed by the commissioner.

(b) Any residential subscriber may contact the commissioner or the commissioner's agent and give notice, in the manner prescribed by the commissioner, that the subscriber objects to receiving telephone solicitations. The commissioner shall add the telephone number of any subscriber who gives notice of objection to the list maintained pursuant to subdivision 1 within 90 days of the date the notice is received.

(c) The commissioner shall allow consumers to give notice under this subdivision by mail or electronically.

(d) The commissioner shall establish the procedures by which a person wishing to make telephone solicitations may obtain access to the list. Those procedures shall, to the extent practicable, allow for access to paper or electronic copies of the list.

Subd. 3. **Use of federal list.** If, pursuant to United States Code, title 15, section 6102(a), the Federal Trade Commission establishes a national list of telephone numbers of subscribers who object to receiving telephone solicitations, the commissioner may consider the Federal Trade Commission as its agent for the establishment and maintenance of a list.

History: *2002 c 367 s 3; 2008 c 363 art 6 s 8*

325E.314 ACQUISITION AND USE OF LIST.

(a) A caller who makes a telephone solicitation to the telephone line of any residential subscriber must, at the time of the call, have obtained access to a current version of the list at least once in the 90 days prior to the call. A caller who complies with this requirement is not liable for any violation of section 325E.312 relating to a solicitation made to a subscriber during the first 30 days after the caller first obtained a copy of the list including that subscriber's telephone

number that has not been superseded by a later list obtained by the caller that does not include the subscriber's telephone number.

(b) If the Federal Trade Commission establishes a national do-not-call list as described in section 325E.313, subdivision 2, a person or entity who is required by law to obtain a copy of the national list may meet its requirement through proof of purchase of the Minnesota numbers from the federal list.

History: *2002 c 367 s 4; 2008 c 363 art 6 s 9*

325E.315 RELEASE OF INFORMATION.

Information contained in the list established under section 325E.313 shall be used only for the purposes of compliance with sections 325E.311 to 325E.316 or in a proceeding or action under section 325E.316. The information contained in the list is private data on individuals or nonpublic data as defined in section 13.02.

History: *2002 c 367 s 5*

325E.316 PENALTIES.

Subdivision 1. **Enforcement by commissioner.** In enforcing sections 325E.311 to 325E.316, the commissioner has all powers provided by section 45.027, including, but not limited to, the power to impose a civil penalty to a maximum of $1,000 for each solicitation that violates section 325E.312.

Subd. 2. **Defenses.** (a) In any action or proceeding against a person under this section, it shall be a defense that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of section 325E.312.

(b) No provider of caller identification service shall be held liable for violations of section 325E.312 committed by other persons or entities.

Subd. 3. **Time limitations.** No action or proceeding may be brought under this section:

(1) more than two years after the person bringing the action knew or should have known of the alleged violation; or

(2) more than two years after the termination of any proceeding or action by the state of Minnesota, whichever is later.

Subd. 4. **Jurisdiction.** A court of this state may exercise personal jurisdiction over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section according to the provisions of section 543.19.

Subd. 5. **Other remedies.** The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

History: *2002 c 367 s 6*

325E.3161 TELEPHONE SOLICITATIONS; EXPIRATION PROVISION.

Sections 325E.311 to 325E.316 expire December 31, 2012.

History: *2009 c 178 art 1 s 61*

WIRELESS DIRECTORIES

325E.317 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 325E.317 and 325E.318, the terms defined in this section have the meanings given.

Subd. 2. **Provider.** "Provider" means a provider of wireless telecommunications services.

Subd. 3. **Telecommunications services.** "Telecommunications services" has the meaning given in section 297A.61, subdivision 24, paragraph (a).

Subd. 4. **Wireless directory assistance service.** "Wireless directory assistance service" means any service for connecting calling parties to a wireless telecommunications services customer when the calling parties themselves do not possess the customer's wireless telephone number information.

Subd. 5. **Wireless telecommunications services.** "Wireless telecommunications services" means commercial mobile radio services as defined in Code of Federal Regulations, title 47, part 20.

Subd. 6. **Wireless telephone directory.** "Wireless telephone directory" means a directory or database containing wireless telephone number information or any other identifying information by which a calling party may reach a wireless telecommunications services customer.

Subd. 7. **Wireless telephone number information.** "Wireless telephone number information" means the telephone number, electronic address, and any other identifying information by which a calling party may reach a wireless telecommunications services customer, which is assigned by a provider to the customer and includes the customer's name and address.

History: *2005 c 163 s 83; 2009 c 86 art 1 s 57*

325E.318 WIRELESS DIRECTORIES.

