CHAPTER 80E

MOTOR VEHICLE SALE AND DISTRIBUTION

80E.01 LEGISLATIVE PURPOSE AND INTENT.

The legislature finds and declares that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors or wholesalers, and factory or distributor representatives, and to regulate dealers of motor vehicles doing business in this state in order to prevent fraud, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

History: *1981 c 59 s 2*

80E.02 APPLICABILITY.

The provisions of sections 80E.01 to 80E.17 shall apply to all new motor vehicle dealers and contracts existing between new motor vehicle dealers and manufacturers on May 1, 1981 and to all subsequent contracts between new motor vehicle dealers and manufacturers.

History: *1981 c 59 s 3*

80E.03 DEFINITIONS.

Subdivision 1. **Terms.** As used in sections 80E.01 to 80E.17, unless the context otherwise requires, the following terms have the meanings given them.

Subd. 2. **Motor vehicle.** "Motor vehicle" is as defined in section 168.002, subdivision 18, but does not include farm implements or machinery or special mobile equipment as defined in section 168.002, subdivision 31.

Subd. 3. **New motor vehicle dealer; dealer.** "New motor vehicle dealer" or "dealer" means a person who in the ordinary course of business is engaged in the business of selling new motor vehicles to consumers or other end users and who holds a valid sales and service agreement, franchise, or contract, granted by a manufacturer, distributor, or wholesaler for the sale of its motor vehicles.

Subd. 4. **Manufacturer.** "Manufacturer" means any person who manufactures or assembles new motor vehicles or any person, partnership, firm, association, joint venture, corporation, or trust which is controlled by the manufacturer.

Subd. 5. **Distributor.** "Distributor" means any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives or who controls any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.

Subd. 6. **Factory branch.** "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, motor vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

Subd. 7. **New motor vehicle.** "New motor vehicle" means a motor vehicle which is in the possession of a manufacturer, distributor, or wholesaler, or has been sold only to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the new motor vehicle and which is in fact new and on which the original title has not been issued from the franchised dealer.

Subd. 8. **Franchise.** "Franchise" means the written agreement or contract between any new motor vehicle manufacturer and any new motor vehicle dealer which grants to the dealer the right to market motor vehicles and which purports to fix the legal rights and liabilities of the parties to the agreement or contract.

Subd. 9. **Good faith.** "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in section 336.2-103, clause (1)(b).

Subd. 10. **Designated family member.** "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner's will or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

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.

Subd. 10b. **Area of sales effectiveness.** "Area of sales effectiveness" means a geographic area designated in a franchise agreement or related document where a new motor vehicle dealer is responsible for effectively selling, servicing, and otherwise representing the products of the manufacturer, distributor, or factory branch.

Subd. 11. [Repealed, 1985 c 34 s 6]

History: *1981 c 59 s 4; 1982 c 452 s 1; 2009 c 34 s 1; 2010 c 339 s 1*

80E.04 MS 2016 [Repealed, 2018 c 203 s 6]

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.

History: *2018 c 203 s 1*

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.

History: *2018 c 203 s 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: *1981 c 59 s 6; 1991 c 69 s 3*

80E.06 CANCELLATIONS, TERMINATIONS, OR NONRENEWALS.

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

(a) satisfied the notice requirement of section 80E.08;

(b) acted in good faith as defined in section 80E.03, subdivision 9; and

(c) good cause for the cancellation, termination, or nonrenewal.

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

Subd. 2. **Circumstances constituting good cause.** Notwithstanding the terms of any franchise agreement or waiver to the contrary, good cause exists for the purposes of a termination, 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: *1981 c 59 s 7; 1985 c 34 s 2; 1988 c 611 s 4; 1991 c 69 s 4*

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

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

(a) a change of ownership of the new motor vehicle dealer's dealership. This paragraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's consent, but consent shall not in any case be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor;

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

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

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

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

History: *1981 c 59 s 8; 1982 c 452 s 2; 1988 c 611 s 5*

80E.08 NOTICE OF TERMINATION, CANCELLATION, OR NONRENEWAL.

