

CHAPTER 51—S.F.No. 1067

An act relating to local government; providing for the discharge of charter commissions; amending Minnesota Statutes 1986, section 410.05, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 410.05, is amended by adding a subdivision to read:

Subd. 5. DISCHARGE. If the charter commission of a statutory city determines that a charter is not necessary or desirable, the commission may be discharged by a vote of three-fourths of its members. Another commission may not be formed sooner than one year from the date of discharge.

Approved April 29, 1987

CHAPTER 52—S.F.No. 793

An act relating to commerce; consumer protection; requiring the repair, refund, or replacement of new motor vehicles under certain circumstances; prescribing certain arbitration mechanisms for all automobile manufacturers doing business and offering express warranties on their vehicles sold in Minnesota; amending Minnesota Statutes 1986, section 325F.665.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 325F.665, is amended to read:

325F.665 NEW MOTOR VEHICLE WARRANTIES; MANUFACTURER'S DUTY TO REPAIR, REFUND, OR REPLACE.

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them:

(a) "consumer" means the purchaser or lessee, other than for purposes of resale or sublease, of a new motor vehicle used for personal, family, or household purposes at least 40 percent of the time, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle; ~~and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;~~

(b) "manufacturer" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles;

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(c) "manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty;

(d) "lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, used for personal, family, or household purposes at least 40 percent of the time, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease;

(e) "motor vehicle" means (1) a passenger automobile as defined in section 168.011, subdivision 7, including pickup trucks and vans, and (2) the self-propelled motor vehicle chassis or van portion of recreational equipment as defined in section 168.011, subdivision 25, which is sold or leased to a consumer in this state;

(f) "informal dispute settlement ~~procedure or mechanism~~" means an arbitration process or procedure by which the manufacturer attempts to resolve disputes with consumers regarding motor vehicle nonconformities and repairs that arise during the vehicle's warranty period;

(g) "motor vehicle lessor" means a person who holds title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor's rights under such agreement; and

(h) "early termination costs" means expenses and obligations incurred by a motor vehicle lessor as a result of an early termination of a written lease agreement and surrender of a motor vehicle to a manufacturer under subdivision 4, including penalties for prepayment of finance arrangements ~~and investment tax credits not allowed for the year in which such termination occurs and for prior years; and~~

(i) "~~early termination savings~~" means ~~expenses and obligations avoided by a motor vehicle lessor as a result of an early termination of a written lease agreement and surrender of a motor vehicle to a manufacturer under subdivision 4, including the interest charges the motor vehicle lessor would have otherwise paid to finance the motor vehicle.~~

Subd. 2. **MANUFACTURER'S DUTY TO REPAIR.** If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranties or during the period of ~~one year~~ two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the vehicle to the applicable express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term or the ~~one-year~~ two-year period.

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Subd. 3. **MANUFACTURER'S DUTY TO REFUND OR REPLACE.** (a) If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall, ~~at the consumer's option,~~ either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price, ~~or the total amount actually paid by the consumer under any vehicle lease,~~ including the cost of any options or other modifications arranged, installed, or made by the manufacturer, its agent, or its authorized dealer within 30 days after the date of original delivery, and all other charges including, but not limited to, sales tax, license fees and registration fees, reimbursement for towing and rental vehicle expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile driven or ten percent of the purchase price ~~or full lease cost of the vehicle,~~ whichever is less. If the manufacturer offers a replacement vehicle under this section, the consumer has the option of rejecting the replacement vehicle and requiring the manufacturer to provide a refund. Refunds must be made to the consumer, and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles. Refunds shall include the amount stated by the dealer as the trade-in value of a consumer's used motor vehicle, plus any additional amount paid by the consumer for the new motor vehicle. ~~For a lease vehicle, refunds shall include the total amount actually paid by the consumer under any vehicle lease, less any finance charges paid by the consumer.~~ A reasonable allowance for use is that amount directly attributable to use by the consumer and any previous consumer ~~prior to the first report of the nonconformity to the manufacturer, agent, or dealer during any period in which the use and market value of the motor vehicle are not substantially impaired.~~ It is an affirmative defense to any claim under this section (1) that an alleged nonconformity does not substantially impair the use or market value, or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(b) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of ~~one year~~ two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist, or (2) the vehicle is out of service by reason of repair for a cumulative total of 30 or more business days during the term or during the period, whichever is the earlier date.