Subdivision 1. **Notice.** No provider of wireless telecommunications service, or any direct or indirect affiliate or agent of a provider, may include the wireless telephone number information of a customer in a wireless telephone directory assistance service database or publish, sell, or otherwise disseminate the contents of a wireless telephone directory assistance service database unless the provider provides a conspicuous notice to the subscriber informing the subscriber that the subscriber will not be listed in a wireless directory assistance service database without the subscriber's prior express authorization.

Subd. 2. **Authorization.** (a) A provider, or any direct or indirect affiliate or agent of a provider, may not disclose, provide, or sell a customer's wireless telephone number information, or any part thereof, for inclusion in a wireless telephone directory of any form, and may not sell a wireless telephone directory containing a customer's wireless telephone number information without first receiving prior express authorization from the customer. The customer's authorization must meet the following requirements:

(1) consent shall be affirmatively obtained separately from the execution of the service contract via verifiable means; and

(2) consent shall be unambiguous and conspicuously disclose that the subscriber is consenting to have the customer's dialing number sold or licensed as part of a publicly available directory assistance database.

(b) A record of the authorization shall be maintained for the duration of the service contract or any extension of the contract.

(c) A subscriber who provides express consent pursuant to paragraph (a) may revoke that consent via verifiable means at any time. A provider must comply with the customer's request to be removed from the directory and remove such listing from directory assistance within 60 days.

Subd. 3. **No fee to retain privacy.** A customer shall not be charged for opting not to be listed in a wireless telephone directory.

Subd. 4. **Remedies.** Every knowing violation of this section is punishable by a fine of up to $500 for each violation with a maximum aggregated amount of $10,000 for a provider, of which $100 per violation shall be paid to each victim of the violation. The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated. No telephone corporation, nor any official or employee of a telephone corporation, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

History: *2005 c 163 s 84*

TIRE RECYCLING

325E.32 WASTE TIRES; COLLECTION.

A person who sells automotive tires at retail must accept waste tires from customers for collection and recycling. The person must accept as many waste tires from each customer as tires are bought by that customer.

History: *1988 c 685 s 28*

MISCONDUCT OF ATHLETIC AGENTS

325E.33 MISCONDUCT OF ATHLETIC AGENTS.

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

(b) "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program. The term includes any individual who may be eligible to engage in collegiate sports in the future.

(c) "Athletic director" means the person discharging the duties of coordinating and administering the overall athletic program for the educational institution attended by the student athlete.

(d) "Educational institution" means the public or private high school, college, junior college, or university that the student athlete last attended or to which the student athlete has expressed written intention to attend.

Subd. 2. **Waiver of eligibility.** A student athlete's waiver of intercollegiate athletic eligibility is not effective until the waiver of eligibility form prescribed by this subdivision has been filed with the Offices of the Secretary of State and the athletic director for seven days. The waiver is considered to have been on file seven days as of the eighth day after the receipt by the Offices of the Secretary of State and the athletic director of the completed waiver of eligibility form prescribed by this subdivision. The original waiver is to be filed with the secretary of state

and must be available for public inspection in the Office of the Secretary of State during normal business hours. The waiver form must provide:

"WAIVER OF INTERCOLLEGIATE ATHLETIC ELIGIBILITY

I, ..., hereby waive any and all intercollegiate athletic eligibility. This waiver is not effective until seven days after it has been received by the Minnesota secretary of state and the office of the athletic director.

This waiver is revocable until my intercollegiate athletic eligibility is terminated as a result of my entering either a contract with an athletic agent or a professional sports contract.

.....

STUDENT ATHLETE

.....

EDUCATIONAL INSTITUTION

.....

DATE"

Subd. 3. **Representation of certain athletes prohibited.** A person may not, before the effective date of a student athlete's waiver of intercollegiate athletic eligibility, enter into a contract, written or oral, with a student athlete to:

(1) serve as the agent of the student athlete in obtaining a professional sports contract; or

(2) represent the student athlete or a professional sports organization in obtaining a professional sports contract for or with a student athlete.

A person who violates this subdivision is subject to the remedies under section 8.31, except that a civil penalty imposed under that section may be not more than $100,000, or three times the amount given, offered, or promised as an inducement for the student athlete to enter the agency contract or professional sports contract, exclusive of the compensation provided by the professional sports contract, whichever is greater.

Subd. 4. **Influencing of educational institution employees prohibited.** A person may not offer, give, or promise to give an employee of an educational institution, directly or indirectly, any benefit, reward, or consideration to which the employee is not legally entitled, with the intent that:

(1) the employee will influence a student athlete to enter into a contract with the person to serve as the athlete's agent or to enter into a professional sports contract; or

(2) the employee will refer student athletes to the person.

