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ACQUISITIONS

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SUMMARY OF
MINNESOTA LAWS

on

C O N S U M E R P R O T E C T I O N

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September, 1977

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AUTOMOBILE-ODOMETER TAMPERING

This law prohibits motor vehicle odometer tampering and the sale of motor vehicles with knowledge that the odometer has been altered to show less than actual mileage. Upon transfer of a motor vehicle, the seller must disclose in writing the true mileage or that the true mileage is unknown if the odometer reading is inaccurate. Violations of this act constitute a gross misdemeanor and may subject the violator to enforcement actions by the Attorney General. In addition, persons injured by a violation may recover up to three times the actual damages or \$1500 (whichever is greater) along with court costs and attorneys fees.

CHARITABLE SOLICITATIONS

This law regulates the solicitation of funds by charitable organizations. Fraud and deceptive practices are prohibited in connection with the solicitation of contributions. Professional fund raisers are required to be licensed, and all charitable organizations using a professional fund raiser must register with the Department of Commerce. The department may require the professional fund raiser to post a bond and file quarterly financial reports. This law also regulates the compensation payable to a professional fund raiser and the private use of a charitable organization's name for financial gain. Existing law requires the registration of charitable organizations receiving in excess of \$2,000 annually through public solicitation.

CLUB CONTRACTS

Any person who has elected to become a member of a health club, social referral club, or buying club has the right to cancel the club contract and his/her membership by giving written notice of cancellation any time before midnight of the third business day following the date on which membership was attained. All contracts must clearly state the "Members' Right to Cancel." Every contract which does not contain this notice may be cancelled by the member at any time by giving notice of cancellation by any means.

The term of any contract may not exceed 18 months from the date upon which the contract is signed. However, after six months of membership a member may convert his/her contract into a contract for a period longer than 18 months.

The law also protects members who pay in advance for future services by requiring the club to post a bond.

CONCILIATION COURT

The conciliation court decides civil claims if the amount of money or property involved does not exceed \$1000. The procedure is simple and informal. The Conciliation Court decision may be appealed to County or Municipal Court.

County boards are authorized to direct county and municipal courts to hold conciliation court hearings on evenings and on Saturdays at specified locations throughout the county court district.

CONSUMER CREDIT SALES

If a consumer purchases merchandise or services on credit and the contract is subsequently assigned to a person or agency for collection, the contract is subject to all claims and defenses of the consumer against the seller arising from the sale. Any rights the consumer may have against the original seller may be asserted against the person to whom the contract was assigned.

Another law provides that if the creditor in a consumer credit transaction repossesses or voluntarily accepts the return of the goods in which he has a security interest, the debtor is not liable for any additional unpaid amount due on the loan and the creditor is not required to resell the goods. This applies only to loans of less than \$3,000. However, the buyer may be liable if he wrongfully damages the goods or he wrongfully fails to make the goods available to the creditor. If the creditor chooses to sue the debtor (rather than repossess the property), he may not repossess the property and cannot levy on the goods to satisfy a judgment in the action.

CONSUMER REMEDIES

This law authorizes the Attorney General to seek civil penalties in an amount determined by the court, not in excess of \$25,000, against persons found by the court to have violated the Minnesota consumer fraud statutes and other laws relating to unlawful practices in business, commerce, or trade. Private citizens injured by a violation of such laws are also permitted to bring a civil action to recover damages, court costs and attorney's fees, and other relief as determined by the court. A judgment of a court in connection with an unlawful business practices suit brought by the Attorney General is declared to be evidence of a violation in an action brought by a private citizen.

CONSUMER RULEMAKING

This law authorizes the Office of Consumer Services of the Department of Commerce to promulgate rules and regulations regarding consumer protection pursuant to the administrative procedure act. Under this act, the Office of Consumer Services could

declare certain business practices to be unlawful under the consumer fraud law after an appropriate hearing.

CREDIT CARD BILLING

Credit card issuers must state on each customer billing statement the name, address and telephone number of the department designated to receive inquiries regarding billing statements. The credit card issuer must respond in writing within 30 days to any customer's billing inquiry.

CREDIT--PROHIBITION OF DISCRIMINATION

This law prohibits discrimination based on sex in the extension of credit.

DECEPTIVE TRADE PRACTICES

This law defines certain unfair trade practices. For example, it is deceptive practice for a person to pass off goods or services as those of another, or to represent that goods are original or new if they are reconditioned or used.

EMPLOYMENT AGENCIES

This law prohibits employment agencies from advertising jobs for which there is no job order and requires employment agencies to keep a written record of all job orders for one year. The statute defines "job order" as a written or oral notification by an employer of a job opening and a request for an employment agency to provide the employer with applicants.

FLAMMABLE TENTS AND SLEEPING BAGS

No person, firm, or corporation may sell or offer for sale or manufacture for sale in this state any tent unless all fabrics or pliable materials in the tent are durably flame resistant or any sleeping bag unless it meets the standards of the Commissioner of Public Safety for flame resistancy.

