

## CHAPTER 80E

## MOTOR VEHICLE SALE AND DISTRIBUTION

80E.04	Warranty obligations to dealers.	80E.12	Unlawful acts by manufacturers, distributors, or factory branches.
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**80E.04 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 also compensate the new motor vehicle dealer for warranty service and parts required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work, and service in connection with warranty services, and the time allowance for the performance of the work and service. This section applies to all repair services performed by the dealer for the manufacturer or with the approval of the manufacturer and for which the dealer receives compensation or reimbursement from the manufacturer.

*[For text of subs 2 to 5, see M.S.1990]*

Subd. 6. For purposes of this section, the terms "manufacturer" and "dealer" include manufacturers and distributors of motor vehicle engines and their dealers.

**History:** 1991 c 69 s 1,2

**80E.05 INDEMNIFICATION REQUIRED.**

Notwithstanding the terms of any franchise agreement to the contrary, it shall be a violation of sections 80E.01 to 80E.17 for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment for damages, including, but not limited to, those based on strict liability, negligence, misrepresentation, warranty (express or implied), or revocation of acceptance as is defined in section 336.2-608, where the complaint, claim, or lawsuit relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer. Indemnification under this section must include court costs, reasonable attorney fees, and expert witness fees incurred by the motor vehicle dealer.

**History:** 1991 c 69 s 3

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

*[For text of subd 1, see M.S.1990]*

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, 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.

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.

To rebut allegations of good cause for a proposed termination, a dealer may present evidence including, but not limited to, a showing that the grounds for termination resulted from acts or circumstances beyond the control of the dealer and which were communicated to the manufacturer, or that in evaluating the dealer's compliance with reasonable sales criteria, the manufacturer failed to consider the dealer's sales of factory program vehicles. For the purposes of this subdivision, "factory program vehicle" means a vehicle of the current model year offered for sale and resold by the manufacturer directly or at a factory sponsored or authorized auction and purchased by a dealer holding a current franchise from the manufacturer for that same line make.

*History: 1991 c 69 s 4*

#### **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; 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;

(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.

*History: 1991 c 69 s 5*

### **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 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 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 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 of the dealership on reasonable terms and conditions;

(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;

(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;

(l) To 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.

**History:** 1991 c 69 s 6