

(b) For an offer to sell, a copy of the purchase agreement containing the price and terms of the highest offer made by a third party that is acceptable to the seller and a signed affidavit by the seller affirming that the purchase agreement is true, accurate, and made in good faith must be included with the notice under this subdivision. At the seller's discretion, reference to the third party's identity may be deleted from the copy of the purchase agreement.

(c) For an offer to lease, a copy of the lease containing the price and terms of the highest offer made by a third party that is acceptable to the lessor and a signed affidavit by the lessor affirming that the lease is true, accurate, and made in good faith must be included with the notice under this subdivision. At the lessor's discretion, reference to the third party's identity may be deleted from the copy of the lease agreement.

(d) The affidavit under paragraphs (b) and (c) is subject to section 609.48.

**Sec. 10. EFFECTIVE DATE.**

This act is effective May 1, 1988.

Approved April 24, 1988

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**CHAPTER 611—H.F.No. 2049**

*An act relating to commerce; motor vehicles; clarifying the intent of the legislature regarding certain motor vehicle coverages; regulating motor vehicle franchises; clarifying the intent of the legislature regarding cancellations, terminations, or nonrenewals; specifying unfair practices; prohibiting agreements designed to waive, nullify, or modify statutory regulation; requiring lessors to title and register vehicles; amending Minnesota Statutes 1986, sections 60A.08, by adding a subdivision; 80E.06; 80E.07; 80E.08; 80E.09; 80E.13; Minnesota Statutes 1987 Supplement, sections 65B.49, subdivision 5a; and 72A.125, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 80E.*

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

Section 1. Minnesota Statutes 1986, section 60A.08, is amended by adding a subdivision to read:

Subd. 12. EXCLUSIONS. All liability policies must provide coverage for rented vehicles as required in chapter 65B.

This subdivision does not apply to liability policies that the commissioner has exempted by order.

This coverage can be excess over any and all specific motor vehicle coverage that is applicable.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 2. Minnesota Statutes 1987 Supplement, section 65B.49, subdivision 5a, is amended to read:

Subd. 5a. **RENTAL VEHICLES.** (a) ~~No~~ Every plan of reparation security may be issued or renewed after August 1, 1987, unless the plan provides that all coverages under the plan are extended to any motor vehicle while being rented by the named insured. ~~The plan insuring a natural person as named insured, covering private passenger vehicles as defined under section 65B.001, subdivision 3, must also provide that all or any part of the obligation of the named insured for property damage and loss of use to a rented vehicle would be covered by the collision or comprehensive portion of the plan. The plan must provide that any deductible will not apply to claims that arise while a motor vehicle is being rented by a named insured property damage liability portion of the plan. The obligation of the plan must not be contingent on fault or negligence. In all cases where the plan's property damage liability coverage is less than \$25,000, the coverage available under the subdivision must be \$25,000. Other than as described in this paragraph, nothing in this section amends or alters the provisions of the plan of reparation security as to primacy of the coverages in section 65B.49.~~

(b) A vehicle is rented for purposes of this subdivision if the rate for the use of the vehicle is determined on a weekly or daily basis. A vehicle is not rented for purposes of this subdivision if the rate for the vehicle's use is determined on a monthly or longer period ~~or the vehicle is rented principally for business purposes.~~

(c) The policy or certificate issued by the plan must inform the insured of the application of the plan to rental vehicles and that the insured may not need to purchase additional coverage from the rental company.

(d) Where an insured has two or more vehicles covered by a plan or plans of reparation security containing the rented motor vehicle coverage required under paragraph (a), claims must be made against the plan covering the motor vehicle most often driven by the insured may select the plan the insured wishes to collect from and that plan is entitled to a pro rata contribution from the other plan or plans based upon the property damage limits of liability. If the person renting the motor vehicle is also covered by the person's employer's insurance policy or the employer's automobile self-insurance plan, the reparation obligor under the employer's policy or self-insurance plan has primary responsibility to pay claims arising from use of the rented vehicle.

(e) A notice advising the insured of rental vehicle coverage must be given by the reparation obligor to each current insured with the first renewal notice after January 1, ~~1988~~ 1989. The notice must be approved by the commissioner of commerce. The commissioner may specify the form of the notice. ~~A form approved by the commissioner must be reasonably calculated to put the insured on notice of the coverage.~~

(f) When a motor vehicle is rented or leased in this state on a weekly or

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daily basis, there must be attached to the rental contract must contain a separate form containing a written notice in at least 10-point bold type, if printed, or in capital letters, if typewritten, which states:

Under Minnesota law, a personal automobile insurance policy issued in Minnesota must cover the rental of a this motor vehicle ~~unless the rental is principally for business use or rented on a monthly or longer basis~~ against damage to the vehicle and against loss of use of the vehicle. Therefore, purchase of any collision damage waiver or ~~other similar~~ insurance affected in this rental contract ~~may~~ is not be necessary if your policy was issued in Minnesota.