(c) If the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle and is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of

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attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of ~~one year~~ two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(d) The term of an applicable express warranty, the ~~one-year~~ two-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, or fire, flood, or other natural disaster.

(e) The presumption contained in paragraph (b) applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested.

(f) ~~A consumer is eligible to receive a refund or replacement vehicle under this section if the nonconformity is reported to the manufacturer, its authorized agent or dealer, at any time during the motor vehicle's express warranty period, even if the motor vehicle's express warranty expires before the requirements of paragraphs (a), (b), and (c) have been met. The expiration of the time periods set forth in paragraph (b) does not bar a consumer from receiving a refund or replacement vehicle under paragraph (a) if the reasonable number of attempts to correct the nonconformity causing the substantial impairment occur within three years following the date of original delivery of the new motor vehicle to a consumer, provided the consumer first reported the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranty.~~

(g) At the time of purchase or lease, the manufacturer must provide directly to the consumer a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE THE STATE'S LEMON LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE OR YOUR LEASE PAYMENTS. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE. YOU ALSO HAVE A RIGHT TO SUBMIT YOUR CASE TO THE CONSUMER ARBITRATION PROGRAM WHICH THE MANUFACTURER MUST OFFER IN MINNESOTA."

Subd. 4. MANUFACTURER'S DUTY TO CONSUMERS WITH LEASED VEHICLES. A manufacturer has the same duties under this section to a consumer who leases a motor vehicle as to a consumer who purchases a new motor vehicle. The lessee has the same rights against the manufacturer under this section as does the owner of the motor vehicle, and the consumer may enforce

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the rights directly against the manufacturer. If it is determined that a consumer who leases a motor vehicle is entitled to a refund or replacement vehicle pursuant to this section A consumer who leases a new motor vehicle has the same rights against the manufacturer under this section as a consumer who purchases a new motor vehicle, except that, if it is determined that the manufacturer must accept return of the consumer's leased vehicle pursuant to subdivision 3, then the consumer lessee is not entitled to a replacement vehicle, but is entitled only to a refund as provided in this subdivision. In such a case, the consumer's leased vehicle shall be returned to the manufacturer and the consumer's written lease with the motor vehicle lessor must be terminated. The manufacturer shall then provide the owner of the leased vehicle with either a full refund or a replacement vehicle. The owner of the returned leased vehicle shall then provide the consumer with either the replacement vehicle or that portion of the owner's refund to which the consumer is entitled under this section the consumer with a full refund of the amount actually paid by the consumer on the written lease, including all additional charges set forth in subdivision 3, if actually paid by the consumer, less a reasonable allowance for use by the consumer as set forth in subdivision 3. The manufacturer shall provide the motor vehicle lessor with a full refund of the vehicle's original purchase price plus any early termination costs, not to exceed 15 percent of the vehicle's original purchase price, less the amount actually paid by the consumer on the written lease.

Nothing contained in this section shall prohibit a motor vehicle lessor from recovering early termination costs incurred or early termination savings received pursuant to this section.

Subd. 5. RESALE OR RE-LEASE OF RETURNED MOTOR VEHICLE.

(a) If a motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold or re-leased in this state unless:

(1) the manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for 12,000 miles or 12 months after the date of resale, whichever is earlier; and

(2) the manufacturer provides the consumer with a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY MINNESOTA LAW."

The provisions of this section apply to the resold or re-leased motor vehicle for full term of the warranty required under this subdivision.

(b) Notwithstanding the provisions of paragraph (a), if a new motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of

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another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven, the motor vehicle may not be resold in this state.

