CHAPTER 456—S.F.No. 1870

An act relating to motor vehicles; regulating motor vehicle fuel franchises and marketing agreements; amending Minnesota Statutes 1998, section 80C.01, subdivision 4, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 80C; proposing coding for new law as Minnesota Statutes, chapter 80F.

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

Section 1. Minnesota Statutes 1998, section 80C.01, subdivision 4, is amended to read:

Subd. 4. (a) "Franchise" means ~~(a)~~ (1) a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

~~(1)~~ (i) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;

~~(2)~~ (ii) in which the franchisor and franchisee have a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and

~~(3)~~ (iii) for which the franchisee pays, directly or indirectly, a franchise fee; or

~~(b)~~ (2) a contract, lease, or other agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons, whereby the franchisee is authorized, permitted, or granted the right to market motor vehicle fuel ~~using~~ at retail under the franchisor's trade name, trademark, service mark, logotype, ~~advertising,~~ or other commercial symbol or related characteristics ~~for which the franchisee pays a franchise fee~~ owned or controlled by the franchisor; or

~~(c)~~ (3) the sale or lease of any products, equipment, chattels, supplies, or services to the purchaser, other than the sale of sales demonstration equipment, materials or samples for a total price of $500 or less to any one person, for the purpose of enabling the purchaser to start a business and in which the seller:

~~(1)~~ (i) represents that the seller, lessor, or an affiliate thereof will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or similar devices, or currency operated amusement machines or devices, on premises neither owned or leased by the purchaser or seller; or

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~~(2)~~ (ii) represents that the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the supplies, services, or chattels sold to the purchaser; or

~~(3)~~ (iii) guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller; or

~~(d)~~ (4) an oral or written contract or agreement, either expressed or implied, for a definite or indefinite period, between two or more persons, under which a manufacturer, selling security systems through dealers or distributors in this state, requires regular payments from the distributor or dealer as royalties or residuals for products purchased and paid for by the dealer or distributor.

~~(e)~~ (b) "Franchise" does not include any business which is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions.

~~(f)~~ (c) "Franchise" does not include any contract, lease or other agreement whereby the franchisee is required to pay less than $100 on an annual basis, except those franchises identified in paragraph ~~(b)~~ (a), clause (2).

~~(g)~~ (d) "Franchise" does not include a contract, lease or other agreement between a new motor vehicle manufacturer, distributor, or factory branch and a franchisee whereby the franchisee is granted the right to market automobiles, motorcycles, trucks, truck tractors, or self-propelled motor homes or campers if the foregoing are designed primarily for the transportation of persons or property on public highways.

~~(h)~~ (e) "Franchise" does not include a contract, lease, or other agreement or arrangement between two or more air carriers, or between one or more air carriers and one or more foreign air carriers. The terms "air carrier" and "foreign air carrier" shall have the meanings assigned to them by the Federal Aviation Act, United States Code Appendix, title 49, sections 1301(3) and 1301(22), respectively.

(f) For purposes of this chapter, a person who sells motor vehicle fuel at wholesale who does not, or is not an affiliate of a person who, owns or controls the trademark, trade name, service mark, logotype, or other commercial symbol or related characteristics under which the motor vehicle fuel is sold at retail, is not a franchisor or a franchisee, and is not considered to be part of a franchise relationship.

Sec. 2. Minnesota Statutes 1998, section 80C.01, is amended by adding a subdivision to read:

Subd. 20. **AFFILIATE.** "Affiliate" means any person who controls, is controlled by, or is under common control with, any other person. The term includes, without limitation, partners, business entities with common ownership, principals of any business entity, and subsidiaries, parent companies, or holding companies of any person.

Sec. 3. Minnesota Statutes 1998, section 80C.01, is amended by adding a subdivision to read:

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Subd. 21. **MOTOR VEHICLE FUEL.** "Motor vehicle fuel" means gasoline of a type distributed for use as a fuel in a self-propelled vehicle designed primarily for use on public streets, roads, and highways, but does not include diesel fuel or specialty fuel.

