

CHAPTER 34—S.F.No. 1711

An act relating to commerce; regulating motor vehicle sales and distribution; amending Minnesota Statutes 2008, sections 80E.03, by adding a subdivision; 80E.09, subdivisions 1, 3; 80E.12; 80E.135; 80E.14, by adding a subdivision.

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

Section 1. Minnesota Statutes 2008, section 80E.03, is amended by adding a subdivision to read:

Subd. 10a. **Line-make.** "Line-make" means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer, distributor, or factory branch.

Sec. 2. Minnesota Statutes 2008, section 80E.09, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** Upon the termination, 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 as an ongoing new motor vehicle dealership for a period of one year from the effective date of the termination, cancellation, or nonrenewal, or until the facilities are leased or sold, whichever is less, if the dealer owns the facilities. If the facilities are leased from a lessor other than the manufacturer, a sum equivalent to rent for the remainder of the term of the lease or one year, whichever is less. Payment under this clause shall not be required if the termination, 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. Nothing in this subdivision relieves the dealer from the obligation to mitigate damages upon termination, cancellation, or nonrenewal. Any amount due under this paragraph is reduced to the extent the dealership makes other use of the property, sells, leases or subleases the property, or secures release from a lease. If the dealer rejects reduction of facility rental value compensation as described in this paragraph, the manufacturer is entitled to use of the premises for the period for which compensation is to be provided or the dealer may elect to receive no compensation;

(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, 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;

(g) if the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, the franchiser shall compensate the dealer an amount equal to the fair market value of the franchise for the line-make as of the date the franchiser announces the action that results in termination, cancellation, or nonrenewal, provided that this paragraph does not apply with respect to a dealer's franchise for distribution of recreational vehicles as defined in section 168.002, subdivision 27.

Sec. 3. Minnesota Statutes 2008, section 80E.09, subdivision 3, is amended to read:

Subd. 3. **Voluntary terminations, cancellations, or nonrenewals.** For the purposes of reimbursement under this section, termination, cancellation, or nonrenewal includes a voluntary termination, cancellation, or nonrenewal by the dealer, and the compensation provided for in subdivision 1, except ~~clause~~ clauses (e) and (g) thereof, shall be paid to the dealer.

Sec. 4. Minnesota Statutes 2008, section 80E.12, is amended to read:

80E.12 UNLAWFUL ACTS BY MANUFACTURERS, DISTRIBUTORS, OR FACTORY BRANCHES.

It shall be unlawful for any manufacturer, distributor, or factory branch to require a new motor vehicle dealer to do any of the following:

(a) order or accept delivery of any new motor vehicle, part or accessory thereof, equipment, or any other commodity not required by law which has not been voluntarily ordered by the new motor vehicle dealer, provided that this paragraph does not modify or supersede reasonable provisions of the franchise requiring the dealer to market a representative line of the new motor vehicles the manufacturer or distributor is publicly advertising;

(b) order or accept delivery of any new motor vehicle, part or accessory thereof, equipment, or any other commodity not required by law in order for the dealer to obtain delivery of any other motor vehicle ordered by the dealer;

(c) order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer or distributor;

(d) participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, showroom, or other display decorations or materials at the expense of the new motor vehicle dealer;

(e) enter into any agreement with the manufacturer or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer. Notice in good faith to any dealer of the dealer's violation of any terms of the franchise agreement shall not constitute a violation of sections 80E.01 to 80E.17;

(f) change the capital structure of the new motor vehicle dealer or the means by or through which the dealer finances the operation of the dealership; provided, that the new motor vehicle dealer at all times meets any reasonable capital standards agreed to by the dealer; and also provided, that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor as provided in section 80E.13, paragraph (j);

(g) prevent or attempt to prevent, by contract or otherwise, any motor vehicle dealer from changing the executive management control of the new motor vehicle dealer unless the franchisor proves that the change of executive management will result in executive management control by a person who is not of good moral character or who does not meet the franchisor's existing reasonable capital standards and, with consideration given to the volume of sales and services of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area; provided, that where the manufacturer, distributor, or factory branch rejects a proposed change in executive management control, the manufacturer, distributor, or factory branch shall give written notice of its reasons to the dealer;

(h) refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products or establishment of another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer; provided, however, that this clause does not apply unless 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 facilities requirements of the manufacturer and that the acquisition or addition is not unreasonable in light of all existing circumstances; provided further that if a manufacturer determines to deny a dealer's request for a change described in this paragraph, such denial must be in writing, must offer an analysis of the grounds for the denial addressing the criteria contained in this paragraph, and must be delivered to the new motor vehicle dealer within 60 days after the manufacturer receives the completed application or documents customarily used by the manufacturer for dealer actions described in this paragraph. If a denial that meets the requirements of this paragraph is not sent within this period, the manufacturer shall be deemed to have given its consent to the proposed change;

(i) during the course of the agreement, change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises during the course of the agreement, when to do so would be unreasonable; or

(j) prospectively assent to a release, assignment, novation, waiver, or estoppel whereby a dealer relinquishes any rights under sections 80E.01 to 80E.17, or which would relieve any person from liability imposed by sections 80E.01 to 80E.17 or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or

factory branch to be referred to any person or tribunal other than the duly constituted courts of this state or the United States, if the referral would be binding upon the new motor vehicle dealer.

Sec. 5. Minnesota Statutes 2008, section 80E.135, is amended to read:

80E.135 WAIVERS AND MODIFICATIONS PROHIBITED.

Subdivision 1. **Prohibition.** 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, restrict a dealer from participation in the management of, investment in, or the acquisition or establishment of any other line of new motor vehicle or related product as provided in section 80E.12, paragraph (h), 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.

Subd. 2. **Applicability.** This section does not apply to an agreement between a dealer and a manufacturer, distributor, or factory branch that restricts or prohibits a dealer from participation in the management of, investment in, or the acquisition or establishment of any other line of new motor vehicle or related product if the agreement:

(1) is voluntarily entered into by the dealer and its execution is not a condition of approval of the transaction by a manufacturer, distributor, or factory branch;

(2) clearly and conspicuously discloses that the agreement is voluntary; and

(3) provides for a separate consideration to the dealer.

Sec. 6. Minnesota Statutes 2008, section 80E.14, is amended by adding a subdivision to read:

Subd. 3. **Successor manufacturers.** If an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

Sec. 7. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 4, 2009

Signed by the governor May 6, 2009, 4:35 p.m.