CHAPTER 203--H.F.No. 740

An act relating to commerce; regulating motor vehicle franchises; specifying warranty and recall obligations; regulating succession agreements and unfair practices by manufacturers, distributors, and factory branches; providing penalties; amending Minnesota Statutes 2016, sections 80E.11, subdivision 7; 80E.13; 80E.16, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 80E; repealing Minnesota Statutes 2016, section 80E.04.

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

Section 1. **[80E.041] WARRANTY OBLIGATIONS TO DEALERS.**

Subdivision 1. **Requirements.** Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer shall compensate the new motor vehicle dealer for warranty service parts and labor required of the new motor vehicle dealer by the manufacturer. Compensation for parts used in warranty service must include the motor vehicle dealer's actual cost of the part plus a reasonable percentage markup or be calculated as described in subdivision 2 at the election of the dealer. Compensation for labor used in warranty service must be reasonable and may at the election of the dealer be determined as described in subdivision 4. This section applies to all warranty repair service performed by the dealer for the manufacturer or with the approval of the manufacturer and for which the dealer is entitled to compensation or reimbursement from the manufacturer.

Subd. 2. **Retail rate for parts.** (a) The dealer may establish a percentage markup to be applied to the cost of warranty parts by submitting 100 sequential nonwarranty customer-paid service repair orders to the manufacturer which contain warranty-like repairs, or 90 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like repairs, whichever is less, covering repairs made no more than 180 days before the submission.

(b) A dealer's retail rate for parts shall be calculated by determining the dealer's total parts sales in the submitted service repair orders under paragraph (a) and dividing that amount by the dealer's total cost to purchase the parts, subtracting one from that amount, and then multiplying by 100. A manufacturer may disapprove a dealer's retail rate if:

(1) the disapproval is provided to the dealer in writing;

(2) the disapproval is sent to the dealer within 30 days of the submission of the retail rate by the dealer to the manufacturer;

(3) the disapproval includes a reasonable substantiation that the retail rate submission is inaccurate, incomplete, or unreasonable in light of a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make of vehicles; and

(4) the manufacturer proposes an adjustment of the retail rate.

(c) If a manufacturer fails to approve or disapprove the retail rate within this time period, the retail rate is approved. If a manufacturer disapproves a dealer's retail rate, and the dealer does not agree to the manufacturer's proposed adjustment, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of their failure to agree. If the manufacturer's internal dispute resolution procedure is unsuccessful, or if the procedure is not implemented within a reasonable time after the dealer notifies the manufacturer of their failure to agree, the dealer may use the civil remedies available under section 80E.17. A dealer must file a civil suit under section

80E.17, as permitted by this subdivision, within 60 days of receiving the manufacturer's proposed adjustment to the retail rate, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.

(d) Charges for the following do not qualify as warranty-like repairs and are excluded from the calculations under this subdivision and subdivision 4:

(1) repairs including parts and labor for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;

(2) parts sold at wholesale;

(3) engine assemblies and transmission assemblies if the new motor vehicle dealer agrees to be compensated for those assemblies with a handling charge instead of a retail parts markup;

(4) parts and labor to perform routine maintenance generally performed at predetermined intervals to keep a vehicle operating properly and not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;

(5) nuts, bolts, fasteners, and similar items that do not have an individual part number;

(6) tires and labor to install or repair;

(7) parts and labor to perform vehicle reconditioning; and

(8) accessories.

Subd. 3. **Parts at no cost or reduced cost.** If a manufacturer furnishes a new part to a dealer at no cost or at a reduced cost for use in performing repairs under this section, the manufacturer shall compensate the dealer the amount paid for the part, if any, plus an amount equal to the dealer's established percentage markup multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the maximum of:

(1) the amount the dealer paid for the part or a substantially identical part if already owned by the dealer;

(2) the cost of the part shown in a current manufacturer's established price schedule; and

(3) the cost of a substantially identical part shown in a current manufacturer's established price schedule.