Sec. 4. Minnesota Statutes 1998, section 80C.01, is amended by adding a subdivision to read:

Subd. 22. **SPECIALTY FUEL.** "Specialty fuel" means a gasoline sold (1) by a refiner who directly or through an affiliate does not own, lease, or have any leasehold or other possessory rights to the marketing premises; and (2) under a trademark or trade name that is different from the trademark, trade name, service mark, logotype, or other commercial symbol used to identify the marketing premises generally.

Sec. 5. **[80C.147] CHANGE IN OWNERSHIP.**

A motor vehicle fuel franchisor, or an affiliate of such franchisor, who determines to (1) sell or transfer its interests in marketing premises occupied by a franchisee, and (2) in connection with such sale or transfer assigns its interest as a franchisor in a franchise agreement applicable to such premises, shall offer to the franchisee occupying the premises those rights contained in United States Code, title 15, section 2802(b)(3)(D)(iii)(I) or (II). This section expires 12 months after the day of final enactment.

Sec. 6. **[80F.01] DEFINITIONS.**

Subdivision 1. **SCOPE.** For the purposes of this chapter, the following terms have the meanings given to them in this section.

Subd. 2. **AFFILIATE.** "Affiliate" means a person who controls, is controlled by, or is under common control with, any other person. Affiliate includes, without limitation, partners, business entities with common ownership, principals of any business entity, and subsidiaries, parent companies, or holding companies of any person.

Subd. 3. **DEALER.** "Dealer" means a person permitted to market motor vehicle fuel pursuant to a marketing agreement.

Subd. 4. **FACILITY.** "Facility" means the premises which, under a marketing agreement, are to be used by a dealer in connection with the sale, consignment, and distribution of motor vehicle fuel to the public for ultimate consumption.

Subd. 5. **INCENTIVE.** "Incentive" or "incentives" means any rebates, volume credits, volume discounts, funds for construction, funds for reimaging, funds for equipment, funds for fixtures, funds for equipment or fixture upgrades, equipment, fixtures, or any other money or things of value provided by or passed through the supplier to a dealer and which are required by the terms of the agreement between the supplier and the dealer to be repaid by the dealer if the terms of the supply contract, whether oral or written, are not met.

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Subd. 6. **MARKETING AGREEMENT.** "Motor vehicle fuel marketing agreement" or "marketing agreement" means any contract, lease, or other agreement, whether that agreement is oral or written and whether it is express or implied, between a supplier or its affiliate and a dealer whereby a dealer is supplied motor vehicle fuel by a supplier or its affiliate for marketing from a facility under a brand name, trade name, service mark, logotype, or other commercial symbol or related characteristics owned or controlled by the supplier or its affiliate, or where the supplier or its affiliate authorizes or permits such use. The term includes any agreement between the supplier and its affiliate and the dealer to occupy or lease a facility, but does not include any agreement that meets the definition of a franchise under chapter 80C.

Subd. 7. **PERSON.** "Person" means a natural person, corporation, partnership, trust, or other legal entity.

Subd. 8. **SUPPLIER.** "Supplier" means a person other than a refiner who supplies motor vehicle fuel to a dealer pursuant to a marketing agreement.

Sec. 7. **[80F.02] REQUIRED DISCLOSURES.**

Subdivision 1. **FORM OF DISCLOSURES.** The disclosures required by this section must be made in writing by the supplier or its affiliate to the dealer, and must be made either prior to the execution of any marketing agreement or as part of the marketing agreement itself.