Subd. 6. **ALTERNATIVE DISPUTE SETTLEMENT PROCEDURE MECHANISM.** (a) If a manufacturer has established, or participates in Any manufacturer doing business in this state, entering into franchise agreements for the sale of its motor vehicles in this state, or offering express warranties on its motor vehicles sold or distributed for sale in this state shall operate, or participate in, an informal dispute settlement procedure mechanism located in the state of Minnesota which complies with the provisions of the Code of Federal Regulations, title 16, part 703 (1982), and the requirements of this section, the provisions of subdivision 3 concerning refunds or replacement do not apply to a consumer who has not first used this procedure mechanism before commencing a civil action, unless the manufacturer allows a consumer to commence an action without first using this mechanism.

(b) The findings and decisions in An informal dispute settlement procedure mechanism provided for by this section shall address and state in writing whether the consumer would be entitled to a refund or replacement under the presumptions and criteria set out in subdivision 3, and are admissible as nonbinding evidence in any legal action and are not subject to further foundation requirements, at the time a request for arbitration is made, provide to the consumer and to each person who will arbitrate the consumer's dispute, information about this section as approved and directed by the attorney general, in consultation with interested parties. The informal dispute settlement mechanism shall permit the parties to present or submit any arguments based on this section and shall not prohibit or discourage the consideration of any such arguments. In developing and approving information about this section as provided herein, the attorney general is not subject to the rulemaking provisions of chapter 14.

(c) If, in an informal dispute settlement procedure mechanism, it is decided that a consumer is entitled to a replacement vehicle or refund under subdivision 3, then the consumer has the option of selecting and receiving either a replacement vehicle or a full refund as authorized by subdivision 3. any refund or replacement offered by the manufacturer or selected by a consumer shall include all amounts authorized by subdivision 3.

(d) In any informal dispute settlement procedure provided for by this section:

(1) No documents shall be received by any informal dispute settlement mechanism unless those documents have been provided to each of the parties in the dispute at or prior to the mechanism's meeting, with an opportunity for the parties to comment on the documents either in writing, or with oral presentation at the request of the mechanism orally. If a consumer is present during the informal dispute settlement mechanism's meeting, the consumer may request

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postponement of the mechanism's meeting to allow sufficient time to review any documents presented at the time of the meeting which had not been presented to the consumer prior to the meeting.

(2) (e) "Nonvoting" manufacturer or dealer representatives shall not attend or participate in the informal dispute settlement procedures unless the consumer is also present and given a chance to be heard, or unless the consumer previously consents to the manufacturer or dealer participation without the consumer's presence and participation. The informal dispute settlement mechanism shall allow each party to appear and make an oral presentation in the state of Minnesota unless the consumer agrees to submit the dispute for decision on the basis of documents alone or by telephone, or unless the party fails to appear for an oral presentation after reasonable prior written notice. If the consumer agrees to submit the dispute for decision on the basis of documents alone, then manufacturer or dealer representatives may not participate in the discussion or decision of the dispute.

(3) (f) Consumers shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the informal dispute settlement hearing.

(4) (g) No disputes shall be heard. Where there has been a recent attempt by the manufacturer to repair a consumer's vehicle, but no response has yet been received by the informal dispute mechanism from the consumer as to whether the repairs were successfully completed, the parties must be given the opportunity to present any additional information regarding the manufacturer's recent repair attempt before any final decision is rendered by the informal dispute settlement mechanism. This provision shall not prejudice a consumer's rights under this section.

(5) (h) If the manufacturer shall provide and the informal dispute settlement mechanism shall consider any relevant knows that a technical service bulletins which may have been issued by the manufacturer or lessor regarding the motor vehicle bulletin directly applies to the specific mechanical problem being disputed by the consumer, then the manufacturer shall provide the technical service bulletin to the consumer at reasonable cost. The mechanism shall review any such technical service bulletins submitted by either party.

(i) A consumer may be charged a fee to participate in an informal dispute settlement mechanism required by this section, but the fee may not exceed the conciliation court filing fee in the county where the arbitration is conducted.

(j) Any party to the dispute has the right to be represented by an attorney in an informal dispute settlement mechanism.

(k) The informal dispute settlement mechanism has all the evidence-gathering powers granted an arbitrator under section 572.14.

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(1) A decision issued in an informal dispute settlement mechanism required by this section may be in writing and signed.