FRANCHISE REGULATION

No person may offer or sell any franchise in this state without first filing with the Commissioner of Securities a statement containing substantial disclosures concerning the contemplated sale. Also, no sale may be concluded until 7 days after the prospective purchaser has been provided with a copy of the statement and copies of all proposed agreements relating to the sale. The Commissioner is also given broad regulatory powers to further protect against the use of deception in the sale

of franchises including the power to deny or revoke a registration, review proposed advertisements, conduct investigations, and promulgate rules.

FUNERAL BILL ITEMIZATION

Under this law, funeral directors are required to provide at the time funeral arrangements are made an itemized statement listing the costs of various funeral items and services to be provided and a statement of all anticipated cash advances and expenditures. This law further provides that the retail price of caskets must be posted in a conspicuous place on the casket and that no person operating a crematory may require that the remains be placed in a casket.

GASOLINE-OCTANE RATINGS

Motor vehicle fuel pumps must conspicuously display the minimum octane rating and the retail price per gallon, including all federal and state tax, of the motor fuel dispensed from that pump. The octane rating is to be determined in the manner described in "Standard Specification for Gasoline" prepared by the American Society for Testing and Materials or in such other manner as prescribed by the Director of Consumer Services.

HEARING AIDS

This law provides that no hearing aid may be sold without the recommendation of an audiologist or licensed medical doctor if the buyer is over 60 or under 18 years of age, or the seller finds certain symptoms of injury or disease present. The professional recommendation need not be obtained if: (1) the buyer is between the ages of 18 and 60 and signs a waiver acknowledging familiarity with this law; (2) the sale is for replacement parts of a presently owned hearing aid; or (3) the aid is sold as a replacement for an aid already owned by a consumer.

HOME IMPROVEMENT--MECHANIC'S LIENS

This law provides protection to the property owner who contracts with another person for the improvement of real property, upon which a mechanics lien may be filed if the contractor or subcontractors are not paid. Under this law contractors and subcontractors are required to promptly notify the property owner of his/her rights and possible liabilities in connection with the improvement. Failure to give proper notice results in the loss of any lien right.

HOME SOLICITATION SALES--COOLING OFF PERIOD

This law provides broad protection to consumers who enter into sales contracts at a place other than the seller's normal business location. If the purchase price of the merchandise exceeds \$25.00, the buyer may cancel the sale by mailing a written notice of cancellation to the seller within 3 business days after the sale. Upon cancellation the seller must pick up the goods within 20 days or forfeit all rights to the goods and return any down payment or trade-in. A seller is required under this law to inform the buyer orally and in writing of his/her right to cancel.

PERSONAL SOLICITATION SALES-DISCLOSURES

Before any personal solicitation every seller must, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose: the individual seller's name, the name of the business, firm or organization he/she represents, the identity of the kinds of goods or services he/she wishes to demonstrate or sell, and that he/she wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller must also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he/she represents. The disclosures required by this law must be made before the seller asks any questions or makes any statements except an initial greeting.

Certain organizations such as non-profit organizations and newspaper carriers that are minor children are exempt from the requirements of this law.

HUMAN RIGHTS - DISCRIMINATION

It is unfair discriminatory practice to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a public place because of race, color, creed, religion, disability, national origin, or sex. This law does not include circumstances which pose a serious threat to the health and safety of the disabled person or others.

It is an unfair discriminatory practice for a taxicab company to discriminate in the access to, full utilization of or benefit from service because of a person's disability.

It is unfair discriminatory practice to discriminate in the extension of credit to a person because of sex or marital status.

INDIAN MADE GOODS

This law requires that all goods which are manufactured or produced in imitation of genuine American Indian-made goods must be labeled with the words "not Indian-Made" on a conspicuous part of the finished article.

LANDLORD AND TENANT

Damage Deposits

This law provides for the payment of 5% interest on all damage or security deposits and requires landlords to refund deposits or furnish the vacating renter with a written statement of the specific reasons for withholding all or any part of the deposit within 3 weeks after the tenancy is terminated. If the landlord fails to provide the written statement within the prescribed period, he/she forfeits all rights to retain any portion of the deposit. Further, if a landlord retains a deposit in bad faith, such as by failing to provide a written statement of the reasons for retaining the deposit, the tenant may bring a lawsuit and receive up to \$200 in punitive damages in addition to the amount of the deposit.

Property Abandonment

If a tenant abandons rented premises the landlord may take possession of the tenant's personal property remaining on the premises. The landlord must store the property for 60 days after abandonment. The law also sets forth a procedure for the landlord to dispose of the tenant's unclaimed belongings after the 60 days.

If the landlord, his/her agent or any person acting under the landlord's direction or control has unlawfully taken possession of a tenant's personal property, the landlord is responsible for paying the cost and expenses relating to the removal, storage or care of the property.

Renewal of Lease

Automatic renewal clauses of leases are unenforceable unless the landlord provides a separate written notice to the tenant of the existence of the automatic renewal clause.

Substandard Housing

This law provides judicial remedies for tenants of substandard housing. If a landlord fails to remedy a housing code

violation brought to his/her attention by an authorized inspector, a special proceeding may be brought against the landlord. At such a proceeding, the court may order the owner to remedy the violation, order the tenant to remedy the violation and deduct the cost thereof from his/her rent, decrease the rent payable to the owner, or appoint an administrator to apply rent for the purpose of rectifying the violations.