Subd. 2. **CONTENT OF DISCLOSURES.** The supplier or its affiliate must disclose the following information to the extent it is known to the supplier or affiliate:

(1) the prior three year motor vehicle fuel gallonage history of the premises, unless previously operated by the same dealer;

(2) the interest, by ownership, lease, or other means of control, of the supplier, an affiliate of the supplier, or any other person, in the facility;

(3) any plans for condemnation, roadway alteration, or other government action that would materially impact the dealer's occupation of the facility or the marketing of motor vehicle fuel from the facility;

(4) any agreements the supplier or affiliate may have to alter, sell, or otherwise dispose of the facility; and

(5) the name, current address, and current telephone number of all dealers who have occupied the facility in the three-year period before the disclosure is made.

Sec. 8. **[80F.03] SURVIVORSHIP.**

Subdivision 1. **DESIGNATED FAMILY MEMBER.** For purposes of this section, "designated family member" means the spouse, child, grandchild, parent, brother, or sister of the operator.

Subd. 2. **RIGHT TO SUCCEED TO AGREEMENT.** Any designated family member of a deceased or incapacitated dealer may succeed to the marketing agreement if (1) the designated family member gives the supplier written notice of the intention

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to succeed to the agreement within 60 days of the dealer's death; (2) the designated family member agrees to be bound by the terms and conditions of a written existing marketing agreement; and (3) the designated family member is a person who meets the supplier's reasonable standards. At the request of the supplier, the designated family member must provide any personal and financial data that is reasonably necessary to determine whether the designated family member meets the reasonable standards of the supplier.

Subd. 3. **STANDARDS.** Reasonable standards used by a supplier may include, but are not limited to, consideration of the designated family member's ability and potential to operate the facility at the same level as the former operator, and of the designated family member's gasoline marketing experience, education, creditworthiness, and management experience.

Subd. 4. **WRITTEN AGREEMENT TO BE OFFERED.** If the marketing agreement under which the deceased or incapacitated dealer operated the facility was oral, the supplier shall offer a reasonable written agreement to the designated family member within 30 days of the designated family member's notification to the supplier of intent to succeed to the agreement. If the designated family member does not, within 30 days after receiving the written agreement from the supplier, either accept the terms of the offered agreement or object to the terms as unreasonable, the designated family member shall be deemed to have waived the right of succession.

Subd. 5. **REFUSAL TO ALLOW SUCCESSION.** If a supplier believes in good faith that the designated family member does not meet the supplier's reasonable standards, the supplier shall notify the designated family member of the refusal to allow succession and intent to terminate the marketing agreement. This notice must be provided no more than 90 days after the supplier receives all personal and financial data requested from the designated family member. The agreement must not be terminated less than 90 days after notice is served on the designated family member.

Subd. 6. **DISPUTE REGARDING RIGHT OF SUCCESSION; BURDEN OF PROOF.** In determining whether a designated family member failed to meet a supplier's reasonable standards, the supplier has the burden of proving that the standards used are reasonable, and the designated family member has the burden of proving that those standards that are reasonable have been met.

Subd. 7. **PERMISSIBLE CONDITION ON SUCCESSION.** As a condition of succession, the supplier may require that reasonable arrangements be entered into for the payment of rent or product payment during the interim period from the date of the dealer's death or incapacity until succession is completed or the right to succession is terminated.

Sec. 9. **[80F.04] ELIMINATION OF SERVICE BAYS PROHIBITED.**

Subdivision 1. **SERVICE BAYS.** For the purposes of this section, "service bay" means an enclosed area where automobile repairs are performed, including, but not limited to, lubrication, oil change, tire repair, battery charge, replacement of fan belts, hoses, and wiper blades.

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Subd. 2. **PROVISION FOR ELIMINATION OF SERVICE BAYS.** A marketing agreement that includes a lease of the facility to the dealer must provide that if the supplier eliminates one or more service bays during the term of the marketing agreement, the supplier must first pay to the dealer in cash an amount that fairly and adequately compensates the dealer for the loss of the service and repair business.