No collision damage waiver or other insurance offered as part of or in conjunction with a rental of a motor vehicle may be sold unless the person renting the vehicle provides a written acknowledgment that the above consumer protection notice has been read and understood.

(g) When damage to a rented vehicle is covered by a plan of reparation security as provided under paragraph (a), the rental contract must state that payment by the reparation obligor within the time limits of section 72A.201 is acceptable, and prior payment by the renter is not required.

(h) To be compensated for the loss of use of a damaged rented motor vehicle, the car rental company must prove:

(1) that had the vehicle been available, it would have been rented; and

(2) that no other vehicle was available for rental in place of the damaged vehicle.

The standard of proof set forth in this paragraph does not limit the responsibility of a reparation obligor to provide an insured with coverage for any loss of use for which the reparation obligor is otherwise responsible. A car rental company may be compensated for loss of use of a damaged rental motor vehicle only for the period when the damaged car actually would have been rented.

Sec. 3. Minnesota Statutes 1987 Supplement, section 72A.125, is amended by adding a subdivision to read:

Subd. 3. COLLISION DAMAGE WAIVER. A "collision damage waiver" is a discharge of the responsibility of the renter or leasee to return the motor vehicle in the same condition as when it was first rented. The waiver is a full and complete discharge of the responsibility to return the vehicle in the same condition as when it was first rented. The waiver may not contain any exclusions except those approved by the commissioner pursuant to the requirements contained in section 61A.02, subdivisions 2 to 5.

Sec. 4. Minnesota Statutes 1986, section 80E.06, is amended to read:

**80E.06 CANCELLATIONS, TERMINATIONS, OR NONRENEWALS.**

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **REQUIREMENTS.** Notwithstanding the terms of any franchise agreement or waiver to the contrary, no manufacturer shall cancel ~~or~~, terminate, or fail to renew any franchise relationship with a licensed new motor vehicle dealer unless the manufacturer has:

- (a) satisfied the notice requirement of section 80E.08;
- (b) acted in good faith as defined in section 80E.03, subdivision 9; and
- (c) good cause for the cancellation ~~or~~ termination, or nonrenewal.

For the purposes of sections 80E.06 to 80E.09, a manufacturer includes a distributor. Any action by a manufacturer terminating a contractual relationship with a distributor is not effective to terminate existing valid franchises running from the distributor to new motor vehicle dealers unless the manufacturer follows the provisions of sections 80E.06 to 80E.09.

Subd. 2. **CIRCUMSTANCES CONSTITUTING GOOD CAUSE.** Notwithstanding the terms of any franchise agreement or waiver to the contrary, good cause exists for the purposes of a termination ~~or~~ cancellation, or nonrenewal, when the new motor vehicle dealer fails to comply with a provision of the franchise which is both reasonable and of material significance to the franchise relationship; provided, that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of the failure; ~~and~~.

If failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer; provided, that the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; the notification stated that notice was provided for failure of performance pursuant to sections 80E.01 to 80E.17; the new motor vehicle dealer was afforded a reasonable opportunity in no event less than six months to comply with the criteria; and the dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during the period.

Sec. 5. Minnesota Statutes 1986, section 80E.07, is amended to read:

**80E.07 CANCELLATION, TERMINATION, OR NONRENEWAL; LIMITATIONS.**

Subdivision 1. **CIRCUMSTANCES NOT CONSTITUTING GOOD CAUSE.** Notwithstanding the terms of any franchise agreement or waiver to the contrary, the following examples represent circumstances which do not by themselves constitute good cause for the termination ~~or~~ cancellation, or nonrenewal of a franchise:

(a) A change of ownership of the new motor vehicle dealer's dealership. This paragraph does not authorize any change in ownership which would have the

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effect of the sale of the franchise without the manufacturer's or distributor's consent, but consent shall not in any case be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor;

(b) The fact that the new motor vehicle dealer refused to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer, other than parts necessary to conduct recall campaigns or perform warranty service;

(c) The fact that the new motor vehicle dealer owns, invests in, participates in the management of, holds a license for the sale of another make or line of new motor vehicle, or has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer; provided, that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable capital, credit, or facilities' requirements of the manufacturer; or

(d) A change in the location of the new motor vehicle dealership. This paragraph does not authorize a change in location without the manufacturer's or distributor's consent, but consent shall not in any case be unreasonably withheld. The burden of establishing reasonableness is on the franchisor.

