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GOVERNOR HAROLD LEVANDER

STATE OF MINNESOTA

CONSUMER PROTECTION



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A Special Message to the 66th Session of the Legislature

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CONSUMER PROTECTION MESSAGE

Members of the House of Representatives, Members of the Senate:

Today I am sending you a special message on a problem that began over 37 centuries ago, for it was 1800 years before Christ when the King of Ancient Babylonia decreed all loans had to be accompanied by written contract. Moreover, if through subterfuge, an illegally high rate of interest was collected, the principal of the loan was forfeited to the borrower.

Contrary to those who claim consumer services must be a new responsibility for government, the facts point out it has always been a prime responsibility of government . . . especially for Minnesota State Government. The first consumer protection law was proposed in the first State of the State Address by our first Governor, Governor Sibley.

The record of the last legislative session indicates our continuing concern. For example, over twenty insurance laws were passed in 1967 to prevent the Minnesota insurance holder from being left without protection. The Attorney General was authorized to establish a Consumer's Division to handle public complaints. Charities were regulated to make better use of public donations.

However, the time has arrived for broadscale revisions in certain practices of the market place.

Just a few years ago America became the first marketing nation in the world. At that time the number of people working at marketing and service jobs outnumbered those working in production. The emphasis of commerce shifted from production to consumption; in other words, selling became very important.

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And consumers are buying . . . buying products and buying time. Since 1945, the consumer debt has increased 18 times from \$5.6 Billion Dollars to \$100 Billion.

The need to re-evaluate consumer services intensifies not only because the number and value and kind of market transactions has multiplied, but also for two other reasons.

First, the complexity of products has increased. The housewife of the 18th Century could easily judge whether the advertised scrub board would meet her expectations but the homemaker of the 20th Century cannot hope to analyze the intricate electrical parts of a new washing machine with seven cycles.

Secondly, production, distribution and consumption are done necessarily on a mass scale which reduces personal relationships in the market place. The special bond between buyer and seller so easily established visiting over a cracker barrel is difficult to simulate standing in a checkout line.

The demand for consumer services is real and urgent. We cannot allow the faith in the free enterprise system to be undermined by the few who intentionally or unintentionally mislead the consumer.

Business recognizes the consumer's confidence is crucial to its success; therefore, efforts to correct abusive practices have been a long-time responsibility of business. Over 100,000 business firms support 139 Better Business Bureaus covering 62% of the population.

Government must also fulfill its obligation to protect the consumer. Consequently, I recommend the following actions for your refinement and

implementation. In order to bring focus to the wide range of topics I shall cover, I have grouped the recommendations. The first group of recommendations covers promotion and selling of consumer goods, the second group covers payment for consumer goods, and the third group covers performance of consumer goods.

However, let me make it perfectly clear, by far the vast majority of American businesses and advertisers and financial institutions operate in the interest of the consumer. The measures I propose will hamper neither innovation nor competition. But they will curb specific abuses a few perpetrate on the unsuspecting.

PROMOTION AND SELLING

Business in America is big . . little wonder then that abuses in business, although limited, can also total an impressive sum. According to the Arthritis and Rheumatism Foundation, arthritis sufferers spend over \$250 Million Dollars a year for misrepresented drugs, devices and treatments . . most of which are worthless and unduly expensive.

A recent report of the National Better Business Bureau estimates that deceptive practices in the home-improvement field alone cost the consumer between \$500 Million and \$1 Billion Dollars yearly.

One of our major department stores described one day in which it received six solicitations under the guise of an invoice for a listing in six different telephone directories, each invoice mailed the same day, each one requesting \$72.00.

In order to correct abusive practices in promotion and selling,
I recommend:

1. Prohibit referral selling schemes (selling for a reduced price or rebate because buyer will aid seller in making subsequent sales.)

2. Declare unordered merchandise to be gifts. I am extremely pleased that the House has already approved such a provision.

3. Prohibit misleading solicitation in the guise of invoices.

4. Regulate door-to-door sales. To provide the buyer with a cooling off period in home solicitation sales, he should be given three business days in which to cancel his contract. If he so cancels, the seller should be allowed to keep 5% of the cash price (providing it does not exceed the cash down payment).

5. Uniform deceptive trade practices act as recommended by the Council of State Governments should be enacted to provide protection to the public from misleading, false and deceptive trade practices. It should provide for resort by individuals to the Courts for relief. It should also provide that anyone may complain to the Division of Consumer Services in the Department of Commerce and Consumer Services which Division shall, if it feels that the complaint has merit and probable cause exists, bring an action in the name of the State of Minnesota on behalf of the injured party for injunctive relief and/or for civil damages.

6. Regulate the sale of franchise agreements to the Minnesota public, to prevent public entrapment in insecure or unreasonable franchise arrangements. Franchise agreements which call for a personal investment of over \$1,000.00 should be backed by a surety bond to protect the public.

7. Require registration of securities being offered by

associations under the guise of a non-profit organization.