Subd. 3. **WAIVER.** The provision required by subdivision 2 may not be waived or modified except in a writing signed by the dealer executed at least 30 days after the execution of the marketing agreement. The writing must be separate and independent from the marketing agreement, and shall eliminate the payment provisions of subdivision 2.

Subd. 4. **LIMITATIONS.** Nothing in this subdivision prohibits a supplier from altering, modifying, or remodeling a full-service station, without payment to the dealer, following the expiration of the franchise relationship based upon termination or nonrenewal of the franchise relationship in accordance with United States Code, title 15, section 2802(b)(3)(D).

Sec. 10. **[80F.05] HOURS OF OPERATION.**

A supplier may set forth in a marketing agreement the required number of hours per day and days per week that the dealer must maintain the retail outlet open for business. However, the supplier shall not unreasonably withhold consent to a modification of such requirements where the dealer can demonstrate that the modification is reasonable based on a change of circumstances, including economic conditions.

Sec. 11. **[80F.06] OTHER BUSINESSES ON THE PREMISES.**

The supplier may set forth in the marketing agreement any prohibitions and limitations on the conduct of any other businesses at the facility, including a charge for additional rent where another business is permitted and conducted. However, the supplier shall not unreasonably withhold consent to the performance of another business, impose unreasonable limitations on the dealer's ability to perform any other business, or charge an unreasonable rent for the conduct of another business, considering the fair rental value of the site and any imposition upon the supplier's business.

Sec. 12. **[80F.07] PRICE CONTROLS.**

The price at which the dealer sells products shall not be fixed, established, or regulated by the supplier or the marketing agreement.

Sec. 13. **[80F.08] PROMOTIONAL REQUIREMENTS.**

No dealer or supplier shall be required to use any promotion, premium, coupon, giveaway, or rebate. Except as otherwise provided by law, nothing herein shall be construed to prohibit voluntary participation in a promotion, premium, coupon, giveaway, or rebate.

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Sec. 14. **[80F.09] DISPOSITION OF PRODUCT.**

In the event of termination or nonrenewal of the marketing agreement, whether by mutual agreement or otherwise, the supplier shall purchase from the dealer products that were available for sale to the public at the facility and were purchased from the supplier, provided that the products are tendered by the dealer no later than 30 days from the date of the termination or nonrenewal of the marketing agreement. The payment for the products shall be the then current wholesale price of the products, minus a reasonable restocking fee for products moved by the supplier. The payment shall be reduced by any amount of indebtedness owed by the dealer to the supplier. If the dealer has in its possession on the date of termination any products which were supplied by the supplier which have not been paid for in full, the dealer at its expense shall, within 30 days of the termination or nonrenewal of the marketing agreement, transfer to the supplier all of such products in a merchantable condition. The provisions of this section are subject to valid liens against the products by or on behalf of other creditors of the dealer.

Sec. 15. **[80F.10] FREE ASSOCIATION.**

No supplier shall restrict or prohibit, directly or indirectly, the right of free association among dealers for any lawful purpose. No dealer shall restrict or prohibit, directly or indirectly, the right of free association among suppliers for any lawful purpose.

Sec. 16. **[80F.11] RELEASE AND WAIVER.**

No party to a marketing agreement shall require as a condition of entering into the marketing agreement that the other party assent to a release or waiver of any rights provided by this chapter, or include in a marketing agreement a release of claims. Any such waiver or release is void. The right of either party to the interposition of counterclaims or crossclaims shall not be waived by the marketing agreement, and any such provision is void.

Sec. 17. **[80F.12] SECURITY DEPOSIT.**

A security deposit shall not be required except for the purpose of securing against loss of or damage to real or personal property or payment of money due to the supplier or credit extended to the dealer. Any security deposit required of the dealer may be satisfied by a letter of credit or the deposit of cash or a pledge of a savings account or its equivalent in a banking institution located in Minnesota. In the event that the security deposit is made by the dealer by depositing cash with the supplier, the deposit shall earn interest at the rate of six percent per year which shall accrue to the benefit of the dealer and be payable to the dealer upon termination of the security deposit, less any charges to which the supplier is entitled to collect from the security deposit or interest earned on it. In the event that the security deposit is made by the pledge of a savings account, a savings account shall be opened in the joint name of the supplier and the dealer and neither party shall be entitled to withdraw the funds without the consent of the other party; upon termination of the security deposit arrangement, the principal deposit together with accrued interest at the rate paid for the account shall be payable to the dealer after deduction of any charges to which the supplier may be entitled.

