

A bill for an act

relating to commerce; regulating motor vehicle sales and distribution; amending Minnesota Statutes 2008, sections 80E.01; 80E.03, by adding a subdivision; 80E.13; 80E.14, by adding a subdivision; Minnesota Statutes 2009 Supplement, sections 80E.09, subdivision 1; 80E.12; 80E.135; 80E.14, subdivision 3.

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

Section 1. Minnesota Statutes 2008, section 80E.01, is amended to read:

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. Amendments to sections 80E.01 to 80E.17 are deemed to be reasonably foreseeable by new motor vehicle dealers and manufacturers.

Sec. 2. Minnesota Statutes 2008, section 80E.03, is amended by adding a subdivision to read:

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.

Sec. 3. Minnesota Statutes 2009 Supplement, section 80E.09, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** Upon the termination, cancellation, or nonrenewal of any franchise, the new motor vehicle dealer shall, in the time prescribed, be allowed fair and reasonable compensation by the manufacturer for the following items:

(a) new motor vehicle inventory which was originally acquired from the manufacturer, as limited in clause (f);

(b) equipment and furnishings if the new motor vehicle dealer purchased them from the manufacturer;

(c) special tools;

(d) supplies, including accessories and parts, purchased from the manufacturer;

(e) a sum equal to the current fair rental value of the dealership facilities as an ongoing new motor vehicle dealership for a period of one year from the effective date of the termination, cancellation, or nonrenewal, or until the facilities are leased or sold, whichever is less, if the dealer owns the facilities. If the facilities are leased from a lessor other than the manufacturer, a sum equivalent to rent for the remainder of the term of the lease or one year, whichever is less. Payment under this clause shall not be required if the termination, cancellation, or nonrenewal was for good cause based on a conviction or plea of nolo contendere of the dealer or one of its principal owners for a crime which constitutes a felony as described in section 609.02, subdivision 2, or if it has been demonstrated that the dealer has exhibited a course of conduct constituting fraud with respect to the manufacturer or the general public. Nothing in this subdivision relieves the dealer from the obligation to mitigate damages upon termination, cancellation, or nonrenewal. Any amount due under this paragraph is reduced to the extent the dealership makes other use of the property, sells, leases or subleases the property, or secures release from a lease. If the dealer rejects reduction of facility rental value compensation as described in this paragraph, the manufacturer is entitled to use of the premises for the period for which compensation is to be provided or the dealer may elect to receive no compensation;

(f) fair and reasonable compensation as applied to paragraphs (a) and (d) means the manufacturer shall reimburse the dealer for 100 percent of the net cost to the dealer, including transportation, of all new current model year motor vehicle inventory acquired from the manufacturer which has not been materially altered or substantially damaged, and all new motor vehicle inventory not of the current model year which has not been materially altered or substantially damaged; provided the noncurrent model year vehicles were acquired from the manufacturer and drafted on the dealer's financing source or paid for within 120 days prior to the effective date of the termination, cancellation, or

nonrenewal. The manufacturer shall reimburse the dealer for 100 percent of the current net prices on motor vehicle accessories and parts, including superseded parts listed in current price lists or catalogues plus five percent of the current net price of all accessories and parts returned to compensate the dealer for handling, packing, and loading the parts; and

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

Sec. 4. Minnesota Statutes 2009 Supplement, section 80E.12, is amended to read:

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

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

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

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

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

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

(e) enter into any agreement with the manufacturer or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer. Notice in good faith to any

dealer of the dealer's violation of any terms of the franchise agreement shall not constitute a violation of sections 80E.01 to 80E.17;

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

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

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

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.

Sec. 5. Minnesota Statutes 2008, section 80E.13, is amended to read:

80E.13 UNFAIR PRACTICES BY MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES.

It is unlawful and an unfair practice for a manufacturer, distributor, or factory branch to engage in any of the following practices:

(a) delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or accessories in reasonable time and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the dealer's relevant market area, after having accepted an order from a new motor vehicle dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, if the new motor vehicle or new motor vehicle parts or accessories are publicly advertised as being available for delivery or actually being delivered. This clause is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer;

(b) refuse to disclose to any new motor vehicle dealer handling the same line make, the manner and mode of distribution of that line make within the relevant market area;

(c) obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer;

(d) increase prices of new motor vehicles which the new motor vehicle dealer had ordered for private retail consumers prior to the dealer's receiving the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order if the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer;

(e) offer any refunds or other types of inducements to any new motor vehicle dealer for the purchase of new motor vehicles of a certain line make without making the same offer to all other new motor vehicle dealers in the same line make within ~~the relevant market area~~ geographic areas reasonably determined by the manufacturer;