Subd. 4. **Retail rate for labor.** (a) Compensation for warranty labor must equal the dealer's effective nonwarranty labor rate multiplied by the time allowances recognized by the manufacturer to compensate its dealers for warranty work. The effective nonwarranty labor rate is determined by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders submitted under subdivision 2 by the total number of labor hours that generated those sales. Compensation for warranty labor must include reasonable diagnostic time for repairs performed under this section.

(b) A manufacturer may disapprove a dealer's effective nonwarranty labor rate if:

(1) the disapproval is provided to the dealer in writing;

(2) the disapproval is sent to the dealer within 30 days of the submission of the effective nonwarranty labor rate by the dealer to the manufacturer;

(3) the disapproval includes a reasonable substantiation that the effective nonwarranty labor rate submission is inaccurate, incomplete, or unreasonable in light of a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make vehicles; and

(4) the manufacturer proposes an adjustment of the effective nonwarranty labor rate.

(c) If a manufacturer fails to approve or disapprove the rate within this time period, the rate is approved. If a manufacturer disapproves a dealer's effective nonwarranty labor rate, and the dealer does not agree to the manufacturer's proposed adjustment, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of their failure to agree. If the manufacturer's internal dispute resolution procedure is unsuccessful, or if the procedure is not implemented within a reasonable time after the dealer notifies the manufacturer of their failure to agree, the dealer may use the civil remedies available under section 80E.17. A dealer must file a civil suit under section 80E.17, as permitted by this subdivision, within 60 days of receiving the manufacturer's proposed adjustment to the effective nonwarranty labor rate, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.

Subd. 5. **Time for establishing rate.** A dealer shall not be permitted to establish a retail rate for parts or labor more than once per year.

Subd. 6. **Requirements for cost recovery.** (a) Except as provided under paragraph (b), a manufacturer shall not otherwise recover its costs under this section from dealers within this state, including but not limited to a surcharge imposed on a dealer, solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this section.

(b) A manufacturer may recover its cost for reimbursing a dealer for parts and labor pursuant to this section if:

(1) the manufacturer provides written notice at least 60 days in advance of the implementation of cost recovery;

(2) the notice includes substantiation of the reasonableness of the cost recovery to be implemented, including by reference to a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make of vehicles.

If the dealer does not agree to the amount of the manufacturer's cost recovery, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of its failure to agree. If the dealer is not satisfied with the result of the manufacturer's internal dispute resolution procedure or if, due to the manufacturer, the procedure is not initiated within a reasonable time after the dealer notifies the manufacturer of its failure to agree, the dealer may file a civil suit under section 80E.17, as permitted by this subdivision, within 60 days of receiving the notice that cost recovery will be implemented, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.

(c) Cost recovery must not be implemented by a manufacturer pending conclusion of the process set forth under paragraph (b) in the case of dealer disagreement with the amount of cost recovery. If cost recovery is allowed at the conclusion of such process, it may be implemented retroactively from the date provided in the notice given under paragraph (b), clause (1).

(d) As an alternative to the dispute resolution process in paragraph (b), or during the pendency of the dispute resolution process in paragraph (b), the dealer may reduce its retail rate and request that the manufacturer recalculate the amount of cost recovery or abandon the implementation of cost recovery.

(e) Nothing in this subdivision prohibits a manufacturer from increasing prices for vehicles or parts in the normal course of business.

Subd. 7. **Fewer than five dealers in state.** If a manufacturer has fewer than five dealers in the state offering the same line-make of vehicle, the comparisons set forth in subdivision 2, paragraph (b), clause (3); subdivision 4, paragraph (b), clause (3); and subdivision 6, paragraph (b), clause (2), may be made by reference to similarly situated franchised motor vehicle dealers in a comparable geographic area in the United States offering the same line-make of vehicle.

Subd. 8. **Payment of claims.** (a) All claims made by new motor vehicle dealers under this section for labor and parts must be paid within 30 days of their approval. Claims must be either approved or disapproved within 30 days after they are submitted to the manufacturer in the manner and on the forms it prescribes. Any claims not specifically disapproved in writing within 30 days after the manufacturer receives them are deemed to be approved and payment must follow within 30 days, provided, however, that the manufacturer retains the right to audit the claims for a period of one year and to charge back any amounts paid on claims not reasonably substantiated or fraudulent claims. The manufacturer has the burden of proving that a claim is not reasonably substantiated or fraudulent.

