CHAPTER 136

FUTURE SERVICE PLANS

136.001 Application.
136.01 Definitions.
136.02 Contracts.
136.03 Duties of the department of agriculture, trade and consumer protection.
136.04 Powers of the department of agriculture, trade and consumer protection.
136.05 Delivery.
136.06 Representations; contract disclosures.
136.07 Contract performance; records.
136.08 Interlocking ownership.
136.10 Bond.

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 (1) No statute or administrative rule in effect on July 1, 1976 is preempted or superseded by this chapter unless directly in conflict with this chapter.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 except those that meet all of the following requirements:

(a) Give the customer the right to cancel the future service contract within at least the first 30 days of the future service contract.

(b) Require the contractor to refund all customer fees, all money received for services not provided to the customer and all money received for goods returned to the contractor other than shipping, handling or trial period fees not exceeding a total of $10 if the customer cancels the future service contract within the cancellation period permitted under the future service contract.

(c) Impose a customer fee of not more than $75 for a 12−month period.

History: 1975 c. 209; 1991 a. 269.

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 or 193. Such person includes, but is not limited to, an individual, partnership, limited liability company, 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; 1993 a. 112, 490; 2005 a. 441.

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.

(7) Subsections (1) to (6) do not apply to a future service contract if all of the following are true:

(a) The future service contract is in writing and provides for a term not longer than 3 years, except that a future service contract under this subsection may be extended if the customer affirmatively agrees to an extension in writing at the time of the extension.

(b) The future service contract provides 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.

(c) The future service contract permits the customer to cancel the future service contract by mailing or hand delivering to the contractor written notice before midnight of the 3rd day after the date on which the customer signed the future service contract and the future service contract imposes no liability on the customer for such a cancellation and entitles the customer to receive, not more than 20 days after such a cancellation, a refund of the entire customer fee paid for the future service contract.

(d) The future service contract contains an attached separate page that contains all of the following:

1. A caption printed in boldface, uppercase type of not less than 10−point size entitled "CANCELLATION AND REFUNDS."

2. A provision under the caption stating: "RIGHT TO CANCEL. You are permitted to cancel this contract until midnight of the 3rd day after the date on which you signed the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying .... (the seller) by any writing mailed or delivered to .... (the seller) at the address shown on the contract within the previously described time period. If you do so cancel, any payments made by you will be refunded within 20 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by .... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

(e) The future service contract provides that a purchase order must specify a date and address of delivery for each item purchased and that the customer may cancel an order and demand refund of any payment the customer made for that order if the goods that the customer ordered are not delivered on or before the delivery date specified in the purchase order or not delivered to the address where the customer requested delivery of the goods, unless the future service contract specifies otherwise.

(f) The future service contract permits the seller to change the date or address of delivery specified in the purchase order only if the customer consents in writing to the change.

(g) The future service contract provides that a contract must return to a customer the full amount of a refund due to the customer under par. (e) without penalty not more than 20 days after the customer has demanded such a refund.

History: 1975 c. 209; 1985 a. 324; 2009 a. 115.

136.03 Duties of the department of agriculture, trade and consumer protection. (1) The department of agriculture, trade and consumer protection 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; 1995 a. 27.

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 form. An extra copy of the order form shall be provided to the customer at the time of ordering.

History: 1975 c. 209; 1985 a. 324; 2001 a. 107.

136.06 Representations; contract disclosures. (1) With respect to representations made to a prospective customer to induce the customer 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; 1993 a. 482.

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 employee of a contractor is prohibited from being the owner, officer, manager or employee of any supplier whose partial or whole purpose is the selling or supplying of merchandise to the contractor. A stockholder of less than 10 percent 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 state. The principal sum of the bond shall at all times be $25,000, except that if a contractor enters into a contract described in s. 136.02 (7), the principal sum of the bond shall be $250,000.

(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 due to insolvency of the contractor, the cessation of business by the plan, or the failure of a contractor to make a refund under a provision in a future service contract described in s. 136.02 (7) (e). 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.

(3) In addition to other means for the enforcement of the surety's liability on the bond required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against a contractor. The notice of motion, the motion, and a copy of the judgment shall be served on the surety as provided under s. 801.14. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the division of trade and consumer protection of the department of agriculture, trade and consumer protection. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the department of agriculture, trade and consumer protection that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest. The court may, in the interest of justice, order a proportional or other equitable distribution of the bond proceeds.

History: 1975 c. 209; 2009 a. 115.