8. Provide the present exemption from registration of securities issued for less than six months shall not apply if the securities are publicly offered or advertised.

9. Provide for the immediate termination of out of state firms by the Commissioner of Insurance when their home license is terminated.

10. Allow the Attorney General to enforce through the courts of this state or any reciprocal state the final decisions reached by the Commissioner of Insurance in any court or administrative proceeding.

11. Prohibit peddlers from masquerading as deaf or disabled.

PAYMENT BY CONSUMERS

As I have already indicated, the amount of buying financed by consumer credit is large and growing.

Few people recognize that the total personal debt in the United States is almost equal to our national public debt. In July, 1968, the public debt was \$370 Billion Dollars and the personal debt \$337 Billion. Since 1945 consumer debt has grown at a rate $4\frac{1}{2}$ times as fast as the growth rate of the gross national product.

I do not list these statistics in order to argue that the size of consumer debt is too large. Rather, I cite these figures because I believe that the sheer size and growth of consumer credit underscores the extent to which our economy is underpinned by credit and the need for the proper use of credit.

We cannot tolerate the shoddy practices of the few but vicious credit

peddlers. For example, loan sharking has become a multi-billion dollar business dominated by organized crime. Often interest rates under these unscrupulous predators amounts to 1000% or more a year. It is estimated loan sharks today are bilking the poor out of more than \$350 Million Dollars a year.

As the National Advisory Commission on Civil Disorders pointed out:

"Most low income families are uneducated concerning the nature of credit purchase contracts, the legal rights and obligations of both buyers and sellers, sources of advice for consumers who are having difficulty with merchants and the operation of the courts concerning these matters."

Yet, unethical practices are not limited to the poor. One young Minnesota girl, after allegedly buying a set of magazines, was sent a notice of payment due by an out-of-state agency. The notice threatened unless payment was received, this agency would draft the amount from either her employer or bank; the notice further threatened that if she did not pay within five days a duplicate copy of her debts was to be sent to a local civic organization and perhaps published in her local newspaper.

The measures I propose will not complicate the honest collection of fair debts. They will, however, prohibit scurrilous practices.

1. Reform garnishment law. Minnesota has one of the harshest garnishment laws in the nation, a law that encourages shoddy business practices and encroaches on the individual's rights. The need for immediate reform is evidenced by the number of bills already introduced. Certain features I believe are essential to a sound reform of garnishment:

Prohibit garnishment before judgment.

Increase exempt wages.

Prohibit discharge by employer for garnishment for one indebtedness.

Decrease the amount of the debt for which garnishment can be obtained from 200% to 110%.

2. Strictly regulate debt prorating agencies. Licenses and annual reports should be required to operate those agencies who consolidate debts and pay creditors by payments from debtor.

3. Remove liability for unsolicited credit card unless the recipient has permitted or authorized use of the card.

4. Regulate collection agencies. Although incorrect practices by collection agencies are infrequent, the occasional abuse can be devastating to a family. Collection agencies should be regulated and licensed by the state along the lines suggested by the Minnesota Bar Association. For example, a collection agency should be prohibited from using or threatening physical violence in connection with collecting debts, operating under the guise of an attorney or publishing a list of debtors except for credit reporting purposes.

5. Require creditors to disclose the terms and costs of a credit sale. In order that the buyer or borrower may meaningfully compare credit offers and get the best deal, all creditors should be required to state the rate in the same manner. Basically, in a credit sale the seller is required to set forth: 1) what is being sold; 2) the cash price; 3) the down

payment; 4) the balance owing; 5) amount payable for registration or certificate of title fees not included in the cash price; 6) the amount of official fees and taxes; 7) a brief description of any insurance provided and, if a separate charge is made, the amount of the charge; 8) in the case of a sale of land the amount and a description of the closing costs; 9) the total amount financed; 10) the dollar amount of the credit service charge; 11) the total unpaid balance; 12) the annual rate of the credit service charge; 13) the payment schedule; 14) the charges to be made in the event of default; and 15) a description of any security interest taken.

6. Prevent unconscionable contracts. If credit was extended with creditor believing there was really

- no reasonable probability of payment, or
- seller's knowledge that buyer will receive little substantial benefit from goods or services sold, or
- a gross disparity between value and price, or
- an attempt by the seller to take advantage of the buyer because of physical, mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement,

then the contract should be unenforceable or the unconscionable parts removed.

7. Prohibit seller from charging buyer for attorney's fee in connection with consumer sale or consumer lease. For the most part, such a charge has been simply a device to increase the cost to the buyer.

8. Prohibit use of negotiable instruments other than checks in certain consumer sales and leases.

9. Restrict deficiency judgments on consumer sales of \$5,000.00 or less. Presently the seller may repossess his goods or his security interest from the buyer and in addition collect the remaining payments. New measures should be adopted that provide either repossession or suit but not both.

10. Prohibit confession of judgment on a claim arising from a consumer credit sale or consumer lease.

11. Limit the security interest which may be taken in a consumer sale or lease to the item sold.

12. Provide that the assignee of consumer papers are subject to the buyer's defenses. If the buyer has a legitimate complaint he should have a recourse for action which is often not now available to him.