A person who violates this subdivision is subject to the remedies under section 8.31, except that a civil penalty imposed under that section may be not more than $100,000, or three times the value offered to the employee in violating this subdivision, whichever is greater.

Subd. 5. **Voidability of contract.** A contract entered into in violation of subdivision 3 is voidable by the student athlete. If voided by the student athlete, the athletic agent shall return to the student athlete any compensation received under the contract. The athletic agent shall also pay reasonable attorney's fees and costs incurred by a student athlete in any action or defense under this subdivision.

History: *1988 c 701 s 1*

DISTRIBUTION OF FREE NEWSPAPERS

325E.34 FREE NEWSPAPERS; EXCLUSIVE RIGHT TO DISTRIBUTE PROHIBITED.

Subdivision 1. **Definitions.** For the purposes of this section, the terms in paragraphs (a) and (b) have the meanings given them.

(a) "Newspaper" has the meaning given in section 331A.01, subdivision 5.

(b) "Place of public accommodation" has the meaning given in section 363A.03, subdivision 34.

Subd. 2. **Prohibition.** No contract may provide for an exclusive right to display free newspapers for distribution in any place of public accommodation.

History: *1990 c 379 s 1; 1990 c 567 s 10*

SELLER-FINANCED AGRICULTURAL INPUT SALES

325E.35 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to section 325E.36.

Subd. 2. **Agricultural chemical.** "Agricultural chemical" has the meaning given in section 18D.01, subdivision 3.

Subd. 3. **Agricultural production input.** "Agricultural production input" means crop production inputs and livestock production inputs.

Subd. 4. **Crop production input.** "Crop production input" means agricultural chemicals, seeds, petroleum products, the custom application of agricultural chemicals and seeds, and labor used in preparing the land for planting, cultivating, growing, producing, harvesting, drying, and storing crops or crop products.

Subd. 5. **Discounted cash price.** "Discounted cash price" means an amount equal to the total of the payments made over the period of the credit sale, discounted by the interest rate index.

Subd. 6. **Feed.** "Feed" means commercial feeds, feed ingredients, mineral feeds, drugs, animal health products, or customer-formula feeds that are used for feeding livestock, including commercial feed as defined in section 25.33, subdivision 5.

Subd. 7. **Interest rate index.** "Interest rate index" means the prime rate as published in the Wall Street Journal plus two percentage points.

Subd. 8. **Livestock production input.** "Livestock production input" means feed and labor used in raising livestock.

Subd. 9. **Petroleum product.** "Petroleum product" means motor fuels and special fuels that are used in the production of crops and livestock, including petroleum products as defined in section 296A.01, alcohol fuels, propane, lubes, and oils.

Subd. 10. **Seed.** "Seed" means agricultural seeds that are used to produce crops, including agricultural seeds and grains as defined in section 21.72, subdivision 12.

History: *1990 c 474 s 1; 1998 c 299 s 30*

325E.36 SELLER-FINANCED AGRICULTURAL INPUT SALES.

If a person sells agricultural production inputs at retail on credit and the interest rate charged to the buyer is less than the interest rate index, the person must also offer to sell the agricultural inputs to the buyer at a discounted cash price. Agricultural production inputs are sold on credit if the terms of the sale allow the buyer to submit any portion of the payment for the inputs more than 60 days after the date on which the goods are delivered.

History: *1990 c 474 s 2*

TERMINATION OF SALES REPRESENTATIVES

325E.37 TERMINATION OF SALES REPRESENTATIVES.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meaning given them.

(b) "Good cause" means a material breach of one or more provisions of a written sales representative agreement governing the relationship with the manufacturer, wholesaler, assembler, or importer, or in absence of a written agreement, failure by the sales representative to substantially comply with the material and reasonable requirements imposed by the manufacturer, wholesaler, assembler, or importer. Good cause includes, but is not limited to:

(1) the bankruptcy or insolvency of the sales representative;

(2) assignment for the benefit of creditors or similar disposition of the assets of the sales representative's business;

(3) the voluntary abandonment of the business by the sales representative as determined by a totality of the circumstances;

(4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the sales representative's business;

(5) any act of the sales representative which materially impairs the good will associated with the manufacturer's, wholesaler's, assembler's, or importer's trademark, trade name, service mark, logotype, or other commercial symbol; or

(6) failure to forward customer payments to the manufacturer, wholesaler, assembler, or importer.

(c) "Person" means a natural person, but also includes a partnership, corporation, and all other entities.

(d) "Sales representative" means a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission.