(b) The audit and charge back provisions of this subdivision also apply to all other incentive and reimbursement programs that are subject to audit by the manufacturer.

(c) A manufacturer shall not deny a claim submitted under this section or charge back a claim or payment based solely on the dealer's incidental failure to comply with a claim processing procedure, a clerical error, or other administrative technicality, provided that the failure does not call into question the legitimacy of the claim. The manufacturer shall allow the dealer to resubmit the claim according to reasonable guidelines not later than 30 days after the dealer receives notice of the initial claim denial or charge back.

Subd. 9. **Product liability; limitation.** As between the dealer and the manufacturer, the obligations imposed by this section constitute the dealer's only responsibility for product liability based in whole or in part on strict liability in tort.

Subd. 10. **Definitions.** For purposes of this section, the term "manufacturer" includes "distributor" and includes manufacturers and distributors of motor vehicle engines. Dealer includes dealers of new motor vehicles and motor vehicle engines.

Subd. 11. **Violations.** It is a violation of this section for any new motor vehicle manufacturer to fail to perform any warranty obligations that it undertakes under the motor vehicle manufacturer's warranty.

Sec. 2. **[80E.045] RECALL REPAIRS; MANUFACTURER AND DEALER OBLIGATIONS.**

Subdivision 1. **Requirements.** (a) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required to perform recall repairs. Compensation for recall repairs must be reasonable and be consistent with section 80E.041. If parts or a remedy are not reasonably available to perform a recall service or repair on a vehicle held for sale by a dealer authorized to sell new motor vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice of recall to the new motor vehicle dealer and the manufacturer has issued a stop-sale or do-not-drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least 1.25 percent of the value of the vehicle per month beginning on the later of either the date that is 30 days after the date on which the stop-sale or do-not-drive order was provided to the dealer, or the date the vehicle was taken into the dealer's used vehicle inventory, until the earlier of either of the following:

(1) the date the recall or remedy parts are made available; or

(2) the date the dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

(b) A stop-sale or do-not-drive order means a notification issued by a vehicle manufacturer to its franchised dealerships stating that certain used vehicles in inventory shall not be sold or leased at retail or wholesale due to a federal safety recall for a defect or a noncompliance or a federal emissions recall.

Subd. 2. **Value of vehicle.** The value of a used vehicle is the average trade-in value for used vehicles as indicated in an independent third-party guide for the year, make, and model of the recalled vehicle.

Subd. 3. **Application.** This section applies only to:

(1) used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations adopted thereunder and where a stop-sale or do-not-drive order has been issued and repair parts or remedy remain unavailable for 30 days or longer; and

(2) new motor vehicle dealers holding affected used vehicles for sale that are a line-make that the dealer is franchised to sell or which the dealer is authorized to perform recall repairs, and which:

(i) are in inventory at the time the "stop-sale" order was issued; or

(ii) were taken in the used vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a new or certified preowned used vehicle from the dealer after the stop-sale or do-not-drive order was issued.

Subd. 4. **Violations.** Subject to the audit provisions of section 80E.041, it is a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer, whether through a charge back, removal of the individual dealer from an incentive program, reduction in amount owed under an incentive program, or any other means, solely because the new motor vehicle dealer has submitted a claim for reimbursement under this section.

Subd. 5. **Payment of claims.** (a) All reimbursement claims made by new motor vehicle dealers pursuant to this section for recall remedies or repairs or for compensation where no part or repair is reasonably available and the vehicle is subject to a stop-sale or do-not-drive order must be subject to the same limitations and requirements as a warranty reimbursement claim made under section 80E.041. Claims must be either approved or disapproved within 30 days after they are submitted to the manufacturer in the manner and on the forms the manufacturer reasonably prescribes. All claims shall be paid within 90 days of approval of the claim by the manufacturer. Any claim not specifically disapproved in writing within 30 days after the manufacturer receives them shall be deemed to be approved.

