

CHAPTER 136

FUTURE SERVICE PLANS

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136.001 Application. (1) No statute or administrative rule in effect on July 1, 1976 is preempted or superseded by this chapter unless directly in conflict with this chapter.

(2) This chapter does not preempt the administration or enforcement of ch. 100. Conduct proscribed by this chapter may also constitute violations of s. 100.18 or 100.20, or administrative rules adopted under such sections.

(3) This chapter applies to all future service contracts solicited, or offered by a contractor, or accepted or signed by a customer, in this state.

History: 1975 c. 209.

136.01 Definitions. In this chapter:

(1) "Contractor" means a person who offers for profit a future service contract to a prospective customer, or who enters into a future service contract with a customer, except a cooperative organized under ch. 185. Such person includes, but is not limited to, an individual, partnership, unincorporated association, or corporation. A "contractor" includes, but is not limited to, buyers clubs, guilds, plans, and guides.

(2) "Customer" means an individual who enters into a future service contract. A "prospective customer" means one who is solicited to enter into a future service contract.

(3) "Customer fee" means all money received or contracted for by the contractor from a customer, which is payment for the right to make future purchases of goods and services incidental thereto or to engage in future videotape rental. A payment for purchase of goods or services or for videotape rental which is inflated above the fair market value for the goods or services or videotape is deemed a customer fee in the amount that it is so inflated. A combination payment for the right to make future purchases or engage in future videotape rentals and for specific goods or services or videotapes is deemed a customer fee in the amount that it exceeds the fair market value for the goods or services or videotapes.

(4) "Earned customer fee" means the proportional share of a total customer fee attributable to the months which have elapsed on a future service contract. Such fee is calculated by taking the total customer fee paid or to be paid to entitle the customer to participate in the future service contract, dividing by the total number of months in the contract period, and multiplying by the number of months which have run on the contract. A month is considered to have elapsed on a contract if the 15th day of that month has passed.

(5) "Future service contract" means a contract represented to a customer and offered by any contractor with the primary purpose of providing customers with the right to purchase goods and services incidental thereto or to rent videotapes in the future through such contract, in return for the payment of a customer fee.

(6) "Goods" has the meaning designated in s. 402.105, except that it does not include the unborn young of animals,

growing crops and other identified things attached to realty as described in s. 402.107 on goods to be severed from realty.

(7) "Prepayment" means any payment or accumulation of payments over \$25 for future service contract rights, or customer fees paid before the rights accrue or the customer fee is earned. It is not a prepayment if a payment for service or goods purchased or videotape rented is made on the same day as the service or goods or the videotape is received.

(8) "Unearned customer fee" means that portion of the fee which is not earned as defined in sub. (4).

(9) "Videotape" means an audiovisual recording of a motion picture or television program for playing through a television set.

History: 1975 c. 209; 1979 c. 110 s. 60 (10); 1985 a. 324.

136.02 Contracts. (1) A future service contract shall be in writing and for a stated number of months. No contractor may request or receive more than 12 months' unearned customer fee in prepayment from a customer.

(2) No future service contract may contain a renewal clause, or provide that the customer has an option to enter into a subsequent contract at a stated price.

(3) A future service contract shall provide that assignees, purchasers, or other transferees of the rights of the contractor are subject to all claims and defenses of the customer against the contractor arising out of the future service contract.

(4) A customer has the right to cancel, for whatever reason, within the first 3 months of a future service contract or within 3 days of delivery of the customer's first purchase of goods or rental of videotapes costing more than \$25 made through the contract, whichever occurs first. All unearned customer fees shall be refunded promptly upon cancellation. In the event of cancellation within the first 15 days of the contract no penalty may be assessed to the customer. Every cancellation shall be made in writing by the customer to the contractor, and is deemed to be made when mailed or hand delivered to the contractor. Every refund shall be made within 20 days of the request for cancellation.

(5) A contractor shall provide a customer with written notice, at or before the time of execution of the contract, of the customer's right to cancel under this section.

(6) Upon cancellation the member is obligated to pay for any goods ordered for purchase or videotape ordered for rental, if ordered prior to cancellation subsequent to the 3rd business day after contracting and delivered at any time within 3 months after such cancellation.

History: 1975 c. 209; 1985 a. 324.

136.03 Duties of the department of justice. (1) The department of justice shall investigate violations of this chapter and of rules and orders issued under s. 136.04. The department may subpoena persons and records to facilitate its investigations, and may enforce compliance with such subpoenas as

provided in s. 885.12. The department may in behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this chapter or rule or order issued under s. 136.04. The court may in its discretion, prior to entry of final judgment, award restitution to any person suffering loss because of violations of this chapter or orders issued under s. 136.04 if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this chapter or any rule or order issued pursuant to s. 136.04, in an amount not less than \$100 nor more than \$10,000 for each violation.