Sales representative does not include a person who:

(1) is an employee of the principal;

(2) places orders or purchases for the person's own account for resale;

(3) holds the goods on a consignment basis for the principal's account for resale; or

(4) distributes, sells, or offers the goods, other than samples, to end users, not for resale.

(e) "Sales representative agreement" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between a sales representative and another person or persons, whereby a sales representative is granted the right to represent,

sell, or offer for sale a manufacturer's, wholesaler's, assembler's, or importer's goods by use of the latter's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics, and in which there exists a community of interest between the parties in the marketing of the goods at wholesale, by lease, agreement, or otherwise. "Wholesale orders" means the solicitation of orders for goods by persons in the distribution chain for ultimate sale at retail.

Subd. 2. **Termination of agreement.** (a) A manufacturer, wholesaler, assembler, or importer may not terminate a sales representative agreement unless the person has good cause and:

(1) that person has given written notice setting forth the reason(s) for the termination at least 90 days in advance of termination; and

(2) the recipient of the notice fails to correct the reasons stated for termination in the notice within 60 days of receipt of the notice.

(b) A notice of termination is effective immediately upon receipt where the alleged grounds for termination are the reasons set forth in subdivision 1, paragraph (b), clauses (1) to (6), hereof.

Subd. 3. **Renewal of agreements.** Unless the failure to renew a sales representative agreement is for good cause, and the sales representative has failed to correct reasons for termination as required by subdivision 2, no person may fail to renew a sales representative agreement unless the sales representative has been given written notice of the intention not to renew at least 90 days in advance of the expiration of the agreement. For purposes of this subdivision, a sales representative agreement of indefinite duration shall be treated as if it were for a definite duration expiring 180 days after the giving of written notice of intention not to continue the agreement.

Subd. 4. **Rights upon termination.** If a sales representative is paid by commission under a sales representative agreement and the agreement is terminated, the representative is entitled to be paid for all sales as to which the representative would have been entitled to commissions pursuant to the provisions of the sales representative agreement, made prior to the date of termination of the agreement or the end of the notification period, whichever is later, regardless of whether the goods have been actually shipped. Payment of commissions due the sales representative shall be paid in accordance with the terms of the sales representative agreement or, if not specified in the agreement, payments of commissions due the sales representative shall be paid in accordance with section 181.145.

Subd. 5. **Arbitration.** (a) The sole remedy for a manufacturer, wholesaler, assembler, or importer who alleges a violation of any provision of this section is to submit the matter to arbitration. A sales representative may also submit a matter to arbitration, or in the alternative, at the sales representative's option prior to the arbitration hearing, the sales representative may bring the sales representative's claims in a court of law, and in that event the claims of all parties must be resolved in that forum. In the event the parties do not agree to an arbitrator within 30 days after the sales representative demands arbitration in writing, either party may request the appointment of an arbitrator from the American Arbitration Association. Each party to a sales representative agreement shall be bound by the arbitration. In the event that the American Arbitration Association declines to appoint an arbitrator, the arbitration shall proceed under chapter 572B. The cost of an arbitration hearing must be borne equally by both parties unless the arbitrator determines a more equitable distribution. Except as provided in paragraph (c), the arbitration proceeding is to be governed by the Uniform Arbitration Act, sections 572B.01 to 572B.31.

(b) The arbitrator may provide any of the following remedies:

(1) sustainment of the termination of the sales representative agreement;

(2) reinstatement of the sales representative agreement, or damages;

(3) payment of commissions due under subdivision 4;

(4) reasonable attorneys' fees and costs to a prevailing sales representative;

(5) reasonable attorneys' fees and costs to a prevailing manufacturer, wholesaler, assembler, or importer, if the arbitrator finds the complaint was frivolous, unreasonable, or without foundation; or

(6) the full amount of the arbitrator's fees and expenses if the arbitrator finds that the sales representative's resort to arbitration or the manufacturer's, wholesaler's, assembler's, or importer's defense in arbitration was vexatious and lacking in good faith.

(c) The decision of any arbitration hearing under this subdivision is final and binding on the sales representative and the manufacturer, wholesaler, assembler, or importer. The district court shall, upon application of a party, issue an order confirming the decision.

[See Note.]

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: *1990 c 539 s 1; 1991 c 190 s 1; 2007 c 135 art 3 s 18; 2007 c 140 art 6 s 1; 2010 c 264 art 2 s 5*

NOTE: The amendment to subdivision 5 by Laws 2010, chapter 264, article 2, section 5, is effective August 1, 2011. Laws 2010, chapter 264, article 2, section 9.

CFC PRODUCT SALES

325E.38 SALE OF CERTAIN CFC PRODUCTS PROHIBITED.