(b) As an alternative to paragraph (a), a manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than that provided under subdivision 1, or the manufacturer and dealer otherwise agree.

Subd. 6. **Inventory.** A manufacturer may direct the manner and method in which a new motor vehicle dealer must demonstrate the inventory status of an affected used motor vehicle to determine eligibility for compensation under this section, provided that the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

Subd. 7. **Total compensation.** Nothing in this section shall require a manufacturer to provide total compensation to a new motor vehicle dealer which would exceed the total average trade-in value of the affected used motor vehicle.

Subd. 8. **Exclusive remedy.** Any remedy provided to a new motor vehicle dealer under this section is exclusive and may not be combined with any other state or federal remedy.

Sec. 3. Minnesota Statutes 2016, section 80E.11, subdivision 7, is amended to read:

Subd. 7. **Succession agreements.** ~~Notwithstanding the foregoing,~~ A new motor vehicle dealer may apply to a manufacturer, distributor, or factory branch to designate a proposed dealer operator as a successor dealer to be established in the event of the death or incapacity of the new motor vehicle dealer. A manufacturer, distributor, or factory branch may not deny the proposed successor unless the proposed change would 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 or does not meet the franchisor's uniformly applied minimum business experience standards to be a franchised new motor vehicle dealer. If a manufacturer, distributor, or factory branch determines to deny a dealer's application to name a successor, such denial must be in writing, must offer an explanation of the grounds for the denial addressing the criteria contained in this

subdivision, and must be delivered to the new motor vehicle dealer within 90 days after the manufacturer, distributor, or factory branch receives the completed application or documents customarily used by the manufacturer, distributor, or factory branch for dealer actions described in this subdivision. If a denial that meets the requirements of this subdivision is not sent within the 90-day period, the manufacturer, distributor, or factory branch shall be deemed to have given its consent to the proposed successor. In the event the new motor vehicle dealer and franchisor have duly executed an agreement concerning succession rights prior to the dealer's death, the agreement shall be observed, even if it designates an individual other than the surviving spouse or heirs of the franchised motor vehicle dealer. Notwithstanding the foregoing, the franchisor shall not be required to accept a successor approved or deemed approved under this section if the franchisor can demonstrate that the proposed successor, at the time of the succession, would 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, or does not meet the franchisor's uniformly applied minimum business experience standards to be a franchised new motor vehicle dealer.

Sec. 4. Minnesota Statutes 2016, 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) 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 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) 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) 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) 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) 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 without making the same offer to all other new motor vehicle dealers in the same line make within geographic areas reasonably determined by the manufacturer;

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

(h) 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) compete with a new motor vehicle dealer in the same line make operating under an agreement or franchise from the same manufacturer, distributor, or factory branch. A manufacturer, distributor, or factory branch is considered to be competing when it has an ownership interest, other than a passive interest held for investment purposes, in a dealership of its line make located within the state. A manufacturer, distributor, or factory branch shall not, however, be deemed to be competing when operating a dealership, either temporarily or for a reasonable period, which is for sale to any qualified independent person at a fair and reasonable price, or when involved 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 and full management and operational control of the dealership within a reasonable time on reasonable terms and conditions;

(j) prevent a new motor vehicle dealer from transferring or assigning a new motor vehicle dealership to a qualified transferee. 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 withheld without good cause. In determining whether good cause exists for withholding consent to a transfer or assignment, the manufacturer, distributor, factory branch, or importer has the burden of proving that the transferee is a person who is not of good moral character or does not meet the franchisor's existing and reasonable capital standards and, considering the volume of sales and service of the new motor vehicle dealer, reasonable business experience standards in the market area. Denial of the request must be in writing and delivered to the new motor vehicle dealer within 60 days after the manufacturer receives the completed application customarily used by the manufacturer, distributor, factory branch, or importer for dealer appointments. 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. In the event of a proposed sale or transfer of a franchise, the manufacturer, distributor, factory branch, or importer shall be permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:

(1) the franchise agreement permits the manufacturer, distributor, factory branch, or importer to exercise a right of first refusal to acquire the franchisee's assets or ownership in the event of a proposed sale or transfer;

(2) the proposed transfer of the dealership or its assets is of more than 50 percent of the ownership or assets;

(3) the manufacturer, distributor, factory branch, or importer notifies the dealer in writing within 60 days of its receipt of the complete written proposal for the proposed sale or transfer on forms generally utilized by the manufacturer, distributor, factory branch, or importer for such purposes and containing the information required therein and all documents and agreements relating to the proposed sale or transfer;

(4) the exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration with equivalent terms of sale as is provided in the documents and agreements submitted to the manufacturer, distributor, factory branch, or importer under clause (3);

(5) the proposed change of 50 percent or more of the ownership or of the dealership assets does not involve the transfer or sale of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a family member, including a spouse, child, stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer owner; to a manager who has been employed in the dealership for at least four years and is otherwise qualified as a dealer operator; or to a partnership or corporation owned and controlled by one or more of such persons; and

(6) the manufacturer, distributor, factory branch, or importer agrees to pay the reasonable expenses, including reasonable attorney fees, which do not exceed the usual customary and reasonable fees charged for similar work done for other clients incurred by the proposed new owner and transferee before the manufacturer, distributor, factory branch, or importer exercises its right of first refusal, in negotiating and implementing the contract for the proposed change of ownership or transfer of dealership assets. However, payment of such expenses and attorney fees shall not be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 20 days after the dealer's receipt of the manufacturer, distributor, factory branch, or importer's written request for such an accounting. The manufacturer, distributor, factory branch, or importer may request such an accounting before exercising its right of first refusal. The obligation created under this clause is enforceable by the transferee;

(k) 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;

(l) unreasonably deny the right to acquire factory program vehicles to any dealer holding a valid franchise from the manufacturer to sell the same line make of vehicles, provided that the manufacturer may impose reasonable restrictions and limitations on the purchase or resale of program vehicles to be applied equitably to all of its franchised dealers. For the purposes of this paragraph, "factory program vehicle" has the meaning given the term in section 80E.06, subdivision 2;

(m) fail or refuse to offer to its same line make franchised dealers all models manufactured for that line make, other than alternative fuel vehicles as defined in section 216C.01, subdivision 1b. Failure to offer a model is not a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity, a strike, labor difficulty, or other cause over which the manufacturer, distributor, or factory branch has no control;

(n) require a dealer to pay an extra fee, or remodel, renovate, or recondition the dealer's existing facilities, or purchase unreasonable advertising displays, training, tools, or other materials, or to require the dealer to establish exclusive facilities or dedicated personnel as a prerequisite to receiving a model or a series of vehicles;

(o) require a dealer by program, incentive provision, or otherwise to adhere to performance standards that are not applied uniformly to other similarly situated dealers.

A performance standard, sales objective, or program for measuring dealership performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program, and the application of the standard or program by a manufacturer, distributor, or factory branch must be fair, reasonable, equitable, and based on accurate information. Upon written request by any of its franchised dealers located within Minnesota, a manufacturer, distributor, or factory branch must provide the method or formula used by the manufacturer in establishing the sales volumes for receiving a rebate or incentive and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other Minnesota-franchised new motor vehicle dealers of the same line-make located within 75 miles of the inquiring dealer. Nothing contained in this section requires a manufacturer, distributor, or factory branch to disclose confidential business information of any of its franchised dealers or the required numerical sales volumes that any of its franchised dealers must attain to receive a rebate or incentive. An inquiring dealer may file a civil action as provided in section 80E.17 without a showing of injury if a manufacturer, distributor, or factory branch fails to make the disclosure required by this section.

A manufacturer, distributor, or factory branch has the burden of proving that the performance standard, sales objective, or program for measuring dealership performance is fair ~~and~~, reasonable, and uniformly applied under this ~~subdivision~~ section;

(p) ~~unreasonably reduce~~ assign or change a dealer's area of sales effectiveness ~~without giving~~ arbitrarily or without due regard to the present pattern of motor vehicle sales and registrations within the dealer's market.