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

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

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

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

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

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

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

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

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

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

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

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

History: *1981 c 59 s 9; 1988 c 611 s 6*

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

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 paragraph (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.

Subd. 2. **Time in which payments must be made.** Fair and reasonable compensation shall be paid by the manufacturer when possible within 90 days of the effective date of termination, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items, is in a position to convey that title to the manufacturer and as long as this period will allow compliance with the notification requirements of any state or federal laws relating to creditor notification.

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 paragraphs (e) and (g) thereof, shall be paid to the dealer.

History: *1981 c 59 s 10; 1Sp1981 c 4 art 4 s 1; 1982 c 452 s 3-5; 1983 c 57 s 1; 1988 c 611 s 7; 1992 c 472 s 1; 1993 c 13 art 2 s 5; 2009 c 34 s 2,3*

80E.10 [Repealed, 1987 c 150 s 3]

80E.11 SURVIVORSHIP.

Subdivision 1. **Authorization.** Any designated family member of a deceased or incapacitated owner of a new motor vehicle dealer may succeed to the ownership of the new motor vehicle dealer under the existing franchise or distribution agreement: (a) if the designated family member gives the manufacturer, distributor, factory branch, or importer of new motor vehicles written notice of the intention to succeed to ownership of the dealership within 120 days of the owner's death or incapacity; (b) if the designated family member agrees to be bound by all of the terms and conditions of the existing franchise; and (c) unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer.

Subd. 2. **Personal and financial data.** As soon as possible after designating a family member pursuant to this section, the dealer shall inform the manufacturer, factory branch, distributor, or importer of the designation and, upon request, shall provide personal and financial data that is reasonably necessary to determine whether the succession should be honored. Failure to inform the manufacturer, factory branch, distributor or importer shall not affect the right of the designee to succeed to ownership of the dealership. At the time of serving notice under subdivision 1, the designated family member shall provide, upon the request of the manufacturer, distributor, factory branch, or importer, a current update of the personal and financial data described above.

Subd. 3. **Notice of discontinuance or refusal to honor succession.** If a manufacturer, distributor, factory branch, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a new motor vehicle dealer by a family member of a deceased or incapacitated

owner of a new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, or importer may, within 60 days after receipt of the personal and financial data requested under subdivision 2, serve notice upon the designated family member of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the new motor vehicle dealer no sooner than 90 days from the date the notice is served.

Subd. 4. **Contents of notice.** The notice must state the specific grounds for the refusal to honor the succession and discontinue the existing franchise agreement with the new motor vehicle dealer.

Subd. 5. **Effect of notice not timely served.** If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by sections 80E.01 to 80E.17.

Subd. 6. **Burden of proof.** In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

Subd. 7. **Succession agreements.** 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.

History: *1981 c 59 s 12; 1982 c 452 s 6,7; 2018 c 203 s 3*

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.

For purposes of this section and sections 80E.07, subdivision 1, paragraph (c), and 80E.14, subdivision 4, reasonable facilities requirements shall not include a requirement that a dealer establish or maintain exclusive facilities for the manufacturer of a line make unless determined to be reasonable in light of all existing

circumstances or the dealer and the manufacturer voluntarily agree to such a requirement and separate and adequate consideration was offered and accepted;

(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 if the manufacturer fails to provide the dealer 180 days' prior written notice of a required change in location or substantial premises alteration; 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: *1981 c 59 s 13; 1985 c 34 s 4; 1991 c 69 s 5; 2009 c 34 s 4; 2010 c 339 s 2*

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 directly or through an entity that it controls or is controlled by:

(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 in this state, or in a dealership of a competing line make in this 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) except as provided in paragraph (n), fail or refuse to offer to its same line make franchised dealers all models manufactured for that line make, including 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. A manufacturer, distributor, or factory branch may require a dealer to comply with reasonable requirements for the sale and service of an alternative fuel vehicle or to serve an alternative fuel vehicle customer;

(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, reasonable, and uniformly applied under this section;

(p) assign or change a 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 manufacturer, distributor, or factory branch must provide at least 90 days' notice of the proposed change. The change may not take effect if the dealer commences a civil action within the 90 days' notice period to determine whether 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. 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;