Subdivision 1. **Motor vehicle coolants.** A person may not offer for sale or sell CFC coolants in containers weighing less than 15 pounds that are designed for or are suitable for use in motor vehicle air conditioners except to persons who possess CFC recycling equipment and who present proof of ownership of CFC recycling equipment at the time of purchase.

Subd. 2. **Solvents.** A person may not offer for sale or sell solvents containing CFCs in containers weighing 15 pounds or less.

Subd. 3. **Party streamers.** A person may not offer for sale or sell CFC propelled party

streamers.

Subd. 4. **Noise horns.** A person may not offer for sale or sell CFC noise horns.

Subd. 5. **CFC definition.** For purposes of this section, the term "CFC" has the definition given in section 116.70, subdivision 3.

Subd. 6. **Applicability to new chemicals.** For each new chemical added to section 116.70, subdivision 3, after the effective date of Laws 1990, chapter 560, the application of this section to the new chemical is effective on the date specified for elimination of production of that chemical in the Montreal Treaty.

History: *1990 c 560 art 2 s 8*

POLYBROMINATED DIPHENYL ETHER PRODUCTS

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 noncomestible 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 2, 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; 2008 c 277 art 1 s 70*

DECABROMODIPHENYL ETHER

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 decabromodiphenyl 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*

ITEMS CONTAINING LEAD

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 1 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 National 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 1,2*

325E.3891 CADMIUM IN CHILDREN'S JEWELRY.

Subdivision 1. **Definitions.** (a) As used in this section, the term:

(1) "accessible" has the meaning given in section 3.1.2 of the ASTM International Safety Specification on Toy Safety, F-963;

(2) "child" means an individual who is six years of age or younger; and

(3) "children's jewelry" shall have the meaning set forth in section 325E.389, subdivision 1, paragraph (c).

Subd. 2. **Prohibitions.** Cadmium in any surface coating or accessible substrate material of metal or plastic components of children's jewelry shall not exceed 75 parts per million, as determined through solubility testing for heavy metals defined in the ASTM International Safety Specification on Toy Safety, ASTM standard F-963 and subsequent versions of this standard, if the product is sold in this state unless this requirement is superseded by a federal standard regulating cadmium in children's jewelry. This section shall not regulate any product category for which an existing federal standard regulates cadmium exposure in surface coatings and accessible substrate materials as required under ASTM F-963.

Subd. 3. **Manufacturer or wholesaler.** No manufacturer or wholesaler may sell or offer for sale in this state children's jewelry that fails to meet the requirements of subdivision 2.

Subd. 4. **Retailer.** No retailer may sell or offer for sale in this state children's jewelry that fails to meet the requirements of subdivision 2. This subdivision does 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.

[See Note.]

Subd. 5. **Enforcement.** The attorney general shall enforce this section under section 8.31.

History: *2010 c 347 art 6 s 27*

NOTE: Subdivision 4, as added by Laws 2010, chapter 347, article 6, section 27, is effective March 1, 2011. Laws 2010, chapter 347, article 6, section 27, the effective date.

TELEPHONE ADVERTISING SERVICES

325E.39 TELEPHONE ADVERTISING SERVICES.

Subdivision 1. **Definition.** For purposes of this section, "telephone advertising service" means a service that enables advertisers to make recorded personal or other advertisements available to respondents by means of voice mail or another messaging device accessed by telephone. "Telephone advertising service" does not mean advertisements for telephone services or a newspaper or other medium of mass communication that publishes an advertisement for a telephone advertising service.

Subd. 2. **Verification and identification.** A person who operates a telephone advertising service in this state shall:

(1) verify the placement of an advertisement that includes the advertiser's telephone number or other information that enables respondents to identify and communicate directly with the advertiser by calling the listed number or otherwise communicating with the person identified as the advertiser to ensure that the person placed or consented to the placement of the advertisement; and

(2) in any advertising for the telephone advertising service, provide a business mailing address or business telephone number sufficient to enable persons to communicate with the business operation of the service.

History: *1992 c 377 s 2*

JUNK FAXES

325E.395 FACSIMILE TRANSMISSION OF UNSOLICITED ADVERTISING MATERIALS.

Subdivision 1. **Telephone number and address required; notice.** (a) A person conducting business in this state may not make or cause to be made a facsimile transmission of documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of property or services unless the person establishes a toll-free telephone number that a recipient of the unsolicited documents may call to notify the sender not to transmit to the recipient unsolicited documents.