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Sec. 18. **[80F.13] VIOLATION OF LAW.**

No party to a marketing agreement shall require or encourage any other party to the marketing agreement to violate or conspire to violate any state, federal, or local laws.

Sec. 19. **[80F.14] ASSIGNMENT.**

Subdivision 1. **LEASE ARRANGEMENTS.** If a dealer leases a facility under a marketing agreement with the supplier or its affiliate, the provisions of this subdivision apply. A supplier shall not unreasonably withhold or delay its consent to any assignment or transfer of a marketing agreement. The dealer may assign the marketing agreement to another person that meets the reasonable standards of the supplier. A dealer who intends to assign the marketing agreement shall give the other party notice of the proposed assignment and shall identify the proposed assignee. At the time of serving notice of assignment, a dealer shall promptly provide, at the request of the other party, personal and financial data that is reasonably necessary to determine whether the assignment should be honored. If the supplier who is requested to approve the assignment believes in good faith that reasonable cause exists for refusing to honor the assignment, that person shall inform the dealer of the denial and the reasons for denial within 60 days of receiving the notice of assignment. A supplier may condition assignment upon the agreement of the dealer who intends to assign and the other assignee to be bound by all terms and conditions of the existing marketing agreement.

Subd. 2. **NONLEASE ARRANGEMENTS.** If a marketing agreement does not involve the lease of the facility by the dealer from the supplier, the agreement shall be freely assignable by the dealer or the supplier, provided that such assignment does not increase the burdens or obligations of the other party. A supplier may require an assignee to make reasonable and adequate credit arrangements for the payment of product delivered. If the assigning dealer has an incentive obligation to the supplier, the assigning dealer either shall obtain the consent of the supplier to the proposed assignment, which consent shall not be unreasonably withheld, or shall provide reasonable and adequate security for the benefit of the supplier to assure that the assignor's incentive obligation to the supplier is met by the assignee dealer.

Sec. 20. **[80F.15] ASSIGNMENT OF FACILITY LEASE OPTION.**

A supplier or an affiliate of a supplier who has an option to purchase, or an option to lease or extend the lease of a facility occupied by a dealer, who determines not to exercise the option, shall offer to assign or otherwise transfer the option to the dealer. The supplier may charge the dealer a reasonable legal and administrative cost for transfer of the option. Options to purchase, or lease or extend the lease of a facility created after the effective date of this section are assignable to the dealer who occupies the facility. If the dealer exercises the option, the supplier or affiliate is not liable for the performance of the dealer pursuant to the option or the underlying lease after the option is exercised.

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Sec. 21. **[80F.16] DEALER NOTICE OF TERMINATION.**

A dealer may only terminate a marketing agreement if the dealer provides 90 days' written notice of termination to the supplier. On or before the termination date, the dealer shall repay to the supplier any incentive money that is required to be repaid to the supplier upon termination pursuant to the terms of the marketing agreement. The giving of notice of termination shall not eliminate a claim by the supplier for damages for breach of contract.