(r) to implement a charge back or withhold payment to a dealer that is solely due to an unreasonable delay by the registrar, as defined in section 168.002, subdivision 29, in the transfer or registration of a new

motor vehicle. The dealer must give the manufacturer notice of the state's delay in writing. Within 30 days of any notice of a charge back, withholding of payments, or denial of a claim, the dealer must transmit to the manufacturer: (1) documentation to demonstrate the vehicle sale and delivery as reported; and (2) a written attestation signed by the dealer operator or general manager stating that the delay is attributable to the state. This clause expires on June 30, 2022; or

(s) 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 August 1, 2018, 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.

History: *1981 c 59 s 14; 1988 c 611 s 8; 1991 c 69 s 6; 2000 c 409 s 1; 2001 c 62 s 1; 2010 c 339 s 3; 2016 c 107 s 1; 2018 c 203 s 4; 1Sp2019 c 3 art 3 s 5; 2022 c 93 art 2 s 36*

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 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. 1a. **Site control agreements.** No manufacturer, distributor, or factory branch shall directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this section, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either:

(1) requiring that the dealer establish or maintain exclusive dealership facilities; or

(2) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease the dealership facilities, option to purchase the dealership facilities, option to lease the dealership facilities, or other similar agreement, regardless of the parties to the agreement.

Any provision contained in any agreement that is inconsistent with the provisions of this subdivision is voidable at the election of the affected dealer or owner of an interest in the dealership facility. This subdivision does not limit the right of a manufacturer, distributor, factory branch, or importer to exercise a right of first

refusal under section 80E.13, paragraph (j), to acquire a franchisee's assets or ownership in the event of a proposed sale or transfer of a franchise.

Subd. 2. **Applicability.** Subdivision 1a does not apply to a site control agreement or an exclusive use agreement if the agreement:

(1) is voluntarily entered into by the dealer or the dealer's lessor as described in subdivision 1a and its execution is not a condition of approval of a 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 or dealer's lessor.

History: *1988 c 611 s 9; 2009 c 34 s 5; 2010 c 339 s 4*

80E.14 LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERSHIPS.

Subdivision 1. **Notification; protest; hearing.** In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within or into a relevant market area where the line make is then represented, the manufacturer shall, in writing, first notify each new motor vehicle dealer in this line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area is a radius of ten miles around an existing dealership. Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, the new motor vehicle dealership may commence a civil action in a court of competent jurisdiction pursuant to section 80E.17 challenging the establishing or relocating of the new motor vehicle dealership. An action brought under this section shall be placed on the calendar ahead of other civil actions to be heard and determined as expeditiously as possible. Thereafter the manufacturer shall not establish or relocate the proposed new motor vehicle dealership unless the court has determined that there is good cause for permitting the establishment or relocation of the motor vehicle dealership.

For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership within two miles of a location at which a former dealership of the same line make had been in operation within the previous two years shall not be deemed the establishment of a new motor vehicle dealership if the reopening is carried out in good faith and does not violate the provisions of section 80E.13, paragraph (i).

The relocation of an existing dealer within its area of responsibility as defined in the franchise agreement shall not be subject to this section, if the proposed relocation site is within five miles of its existing location and is not within a radius of five miles of an existing dealer of the same line make.

A manufacturer's establishment or approval of an additional new motor vehicle sales, service, or parts location by its line make dealer is considered the establishment of a new motor vehicle dealership subject to the requirements of this section.

Subd. 2. **Good cause.** In determining whether good cause has been established for entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

(a) the extent, nature, and permanency of the investment of the proposed new dealership and the existing motor vehicle dealers of the same line make in the relevant market area;

(b) the effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) whether it is injurious to existing new motor vehicle dealers of the same line make in the relevant market area and the public welfare for an additional new motor dealership to be established;

(d) whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(e) whether the new motor vehicle dealers of the same line make in the relevant market area are providing adequate market penetration and representation; provided, that good cause shall not be shown solely by a desire for further market penetration;

(f) whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest;

(g) the growth or decline in population and new car registrations in the relevant market area;

(h) the effect the proposed new dealership would have on the provision of stable, adequate, and reliable sales and service to purchasers of the same line make in the relevant market area; and

(i) the effect the proposed new dealership would have on the stability of existing franchises of the same line make in the relevant market area.