(b) Unsolicited facsimile transmissions subject to this section must include a statement, in at least 9-point type, informing the recipient of the toll-free telephone number the recipient may call, and an address the recipient may write to, to notify the sender not to transmit to the recipient unsolicited documents to the facsimile number specified by the recipient.

(c) Upon receiving a request not to transmit unsolicited documents, no person or entity conducting business in this state may make or cause to be made any unsolicited facsimile transmissions of documents to the person making the request.

Subd. 2. **Exception.** This section does not apply to the transmission of documents by a telecommunications service provider to the extent that the telecommunications service provider merely provides transmission facilities.

Subd. 3. **Remedies and penalties.** A person who is found to have violated this section is subject to the penalties and remedies, including a private right of action, as provided in section 8.31.

History: *1993 c 197 s 1*

PETROLEUM-BASED SWEEPING COMPOUNDS

325E.40 SALE OF PETROLEUM-BASED SWEEPING COMPOUND PRODUCTS PROHIBITED.

Subdivision 1. **Prohibition.** A person may not offer for sale or sell any sweeping compound product that the person knows contains petroleum oil.

Subd. 2. **Labeling.** The manufacturer of sweeping compound that is to be sold in this

state shall label the packaging for the compound to clearly indicate the type of oil contained in the compound.

Subd. 3. **Enforcement.** In addition to the enforcement mechanisms available for this chapter, the commissioner of the Pollution Control Agency may enforce this section under section 116.072.

History: *1992 c 593 art 1 s 36*

DECEPTIVE TRADE PRACTICES

325E.41 DECEPTIVE TRADE PRACTICES; ENVIRONMENTAL MARKETING CLAIMS.

Subdivision 1. **Adoption of federal guides.** (a) Environmental marketing claims made by a manufacturer, packager, wholesaler, or retailer for a product sold or offered for sale or distribution in this state, including those related to the product's packaging, must conform to the standards or be consistent with the examples contained in Code of Federal Regulations, title 16, part 260, "Guides for the Use of Environmental Marketing Claims" regarding general environmental benefits claims, claims that a product or package is degradable, compostable, recyclable, or contains recycled content, and claims relating to source reduction, refillability, or ozone safety.

(b) Paragraph (a) does not apply to an environmental claim unless the claim is made in an attempt to influence purchasing decisions by end users of the product.

Subd. 2. **Investigation; enforcement.** A person who violates this section is subject to the penalties and remedies in section 8.31.

History: *1996 c 359 s 2*

325E.42 DECEPTIVE TRADE PRACTICES; GAMBLING ADVERTISING AND MARKETING CLAIMS.

Subdivision 1. **Regulation.** All advertising or marketing materials relating to the conduct of any form of legal gambling in Minnesota, including informational or promotional materials, must:

(1) be sufficiently clear to prevent deception; and

(2) not overstate expressly, or by implication, the attributes or benefits of participating in legal gambling.

Subd. 2. **Attorney general's actions.** The attorney general may bring an action against any person violating this section in accordance with section 8.31, except that no private action is permitted to redress or correct a violation of this section.

Subd. 3. **Advertising media excluded.** This section applies to actions of the owner, publisher, agent, or employee of newspapers, magazines, other printed matter, or radio or television stations or other advertising media used for the publication or dissemination of an advertisement or marketing materials, only if the owner, publisher, agent, or employee has been personally served with a certified copy of a court order or consent judgment or agreement prohibiting the publication of particular gambling advertising or marketing materials and thereafter publishes such materials.

History: *1994 c 633 art 8 s 2*

325E.491 DEFINITIONS.

Subdivision 1. **Terms.** For the purpose of section 325E.492, the terms defined in this section have the meanings given.

Subd. 2. **Performing group.** "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

Subd. 3. **Recording group.** "Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

Subd. 4. **Sound recording.** "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

History: *2008 c 191 s 1*

325E.492 PRODUCTION.

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if any of the following apply:

(1) the performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office;

(2) at least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(3) the live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(4) the advertising does not relate to a live musical performance or production taking place in this state; or

(5) the performance or production is expressly authorized by the recording group.

History: *2008 c 191 s 2*

ENFORCEMENT OF MUSICAL WORKS COPYRIGHT LICENSES

325E.50 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 325E.50 to 325E.57, the terms defined in this section have the meanings given them.

Subd. 2. **Copyright owner.** "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States under United States Code, title 17, sections 101 to 810.

Subd. 3. **Performing rights society.** "Performing rights society" means an association, corporation, or other entity that licenses the public performance of nondramatic musical works on

behalf of copyright owners, such as the American Society of Composers, Authors, and Publishers (ASCAP); Broadcast Music, Inc. (BMI); and SESAC, Inc.