Sec. 22. **[80F.17] ENFORCEMENT.**

Any person aggrieved by a violation of this chapter may obtain injunctive relief, damages, rescission, or other relief. It is not a defense to an action for injunctive relief that an aggrieved person may have adequate remedies at law. A party shall submit the dispute to binding arbitration in accordance with the commercial rules of the Minnesota American Arbitration Association. Injunctive relief shall remain available in a court of competent jurisdiction where arbitration cannot provide complete relief to vindicate the rights of either party or where appropriate to secure rights after arbitration. The court or arbitrator shall have the discretion to award to the prevailing party its costs and disbursements. No action may be commenced under this chapter more than three years after the cause of action accrued. If the marketing agreement provides for the right of the supplier to recover attorney fees as the prevailing party in a suit between the parties, then the dealer shall have the right to recover attorney fees as the prevailing party in an action under this marketing agreement or under this chapter.

Sec. 23. **[80F.18] CHOICE OF LAW AND JURISDICTION.**

The laws of the state of Minnesota shall govern any marketing agreement whereby the dealer is or will be marketing motor vehicle fuel in Minnesota and venue for all actions shall be the state of Minnesota. Any condition, stipulation or provision, including any choice of law provision or any choice of venue provision, purporting to bind any person who is acquiring a marketing agreement to be operated in this state to waive compliance with any provisions of this chapter is void.

Sec. 24. **EFFECTIVE DATE.**

Sections 1 and 2 are effective the day following final enactment and apply to franchises entered into, amended, or renewed on or after that date. Any franchise in existence on the effective date of this act that has no expiration date is considered to be renewed August 1, 2000, for purposes of the application of sections 1 and 2.

Sections 4 to 23 are effective on the day following final enactment for existing written marketing agreements to the extent allowable by law. Sections 4 to 23 are effective one year after final enactment for existing oral marketing agreements, except that sections 8, 12, and 21 are effective the day following final enactment for existing oral marketing agreements.

Sections 4 to 23 are effective the day following final enactment for agreements entered into, modified, renewed, or extended on or after that date. A marketing agreement with an indefinite term or no expiration date shall be deemed to be extended for the purposes of this section if continued after August 1, 2000.

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Presented to the governor May 2, 2000

Signed by the governor May 5, 2000, 10:50 a.m.

CHAPTER 457—S.F.No. 3257

An act relating to state employment; modifying legislative employment provisions; amending Minnesota Statutes 1998, sections 3.07; 3.09; 3.095; 352.01, subdivision 2a; and 352D.02, subdivisions 1 and 1c; Minnesota Statutes 1999 Supplement, sections 3.096; and 43A.24, subdivision 2.

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

Section 1. Minnesota Statutes 1998, section 3.07, is amended to read:

3.07 **ADDITIONAL EMPLOYEES.**

Each house, after its organization, may appoint and at pleasure remove the employees provided for by its permanent rules or recommended by its committee on ~~legislative expense~~ rules. All officers and employees ~~shall be paid by the day and~~ shall receive the compensation provided by the permanent rules of the electing or appointing body or recommended by its committee on ~~legislative expense~~ rules. Unless otherwise expressly provided by law, no officer or employee shall receive any other compensation for services.

Sec. 2. Minnesota Statutes 1998, section 3.09, is amended to read:

3.09 **COMPENSATION OF EMPLOYEES.**

The compensation of officers and employees shall be at the rates ~~per day~~ fixed by the permanent rules of the electing or appointing body or recommended by its committee on ~~legislative expense~~ rules.

Sec. 3. Minnesota Statutes 1998, section 3.095, is amended to read:

3.095 **LEGISLATIVE EMPLOYEES, LEAVES.**

The legislative coordinating commission shall adopt plans for sick leave and annual leave for the ~~permanent~~ employees of the legislature and of legislative committees and commissions.

Sec. 4. Minnesota Statutes 1999 Supplement, section 3.096, is amended to read:

3.096 **TRANSFER OF LEAVE.**

An employee in the classified or unclassified service who accepts a position as ~~a permanent~~ an employee of the legislature shall have accrued vacation and sick leave transferred and placed to the employee's credit on the legislative records. ~~A permanent~~ An employee of the legislature who accepts a position in the classified or unclassified service shall have accrued vacation and sick leave transferred and placed to the

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