The manufacturer, distributor, or factory branch must provide at least 90 days' notice of the proposed ~~reduction~~ change. The change may not take effect if the dealer commences a civil action within the 90 days' notice period to determine whether ~~there is good cause for the change within the 90 days' notice period~~ the manufacturer, distributor, or factory branch met its obligations under this section. The burden of proof in such an action shall be on the manufacturer or distributor~~; or~~. In determining at the evidentiary hearing whether a manufacturer, distributor, or factory branch has assigned or changed the dealer's area of sales effectiveness or is proposing to assign or change the dealer's area of sales effectiveness arbitrarily or without due regard to the present pattern of motor vehicle sales and registrations within the dealer's market, the court may take into consideration the relevant circumstances, including, but not limited to:

(1) the traffic patterns between consumers and the same line-make franchised dealers of the affected manufacturer, distributor, or factory branch who are located within the market;

(2) the pattern of new vehicle sales and registrations of the affected manufacturer, distributor, or factory branch within various portions of the area of sales effectiveness and within the market as a whole;

(3) the growth or decline in population, density of population, and new car registrations in the market;

(4) the presence or absence of natural geographical obstacles or boundaries, such as rivers;

(5) the proximity of census tracts or other geographic units used by the affected manufacturer, factory branch, distributor, or distributor branch in determining the same line-make dealers' respective areas of sales effectiveness; and

(6) the reasonableness of the change or proposed change to the dealer's area of sales effectiveness, considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the manufacturer, distributor, or factory branch;

(q) to charge back, withhold payment, deny vehicle allocation, or take any other adverse action against a dealer when a new vehicle sold by the dealer has been exported to a foreign country, unless the manufacturer, distributor, or factory branch can show that at the time of sale, the customer's information was listed on a known or suspected exporter list made available to the dealer, or the dealer knew or reasonably should have known of the purchaser's intention to export or resell the motor vehicle in violation of the manufacturer's export policy. There is a rebuttable presumption that the dealer did not know or should not have reasonably known that the vehicle would be exported or resold in violation of the manufacturer's export policy if the vehicle is titled and registered in any state of the United States; or

(r) to require a dealer or prospective dealer by program, incentive provision, or otherwise to construct improvements to its or a predecessor's facilities or to install new signs or other franchisor image elements that replace or substantially alter improvements, signs, or franchisor image elements completed within the preceding ten years that were required and approved by the manufacturer, distributor, or factory branch, including any such improvements, signs, or franchisor image elements that were required as a condition of the dealer or predecessor dealer receiving an incentive or other compensation from the manufacturer, distributor, or factory branch.

This paragraph shall not apply to a program or agreement that provides lump sum payments to assist dealers in making facility improvements or to pay for signs or franchisor image elements when such payments are not dependent on the dealer selling or purchasing specific numbers of new vehicles and shall not apply to a program that is in effect with more than one Minnesota dealer on the effective date of this section, nor to any renewal of such program, nor to a modification that is not a substantial modification of a material term or condition of such program.

Sec. 5. Minnesota Statutes 2016, section 80E.16, subdivision 1, is amended to read:

Subdivision 1. **Civil penalty.** Any person who violates section ~~80E.04,~~ 80E.041, 80E.045, 80E.12, or 80E.13 shall be subject to a fine of not more than $2,000 for each violation. Any person who fails to comply

with a final judgment or order rendered by a court of competent jurisdiction, issued for a violation of sections 80E.01 to 80E.17, shall be subject to a fine of not more than $25,000. The fines authorized by this subdivision shall be imposed in a civil action brought by the attorney general on behalf of the state of Minnesota, and shall be deposited into the state treasury.

Sec. 6. **REPEALER.**

Minnesota Statutes 2016, section 80E.04, is repealed.

Presented to the governor May 21, 2018

Signed by the governor May 29, 2018, 1:18 p.m.