Subd. 3. **Successor manufacturers.** (a) 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.

(b) For purposes of this subdivision, the following definitions apply:

(1) "successor manufacturer" means a motor vehicle manufacturer, distributor, or factory branch that, on or after January 1, 2009, acquires, succeeds to, or assumes any part of the business of another manufacturer, referred to as the "predecessor manufacturer," as the result of a court-approved sale;

(2) "relevant market area" is the area within a ten-mile radius around the site of the previous franchisee's dealership facility; and

(3) "former franchisee" is a new motor vehicle dealer that was party to a franchise agreement with a predecessor manufacturer and that has either:

(i) entered into a termination agreement or deferred termination agreement with a predecessor or successor manufacturer related to the franchise; or

(ii) has had the franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended by a predecessor or successor manufacturer.

(c) For a period of three years from the date that a former franchisee was terminated, it shall be unlawful for the successor manufacturer to enter into a same line make franchise with any person or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area without first offering the additional or relocated

franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

(1) as a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then existing dealership facility located within that relevant market area;

(2) the successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, all amounts provided in section 80E.09; or

(3) the successor manufacturer proves that the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, by reason of lack of training, lack of prior experience, poor past performance, lack of financial ability, or poor character, is unfit to own or manage the dealership pursuant to the successor manufacturer's reasonable requirements for appointment as a dealer. A successor manufacturer who seeks to assert that a former franchisee is unfit to own or manage the dealership shall have the burden of proving lack of fitness in any action to enforce the provisions of this subdivision.

Subd. 4. **Consolidations.** A manufacturer shall not unreasonably deny the request of two or more new motor vehicle dealers who hold franchises representing different line makes of the same manufacturer to consolidate the dealers' ownership and facilities, provided that the resulting new motor vehicle dealer remains in substantial compliance with reasonable capital, credit, and facilities' requirements of the manufacturer, and provided further that the existing location of the dealership holding the franchise or franchises to be relocated is the nearest of that line make to the resulting consolidated facility, and that the resulting facility is not within a radius of ten miles of another dealer of any of the same line makes.

History: *1981 c 59 s 15; 1Sp1981 c 4 art 4 s 3; 1982 c 452 s 8; 1985 c 34 s 5; 1987 c 150 s 1,2; 1995 c 107 s 1; 2000 c 409 s 2; 2009 c 34 s 6; 2010 c 339 s 5,6*

80E.15 MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES ACTING AS LESSORS.

A manufacturer, distributor or factory branch acting in the capacity of lessor of buildings or facilities to a new motor vehicle dealer may not take any actions or include in a lease agreement relating to those buildings or facilities any provisions which would be in contravention of or prohibited by sections 80E.01 to 80E.17.

History: *1981 c 59 s 16*

80E.16 ENFORCEMENT.

Subdivision 1. **Civil penalty.** Any person who violates section 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.

Subd. 2. **Remedies cumulative.** Nothing in this section shall be construed to limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

History: *1981 c 59 s 17; 2018 c 203 s 5*

80E.17 CIVIL REMEDIES.

Notwithstanding the terms of any franchise agreement or waiver to the contrary, any person whose business or property is injured by a violation of sections 80E.01 to 80E.17, or any person injured because of the refusal to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 80E.01 to 80E.17, may bring a civil action to enjoin further violations and to recover the actual damages sustained, together with costs and disbursements, including reasonable attorney's fees.

History: *1981 c 59 s 18; 1986 c 444*

80E.18 NO RETROACTIVE APPLICATION.

The provisions of this chapter shall not apply to any action to terminate or cancel a motor vehicle franchise if the notice to terminate or cancel was given prior to May 1, 1981. Any such action to terminate or cancel shall be governed by the laws and rules of the state of Minnesota in effect on the day notice to terminate or cancel was given.

History: *1982 c 452 s 9; 1985 c 248 s 70*