Subd. 4. **Proprietor.** "Proprietor" means the owner of a retail establishment, office, restaurant, inn, bar, tavern, or any other similar establishment or place of business located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

Subd. 5. **Royalty or royalties.** "Royalty" or "royalties" means the license fees payable by a proprietor to a performing rights society for the public performance of nondramatic musical works.

History: *1996 c 336 s 1*

325E.51 LICENSING NEGOTIATIONS.

No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than 72 hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

(1) a schedule of the rates and terms of royalties under the contract;

(2) upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the society; and

(3) notice that it will make available, upon written request of any proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted musical works in the performing rights society's repertory, provided that the notice shall specify the means by which the information can be secured.

History: *1996 c 336 s 2*

325E.52 ROYALTY CONTRACT REQUIREMENTS.

Every contract for the payment of royalties between a proprietor and a performing rights society executed in this state must be in writing and signed by the parties and must include, at a minimum, the following information:

(1) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(2) the name of the performing rights society;

(3) the duration of the contract; and

(4) the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of rates for the duration of the contract.

History: *1996 c 336 s 3*

325E.53 IMPROPER LICENSING PRACTICES.

No performing rights society or any agent or employee of a performing rights society shall: (1) collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to sections 325E.50 to 325E.57; or (2) enter into the premises of a proprietor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor without first showing personal identification to the proprietor or the proprietor's employees and disclosing

that the agent is acting on behalf of the performing rights society and disclosing the purpose of this discussion.

History: *1986 c 444; 1996 c 336 s 4*

325E.54 INVESTIGATION.

Nothing in sections 325E.50 to 325E.57 shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the federal copyright law, United States Code, title 17.

History: *1996 c 336 s 5*

325E.55 REMEDIES.

A person who suffers a violation of sections 325E.50 to 325E.57 may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other available remedy.

History: *1996 c 336 s 6*

325E.56 REMEDIES CUMULATIVE.

The rights, remedies, and prohibitions contained in sections 325E.50 to 325E.57 are in addition to and cumulative of any other right, remedy, or prohibition accorded by common law, or state or federal law. Nothing contained in sections 325E.50 to 325E.57 shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

History: *1996 c 336 s 7*

325E.57 EXCEPTIONS.

Sections 325E.50 to 325E.57 do not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission, or to contracts with cable operators, programmers, or other transmission services. Sections 325E.50 to 325E.57 do not apply to musical works performed in synchronization with an audio/visual film or tape, or to the gathering of information for determination of compliance with or activities related to the enforcement of sections 325E.169 to 325E.201.

History: *1996 c 336 s 8*

325E.58 MS 2006 [Renumbered 326B.865]

USE OF SOCIAL SECURITY NUMBERS

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, except in conjunction with an employee or member retirement or benefit plan or human resource or payroll administration; or

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

(b) For purposes of paragraph (a), clause (7), "sell" does not include the release of an individual's Social Security number if the release of the Social Security number is incidental to a larger transaction and is necessary to identify the individual in order to accomplish a legitimate business purpose. The release of a Social Security number for the purpose of marketing is not a legitimate business purpose under this paragraph.

(c) Notwithstanding paragraph (a), 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.

(d) A person or entity, not including a government entity, must restrict access to individual Social Security numbers it holds so that only its employees, agents, or contractors who require access to records containing 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.

(e) 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]

Subd. 3. **Coordination with other law.** This section does not prevent:

(1) the collection, use, or release of a Social Security number as required by state or federal law;

(2) the collection, use, or release of a Social Security number for a purpose specifically authorized or specifically allowed by a state or federal law that includes restrictions on the use and release of information on individuals that would apply to Social Security numbers; or

(3) the use of a Social Security number for internal verification or administrative purposes.

Subd. 4. **Public records.** This section does not apply to documents that are recorded or required to be open to the public under chapter 13 or by other law.

Subd. 5. **Definitions.** For purposes of this section, "government entity" has the meaning given in section 13.02, subdivision 7a, but does not include the Minnesota State Colleges and Universities or the University of Minnesota.

History: *2005 c 163 s 85; 2006 c 253 s 19; 2007 c 129 s 55,57; 2008 c 333 s 1,2*

RESTROOM ACCESS

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*

DATA WAREHOUSES; DISCLOSURE OF PERSONAL INFORMATION

325E.61 DATA WAREHOUSES; NOTICE REQUIRED FOR CERTAIN DISCLOSURES.

Subdivision 1. **Disclosure of personal information; notice required.** (a) Any person or business that conducts business in this state, and that owns or licenses data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in paragraph (c), or with any measures necessary to determine the scope of the breach, identify the individuals affected, and restore the reasonable integrity of the data system.