Subd. 2. **BURDEN OF PROOF.** The manufacturer has the burden of proving that it acted in good faith; that the notice requirements have been complied with; and that there was good cause for the franchise termination ~~or~~, cancellation, or nonrenewal.

Sec. 6. Minnesota Statutes 1986, section 80E.08, is amended to read:

**80E.08 NOTICE OF TERMINATION ~~OR~~, CANCELLATION, OR NON-RENEWAL.**

Subdivision 1. **REQUIREMENTS.** Notwithstanding the terms of any franchise agreement or waiver to the contrary, prior to the termination ~~or~~, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notice of the termination, cancellation, or nonrenewal to the new motor vehicle dealer as provided in subdivision 2.

Subd. 2. **GENERALLY.** Notice shall be in writing and except as provided in subdivision 3 shall be given not less than 90 days prior to the effective date of the termination ~~or~~, cancellation, or nonrenewal.

Subd. 3. **SPECIFIC EXCEPTIONS.** (a) At least 15 days notice must be provided with respect to terminations ~~or~~, cancellations, or nonrenewals involving the following circumstances:

(1) Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of a crime which constitutes a felony as defined in section 609.02, subdivision 2;

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(2) The business operations of the franchised motor vehicle dealer have been abandoned or closed for seven consecutive business days unless the closing is due to an act of God, strike or labor difficulty, or other cause over which the dealer has no control;

(3) A significant misrepresentation by the new motor vehicle dealer; or

(4) The suspension, revocation, or refusal to renew the franchised motor vehicle dealer's license pursuant to section 168.27.

(b) Not less than 180 days notice must be provided prior to the effective date of cancellation ~~or~~ termination, or nonrenewal where the manufacturer or distributor is discontinuing the sale of the product line.

Subd. 4. **CONTENTS AND DELIVERY.** The notice shall be sent by certified mail or personally delivered to the new motor vehicle dealer. The notice shall contain the following information:

(a) A statement of intention to terminate ~~or~~ cancel, or nonrenew the franchise;

(b) A statement of the reasons for the termination ~~or~~ cancellation, or nonrenewal; and

(c) The date on which the termination ~~or~~ cancellation, or nonrenewal takes effect.

Sec. 7. Minnesota Statutes 1986, section 80E.09, is amended to read:

**80E.09 PAYMENTS REQUIRED UPON TERMINATION, CANCELLATION, OR NONRENEWAL.**

Subdivision 1. **REQUIREMENTS.** Upon the termination ~~or~~ cancellation, or nonrenewal of any franchise, the new motor vehicle dealer shall, in the time prescribed, be allowed fair and reasonable compensation by the manufacturer for the following items:

(a) New motor vehicle inventory which was originally acquired from the manufacturer, as limited in clause (f);

(b) Equipment and furnishings if the new motor vehicle dealer purchased them from the manufacturer;

(c) Special tools;

(d) Supplies, including accessories and parts, purchased from the manufacturer;

(e) A sum equal to the current fair rental value of the dealership facilities for a period of one year from the effective date of the termination ~~or~~ cancellation, or nonrenewal, or the remainder of the term of the lease, whichever is less.

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Payment under this clause shall not be required if the termination ~~or~~, cancellation, or nonrenewal was for good cause based on a conviction or plea of nolo contendere of the dealer or one of its principal owners for a crime which constitutes a felony as described in section 609.02, subdivision 2, or if it has been demonstrated that the dealer has exhibited a course of conduct constituting fraud with respect to the manufacturer or the general public;

(f) Fair and reasonable compensation as applied to paragraphs (a) and (d) means the manufacturer shall reimburse the dealer for 100 percent of the net cost to the dealer, including transportation, of all new current model year motor vehicle inventory acquired from the manufacturer which has not been materially altered or substantially damaged, and all new motor vehicle inventory not of the current model year which has not been materially altered or substantially damaged; provided the noncurrent model year vehicles were acquired from the manufacturer and drafted on the dealer's financing source or paid for within 120 days prior to the effective date of the termination ~~or~~, cancellation, or nonrenewal. The manufacturer shall reimburse the dealer for 100 percent of the current net prices on motor vehicle accessories and parts, including superseded parts listed in current price lists or catalogues plus five percent of the current net price of all accessories and parts returned to compensate the dealer for handling, packing, and loading the parts.