Mobile Home Tenant's Rights

This law protects mobile home park tenants by prohibiting park owners from charging excessive rates for utility services, restricting security deposits to an amount which does not exceed two months rent and prohibiting fees charged to tenants when moving into a park or for leaving a home in the park after a sale. Every rental agreement must be written and must contain a full description of the rights and obligations of both parties.

PERISHABLE FOOD ITEMS--OPEN CODE DATING

This law requires the dating of certain perishable foods by the Commissioner of Agriculture, but exempts meat, poultry, frozen foods, fresh fruits and vegetables from the dating requirements.

PRESCRIPTION DRUGS - GENERICALLY EQUIVALENT DRUGS

A pharmacist who receives a prescription for a brand name legend drug may with the consent of the purchaser, dispense any generically equivalent drug, unless the prescriber (physician, for example) has specifically indicated in writing that the brand name drug be dispensed.

PRESCRIPTION DRUGS - DRUG PRICE POSTING

Pursuant to this law, pharmacists must post prices in their retail stores and answer telephone inquiries concerning prescription prices.

PRIVATE TRADE SCHOOLS

This law requires private trade schools to permit the review of all advertising and contract forms by the Commissioner of Education and prohibits the use of false or deceptive representations in connection with the sale of courses. All contracts must clearly state the cancellation rights of the individual student and the school's tuition refund policy. Further, schools which offer or imply a placement service must disclose to the Commissioner and to prospective students the percentage of graduates actually placed in the occupation for which they were trained.

SUBDIVIDED LAND SALES

This law requires registration of land offered for sale when such land has been subdivided into 50 or more parcels. The seller must register with the Commissioner of Securities who is given broad regulatory authority over such sales. The seller is required to provide all potential purchasers with a prospectus which includes detailed, pertinent information concerning the proposed sale. This law further provides that a purchaser may cancel a sales contract within five days after the contract is signed.

TOYS--HAZARDOUS TOYS

This law prohibits the importation, manufacture, sale and distribution of hazardous toys. The Director of the Office of Consumer Services of the Department of Commerce is authorized to test toys or other articles intended for use by children to determine if certain defined hazards are present and to ban the sale or distribution in Minnesota of toys and articles determined to be hazardous.

WARRANTIES

This law provides that a consumer's expectation of an implied warranty of merchantability (goods will work as expected) and fitness (goods will be fit for the purpose intended by the buyer and made known to the seller) will be honored by a merchant and not disclaimed in a hidden writing. No disclaimer of warranties is effective unless a conspicuous writing states that the goods are sold with the entire risk as to quality and performance on the buyer.

HOME WARRANTY ACT

This act provides the following statutory warranties to persons who purchase a new residence on or after January 1, 1978:

- a. During a 1 year period from the warranty date, the dwelling shall be free from defects caused by faulty workmanship and deceptive materials due to non-compliance with building standards;
- b. During the 2 year period from the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems; and
- c. During the 10 year period from the warranty date, the dwelling shall be free from major construction defects.

Excluded from warranty protection are detached garages, driveways, walkways, patios, landscaping, fences, and other similar items.

The warranty protection also does not extend to a loss or damage resulting from several specified situations.

The warranty protection in this bill cannot be waived or modified unless the seller provides substitute express warranties which offer substantially the same protection to the buyer as the statutory warranties and are approved by the Commissioner of Administration.

The buyer may bring a lawsuit against the seller for damages or specific performance when there is a breach of the statutory warranties. Damages are limited to the following: (a) the amount necessary to remedy the defect or breach; or (b) the difference in the value in the dwelling without the defect and with the defect.

FIRE DETECTION DEVICES

This law requires that by January, 1980, all apartment houses, hotels, and lodging houses must have smoke detectors in every room. It also requires smoke detectors in all residential buildings constructed, remodeled, rented or offered for rent after January 1, 1980. The Commissioner of Public Safety is required to promulgate rules regarding the actual placement and mounting of the detectors. Owners of the buildings are responsible for making sure the detectors are properly maintained. A penalty for violating any order to comply with these provisions is a fine of up to \$200 or imprisonment of up to 3 months or both. Local governments may not adopt different standards from those outlined above except they may request smoke detectors in new construction to be attached to a centralized electrical power source.

INVENTION SERVICES ACT

This act regulates businesses and individuals who develop or promote the inventions of others. It gives customers of invention developers several rights: a written statement of the full contract price, a three day cancellation period, a cautionary warning concerning legal advice on patent matters, and the disclosure of certain information in their contract with an invention developer. Among the disclosures the developer must provide the inventor are a description of the services to be rendered, the date by which the services will be rendered, whether the invention developer will acquire a legal interest in the customer's invention, and statistics showing the number of customers who have profited from the developer's services. Invention developers must also post a bond with the State of Minnesota. The contract for invention services which does not comply with this act's provisions would be voidable by the customer unless the developer proves noncompliance to a bona fide error. The inventor's rights are not waivable. The act may be enforced by individuals through a private class action, by county attorneys and the Attorney General.