(b) Any person or business that maintains data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section and section 13.055, subdivision 6, may be delayed to a date certain if a law enforcement agency affirmatively determines that the notification will impede a criminal investigation.

(d) For purposes of this section and section 13.055, subdivision 6, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section and section 13.055, subdivision 6, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the data element is not secured by encryption or another method of technology that makes electronic data unreadable or unusable, or was secured and the encryption key, password, or other means necessary for reading or using the data was also acquired:

(1) Social Security number;

(2) driver's license number or Minnesota identification card number; or

(3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section and section 13.055, subdivision 6, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section and section 13.055, subdivision 6, "notice" may be provided by one of the following methods:

(1) written notice to the most recent available address the person or business has in its records;

(2) electronic notice, if the person's primary method of communication with the individual is by electronic means, or if the notice provided is consistent with the provisions regarding electronic records and signatures in United States Code, title 15, section 7001; or

(3) substitute notice, if the person or business demonstrates that the cost of providing notice would exceed $250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice must consist of all of the following:

(i) e-mail notice when the person or business has an e-mail address for the subject persons;

(ii) conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one; and

(iii) notification to major statewide media.

(h) Notwithstanding paragraph (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section and section 13.055, subdivision 6, shall be deemed to be in compliance with the notification requirements of this section and section 13.055, subdivision 6, if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

Subd. 2. **Coordination with consumer reporting agencies.** If a person discovers circumstances requiring notification under this section and section 13.055, subdivision 6, of more than 500 persons at one time, the person shall also notify, within 48 hours, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by United States Code, title 15, section 1681a, of the timing, distribution, and content of the notices.

Subd. 3. **Waiver prohibited.** Any waiver of the provisions of this section and section 13.055, subdivision 6, is contrary to public policy and is void and unenforceable.

Subd. 4. **Exemption.** This section and section 13.055, subdivision 6, do not apply to any "financial institution" as defined by United States Code, title 15, section 6809(3).

Subd. 5. [Renumbered 13.055, subd 6]

Subd. 6. **Remedies and enforcement.** The attorney general shall enforce this section and section 13.055, subdivision 6, under section 8.31.

History: *2005 c 167 s 1; 2006 c 212 art 1 s 17,24; 2006 c 233 s 7,8*

CREDIT ISSUED TO MINORS

325E.63 CREDIT ISSUED TO MINORS.

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

(b) "Credit" means the right granted to a borrower to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. Credit does not include an overdraft from a person's deposit account, whether through a check, ATM withdrawal, debit card, or otherwise, that is not pursuant to a written agreement to pay overdrafts with the right to defer payment of them.

(c) "Creditor" means a person or entity doing business in this state.

(d) "Guardian" means a guardian as defined under section 524.5-102, subdivision 5.

(e) "Minor" means an individual under the age of 18 years.

(f) "Parent" means a person who has legal and physical custody of a child.

Subd. 2. **Prohibition on offering credit to minors.** No creditor shall knowingly offer or provide credit to a minor except at the request of the parent or guardian of the minor, until the minor reaches the age of 18 years.

History: *2006 c 233 s 9*

ACCESS DEVICES

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*

SALE OF AMERICAN FLAGS

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*

325E.66 INSURANCE CLAIMS FOR RESIDENTIAL CONTRACTING GOODS AND SERVICES.

Subdivision 1. **Payment or rebate of insurance deductible.** A residential contractor providing the repair or replacement of residential roofing or siding to be paid by an insured from the proceeds of a property or casualty insurance policy shall not, as an inducement to the sale or provision of goods or services to an insured, advertise or promise to pay, directly or

indirectly, all or part of any applicable insurance deductible or offer to compensate an insured for providing any service to the insured. If a residential contractor violates this section, the insurer to whom the insured tendered the claim shall not be obligated to consider the estimate prepared by the residential contractor.

For purposes of this section, "residential contractor" means a residential roofer, as defined in section 326B.802, subdivision 14; a residential contractor, as defined in section 326B.802, subdivision 11; a residential remodeler, as defined in section 326B.802, subdivision 12; and a siding contractor registered under section 326B.802, subdivision 15.

Subd. 2. **Private remedy.** If a residential contractor violates subdivision 1, the insured or the applicable insurer may bring an action against the residential contractor in a court of competent jurisdiction for damages sustained by the insured or insurer as a consequence of the residential contractor's violation.

Subd. 3. **Public enforcement.** The commissioner of labor and industry shall enforce this section under sections 326B.081 to 326B.085.

History: *2010 c 324 s 1; 2011 c 63 s 1*