Subd. 2. **TIME IN WHICH PAYMENTS MUST BE MADE.** Fair and reasonable compensation shall be paid by the manufacturer when possible within 90 days of the effective date of termination ~~or~~, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items, is in a position to convey that title to the manufacturer and as long as this period will allow compliance with the notification requirements of sections 336.6-101 to 336.6-111 or any other state or federal laws relating to creditor notification.

Subd. 3. **VOLUNTARY TERMINATIONS ~~OR~~, CANCELLATIONS, OR NONRENEWALS.** For the purposes of reimbursement under this section, termination ~~or~~, cancellation, or nonrenewal includes a voluntary termination ~~or~~, cancellation, or nonrenewal by the dealer, and the compensation provided for in subdivision 1, except clause (e) thereof, shall be paid to the dealer.

Sec. 8. Minnesota Statutes 1986, section 80E.13, is amended to read:

**80E.13 UNFAIR PRACTICES BY MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES.**

It is unlawful and an unfair practice for a manufacturer, distributor, or factory branch to engage in any of the following practices:

(a) To delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or accessories in reasonable time and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the dealer's relevant market area, after having accepted an order from a new motor vehicle dealer having a franchise for the retail sale of any new motor vehicle sold or

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distributed by the manufacturer or distributor, if the new motor vehicle or new motor vehicle parts or accessories are publicly advertised as being available for delivery or actually being delivered. This clause is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer;

(b) To refuse to disclose to any new motor vehicle dealer handling the same line make, the manner and mode of distribution of that line make within the relevant market area;

(c) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer;

(d) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for private retail consumers prior to the dealer's receiving the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order if the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer;

(e) To offer any refunds or other types of inducements to any new motor vehicle dealer for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof without making the same offer to all other new motor vehicle dealers in the same line make within the relevant market area;

(f) To release to any outside party, except under subpoena or in an administrative or judicial proceeding involving the manufacturer or dealer, any business, financial, or personal information which may be provided by the dealer to the manufacturer, without the express written consent of the dealer or unless pertinent to judicial or governmental administrative proceedings or to arbitration proceedings of any kind;

(g) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose;

(h) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new vehicle dealers to make warranty adjustments with retail customers;

(i) To compete with a new motor vehicle dealer in the same line make operating under an agreement or franchise from the same manufacturer in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified indepen-

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dent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(j) To prevent a new motor vehicle dealer from receiving fair and reasonable compensation for the value of the new motor vehicle dealership. There shall be no transfer, assignment of the franchise, or major change in the executive management of the dealership, except as is otherwise provided in sections 80E.01 to 80E.17, without consent of the manufacturer, which shall not be unreasonably withheld. Denial of the request must be in writing and delivered to the new motor vehicle dealer within 60 days after the manufacturer receives the information necessary to evaluate the proposed transfer. If a denial is not sent within this period, the manufacturer shall be deemed to have given its consent to the proposed transfer or change; or

(k) To threaten to modify or replace or modify or replace a franchise with a succeeding franchise that would adversely alter the rights or obligations of a new motor vehicle dealer under an existing franchise or that substantially impairs the sales or service obligations or investments of the motor vehicle dealer.

#### Sec. 9. [80E.135] WAIVERS AND MODIFICATIONS PROHIBITED.

No manufacturer, distributor, or factory branch shall, before entering into a franchise with a new motor vehicle dealer or during the franchise term, use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter, or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law. These instruments, agreements, and waivers are null and void.

#### Sec. 10. LEGISLATIVE INTENT.

Sections 4 to 7 are a restatement and clarification of the legislative intent of Laws 1987, chapter 150, section 3, and shall not be construed as a modification of existing law.

Approved April 24, 1988

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### CHAPTER 612—H.F.No. 2127

*An act relating to health maintenance organizations; requiring insolvency insurance policies to be filed; requiring a deposit; creating a net worth requirement; defining admitted assets; imposing investment restrictions; requiring quarterly reports; providing for the inclusion of certain items in provider contracts; regulating rehabilitation and liquidations; providing for alternative coverage for enrollees of an insolvent health maintenance organization; requiring health maintenance organizations to maintain liabilities for unpaid claims; impos-*

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