Subd. 7. EXHAUSTION OF EFFECT AND ADMISSIBILITY OF DECISION BY INFORMAL DISPUTE SETTLEMENT REMEDY MECHANISM. No consumer shall be required to first participate in an informal dispute settlement procedure before filing an action in district court if the informal dispute settlement procedure does not comply with the requirements of this section; notwithstanding the procedure's compliance with the Code of Federal Regulations, title 16, part 703 The decision issued in an informal dispute settlement mechanism required by this section is nonbinding on the parties involved, unless otherwise agreed by the parties. Any party, upon application, may remove the decision to district court for a trial de novo. If an application to remove a decision is not filed in the district court within 30 days after the date the decision is received by the parties, then the district court shall, upon application of a party, issue an order confirming the decision. A written decision issued by an informal dispute settlement mechanism, and any written findings upon which the decision is based, are admissible as nonbinding evidence in any subsequent legal action and are not subject to further foundation requirements.

Subd. 8. TREBLE DAMAGES FOR BAD FAITH APPEAL OF DECISION. If the district court finds that a party has removed a decision of an informal dispute settlement mechanism in bad faith, by asserting a claim or defense that is frivolous and costly to the other party, or by asserting an unfounded position solely to delay recovery by the other party, then the court shall award to the prevailing party three times the actual damages sustained, together with costs and disbursements, including reasonable attorney's fees.

Subd. 8-9. CIVIL REMEDY. Any consumer injured by a violation of this section may bring a civil action to enforce this section and recover costs and disbursements, including reasonable attorney's fees incurred in the civil action. In addition to the remedies provided herein, the attorney general may bring an action pursuant to section 8.31 against any manufacturer for violation of this section.

Subd. 9-10. LIMITATION ON ACTIONS. An A civil action brought under this section must be commenced within ~~six months~~ three years of the date of original delivery of the new motor vehicle's express warranty term expires; the date a consumer is eligible under this section to bring an action in district court; or the date a consumer receives written notice of the final decision by the informal dispute settlement mechanism, whichever is the later date vehicle to a consumer; except that, if the consumer applies to an informal dispute settlement mechanism within three years of the date of original delivery of a new motor vehicle to a consumer, then any civil action brought under this section must be commenced within six months after the date of the final decision by the mechanism.

Subd. 10-11. REMEDY NONEXCLUSIVE. Nothing in this section limits

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the rights or remedies which are otherwise available to a consumer under any other law.

Subd. 12. DISCLOSURE REQUIREMENT. In addition to any investigative powers authorized by law, the attorney general may inspect the records of the informal dispute settlement mechanism upon reasonable notice, during regular business hours, and may make available to the public information about the operation of the mechanism, but data on an individual may not be disclosed without the prior consent of the individual.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1987, and applies to all motor vehicles that are still under an applicable express manufacturer's warranty and which were originally delivered to the consumer during the previous one-year period.

Approved May 4, 1987

CHAPTER 53—H.F.No. 499

An act relating to metropolitan government; changing the treatment of current value credits and modifying the cost allocation system of the metropolitan waste control commission; providing for a reserve fund for the commission; authorizing appointment of advisory committees by the commission; authorizing an implementation period for transition to a new cost allocation system; amending Minnesota Statutes 1986, sections 473.511, subdivision 4; and 473.517, subdivisions 1, 2, 3, and 9; repealing Minnesota Statutes 1986, section 473.517, subdivisions 4, 5, and 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 473.511, subdivision 4, is amended to read:

Subd. 4. CURRENT VALUE OF EXISTING FACILITIES. When the commission assumes the ownership of any existing interceptors or treatment works as provided in subdivision 2 or 3, the local government unit or units which paid part or all of the cost of such facility, directly or pursuant to contracts for reimbursement of costs, shall be entitled to receive a credit against amounts to be allocated to them under section 473.517, which may be spread over such period not exceeding 30 years as the commission shall determine, and an additional credit equal to interest on the unused credit balance from time to time at the rate of four percent per annum. The amount of such credit shall equal the current value of the facility computed by the commission in the manner provided in this subdivision at the time the commission acquires it. The original cost of a facility shall be computed as the total actual costs of constructing it, including engineering, legal, and administrative costs, less any

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