13. Prohibit extortionate extensions of credit. Although this practice is not common in Minnesota, we must move swiftly and justly to prevent credit repayments under the threat or use of violence or harm to the debtor's person, reputation or property. It should also be prima facie evidence that the extension of credit is unenforceable if it can be shown that the creditor has a reputation for use of violence or criminal means as a collection procedure.

PERFORMANCE

After the product is advertised, sold and paid for, the consumer should get sound and safe (or wholesome) performance from his purchase. Because the consumer is not omniscient or omnipresent, specific safeguards must be adopted to protect his well-being.

Certainly if a product or service does not perform as intended or agreed, the buyer should have avenues open to him to remedy the injustice. Many of the recommendations I have just made will dramatically strengthen the consumer's right to remedies.

However, I am also concerned that we take every reasonable step to assure the consumer will have no cause for complaint. In the consumer services area as well as many of the solutions I have proposed for other current issues, prevention is an important ingredient. Therefore, I strongly urge this Legislature to:

1. Provide for registration and certification by the State Board of Health of persons engaged in fitting hearing aids.

2. Require report to State Board of Health by managers of hotels and restaurants, lodging and boarding homes, and places of refreshment of any employee afflicted with a communicable disease. The employee should be suspended until cured.

3. Authorize a research study and report of pesticides. The use of pesticides has expanded rapidly since World War II. After years of widespread use in Minnesota, I believe it is not only wise but urgent that an objective review of the effect of pesticides on our natural environment and people's health be carried out by the Department of Agriculture.

4. Grant the Commissioner of Agriculture authority to set rules for the use of pesticides. For example, the Commissioner could provide that notice of proposed applications of pesticides must be given to neighboring landowners, or he may restrict the use of pesticides to prevent injury to

persons, animals or environment. A pesticide advisory board representing all segments of health, agriculture, conservation, and pollution should be formed.

5. Establish a pesticide regulation section in the agronomy services division of the Department of Agriculture to carry out the authority given the Commissioner.

6. Improve meat inspection by providing for an ante-mortem and post-mortem inspection of meat and such other regulations as qualify the state for federal matching funds.

7. Extend state inspection to retail outlets in Minnesota where animal carcasses or edible products derived from animals are cured, salted, processed, packaged or prepared for sale for human consumption. This provision will make state inspection more rigid than federal regulations. Again, I am gratified that the House has acted favorably on this proposal.

8. Provide continuous inspection of egg processing plants.

9. Provide inspection of foreign and domestic ships in ports such as Duluth. Presently there is no comprehensive federal or state program to inspect and intercept plant or animal organisms that may be harmful to the public safety or agriculture.

10. Regulate private trade schools. Minnesota has greatly benefited from the tremendous contributions of private trade schools. Such an outstanding performance should not be tarnished by a few unprincipled operators, largely from outside the state, who prey on those students seeking to develop their skills. Private trade schools should be licensed by the

state upon recommendations of an advisory commission with significant jurisdiction and appointed by the Governor.

11. Create the office of an Ombudsman. There are 3½ million Minnesota consumers of government. To provide a citizen defender against possible institutional wrongdoing, I recommend the establishment of an ombudsman. The mere existence of an office to which any one can carry complaints will in itself counteract tendencies toward arbitrary decisions. Naturally the success of an ombudsman depends on keeping this important institution above political implications. This office would be the expression of real democracy, ensuring that agencies designed to serve the welfare of society, also respect the rights of individuals.

CREATE A DIVISION OF CONSUMER SERVICES

In accordance with the previous recommendations regarding reorganization of the executive branch, a division of consumer services should be established within the Division of Commerce and Consumer Services. Such a division would consolidate all consumer protection activities presently carried out by several departments and agencies. The consumer would have one united special division to handle their complaints. An advisory consumer services board should also be established to assist the director in preparing and proposing rules in the consumer services area. Giving responsibility for consumer services to one division will allow the people to be effectively served by the laws we have, and the state to easily assess the laws we need.

CONCLUSION

No doubt there are some issues not discussed in this message that

some think should fall under the umbrella of consumer protection. Perhaps there are also issues included in this message others would not categorize as consumer protection.

But regardless of how encompassing one's idea of consumer protection is, this administration's past action and present recommendations covering every aspect of consumer transactions indicate our commitment to serving the consumer. We shall constantly be alert to revisions and additions necessary to our consumer laws.

Yet no government regulations, no matter how completely drawn or forcefully administered, can protect the consumer in every circumstance. If that were the case, government's protection would become the consumer's strait jacket.

We cannot overemphasize the importance of consumer education. The best deal in any market place is an informed buyer. The new division of consumer services will be interested in consumer education. Their efforts must be reinforced by our schools, our civic organizations, our advertisers and our industries.

I am confident that the recommendations in this message, together with consumer education, will ensure the proper balance in our free enterprise system.