(2) In addition to the remedies otherwise provided by law, any person injured by a violation of this chapter or any rule or order issued pursuant to s. 136.04 may bring a civil action for damages pursuant to s. 100.20 (5). Any person injured by breach of any future service contract may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

History: 1975 c. 209.

136.04 Powers of the department of agriculture, trade and consumer protection. (1) The department of agriculture, trade and consumer protection may adopt such rules as may be required to carry out the purposes of this chapter.

(2) The department of agriculture, trade and consumer protection after public hearing may issue general or special orders to carry out the purposes of this chapter and to determine and prohibit unfair trade practices in business or unfair methods of competition in business pursuant to s. 100.20 (2) to (4).

History: 1975 c. 209; 1977 c. 29 s. 1650m (4).

136.05 Delivery. Any goods ordered for purchase or videotape ordered for rental by a customer pursuant to a future service contract shall be delivered to the customer within 3 months after being ordered, or within 15 days of the time specified on the order, whichever is later. If the videotape or goods are not delivered in a timely manner, the customer's down payment, if any, shall be refunded within 3 business days of written demand. The right of a customer to demand a refund in the event that the delivery date is not met and the right to specify a delivery date shall be conspicuously disclosed on each order blank. An extra copy of the order blank shall be provided to the customer at the time of ordering.

History: 1975 c. 209; 1985 a. 324.

136.06 Representations; contract disclosures. (1) With respect to representations made to a prospective customer to induce him to sign a future service contract, the contractor shall clearly and accurately describe:

(a) The source of purchase of any merchandise named by its brand, whether such source is from a manufacturer, wholesaler, retailer, or other supplier.

(b) Where no brand name is stated, the comparative numbers, expressed in percentages of purchases made by the contractor from manufacturers, wholesalers, retailers or other suppliers.

(c) The existence, if any, of purchasing arrangements which the contractor has with all manufacturers, wholesalers, retailers or other suppliers, including a statement of the duration of the arrangements.

(d) At the initiation of any solicitation of a prospective customer, the fact that the contractor is offering and selling contracts for future services.

(e) At or prior to the time of execution of a future service contract by the customer, in writing, the step-by-step procedure for ordering the purchase of goods or services or the rental of videotapes.

(f) The contractor's policy with respect to retention or refund of trade, prompt payment or other discounts, and the maximum amount of such discounts expressed as a percentage of the contractor's cost for the goods or services purchased or the videotapes rented.

(2) All future service contracts shall disclose:

(a) The disposition of all trade discounts, prompt payment discounts or other discounts received by the contractor, and if the contractor retains such discounts, the maximum discount which the contractor may receive expressed as a percentage of the contractor's cost for the goods or services. Where the contract provides for a return of any discount to the customer, or where the contract fails to disclose the disposition of such discounts the contractor shall promptly refund such discounts to the customer upon receiving them.

(b) All normal charges assessed on an item that are to be paid by the customer, such as freight costs, the contractor's markup differential and other costs. Such disclosure shall also be made on each order placed through the contractor, separately and in specific monetary amounts.

(c) That a manufacturer's or other dealer's supply agreement with the contractor may not be permanent, if such is in fact true.

(d) Upon whom falls the risk of damage in shipment of goods pursuant to a customer's order.

(e) The contractor's policy with respect to return of ordered goods, cancellation of orders by the customer and refunds for such cancellation or return.

(f) The contractor's policy with respect to warranties or guarantees on goods ordered.

(3) Every contract made in violation of this chapter is void and unenforceable as contrary to public policy.

(4) Any waiver by a customer of this chapter or of a customer's rights under this chapter is contrary to public policy and is void and unenforceable.

History: 1975 c. 209; 1985 a. 324.

136.07 Contract performance; records. (1) No contractor may fail to perform upon the contractual provisions required to be set forth in future service contracts under s. 136.06 (2).

(2) Every contractor shall retain business records for goods ordered for purchase for 2 years following delivery of those goods. These records shall include, but not be limited to, records showing the contractor's costs of purchased goods and all customer orders for those goods. Every contractor renting videotapes shall retain copies of all unexpired videotape rental contracts, identifying the member and the cost and duration of membership.

History: 1975 c. 209; 1985 a. 324.

136.08 Interlocking ownership. Any person who is the owner, officer, manager or employe of a contractor is prohibited from being the owner, officer, manager or employe of any supplier whose partial or whole purpose is the selling or supplying of merchandise to the contractor. A stockholder of less than 10% of the stock of a supplier corporation is exempt from the prohibition of this section.

History: 1975 c. 209.

136.10 Bond. (1) Every contractor shall maintain a bond issued by a surety company licensed to do business in this

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state. The principal sum of the bond shall at all times be \$25,000.

(2) The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayments made pursuant to a contract entered into after July 1, 1976, due to insolvency of the contractor or the

cessation of business by the plan. A copy of the bond shall be filed with the department. Any person claiming against the bond may maintain an action at law against the contractor and the surety.

History: 1975 c. 209.