(f) release to any outside party, except under subpoena or in an administrative or judicial proceeding involving the manufacturer or dealer, any business, financial, or personal information which may be provided by the dealer to the manufacturer, without the express written consent of the dealer or unless pertinent to judicial or governmental administrative proceedings or to arbitration proceedings of any kind;

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

(h) unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new vehicle dealers to make warranty adjustments with retail customers;

(i) compete with a new motor vehicle dealer in the same line make operating under an agreement or franchise from the same manufacturer, distributor, or factory branch. A manufacturer, distributor, or factory branch is considered to be competing when it has an ownership interest, other than a passive interest held for investment purposes, in a dealership of its line make located within the state. A manufacturer, distributor, or factory branch shall not, however, be deemed to be competing:

~~(1)~~ 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; ~~or~~

~~(2) if it has an existing direct or indirect ownership interest in a new motor vehicle dealer in this state as of January 1, 2000, and has no more than four franchised dealers in this state. A manufacturer, distributor, or factory branch described in this clause that has~~

~~unaffiliated dealers of the same line make in this state may acquire an interest in existing dealers of that line make but it may not establish any new dealership in which it would own an interest or approve an additional location for the sale of new motor vehicles by an affiliated dealership. A manufacturer, distributor, or factory branch described in this clause is permitted to alter its ownership interest in a new motor vehicle dealer;~~

(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. If the manufacturer denies an application for transfer or assignment and does not exercise a right of first refusal as provided in this subdivision, in addition to any rights available to the new motor vehicle dealer transferor under sections 80E.16 and 80E.17, both the transferor and a proposed transferee may file a claim in a court of competent jurisdiction to determine whether the manufacturer had good cause for the denial and to recover actual damages sustained, together with costs and disbursements, including reasonable attorney fees. A manufacturer, distributor, or factory branch has the burden of proving that good cause existed for denying the transfer. In the event of a proposed sale or transfer of a franchise, the manufacturer, distributor, factory branch, or importer shall be permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:

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

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

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

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

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

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

(k) threaten to modify or replace or modify or replace a franchise with a succeeding franchise that would adversely alter the rights or obligations of a new motor vehicle dealer under an existing franchise or that substantially impairs the sales or service obligations or investments of the motor vehicle dealer;

(l) unreasonably deny the right to acquire factory program vehicles to any dealer holding a valid franchise from the manufacturer to sell the same line make of vehicles, provided that the manufacturer may impose reasonable restrictions and limitations on the purchase or resale of program vehicles to be applied equitably to all of its franchised

dealers. For the purposes of this paragraph, "factory program vehicle" has the meaning given the term in section 80E.06, subdivision 2;

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

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

(o) require a dealer 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.

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

(p) unreasonably reduce a dealer's area of sales effectiveness without giving at least 90 days' notice of the proposed reduction. The change may not take effect if the dealer commences a civil action to determine whether there is good cause for the change within the 90 days' notice period. The burden of proof in such an action shall be on the manufacturer or distributor.

Sec. 6. Minnesota Statutes 2009 Supplement, section 80E.135, is amended to read:

80E.135 WAIVERS AND MODIFICATIONS PROHIBITED.

Subdivision 1. **Prohibition.** No manufacturer, distributor, or factory branch shall, before entering into a franchise with a new motor vehicle dealer or during the franchise term, use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter, ~~restrict a dealer from participation in the management of, investment in, or the acquisition or establishment of any other line of new motor vehicle~~

~~or related product as provided in section 80E.12, paragraph (h);~~ or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law. These instruments, agreements, and waivers are null and void.

Subd. 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, option to purchase, option to lease, 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.

Subd. 2. **Applicability.** ~~This section~~ Subdivision 1a does not apply to ~~an a site control agreement or an exclusive use agreement between a dealer and a manufacturer, distributor, or factory branch that restricts or prohibits a dealer from participation in the management of, investment in, or the acquisition or establishment of any other line of new motor vehicle or related product~~ if the agreement:

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

Sec. 7. Minnesota Statutes 2009 Supplement, section 80E.14, subdivision 3, is amended to read:

~~Subd. 3. **Successor manufacturers.** If an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make~~

~~and intends to distribute motor vehicles of that line-make in this state, the entity shall offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.~~ (a) 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 any of the following:

(i) a change in ownership, operation, or control of the predecessor manufacturer by sale or transfer of assets, corporate stock, or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law, or otherwise;

(ii) the termination, suspension, or cessation of a part or all of the business operations of the predecessor manufacturer;

(iii) the discontinuance of the sale of the product line by the predecessor manufacturer; or

(iv) a change in distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor altogether;

(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 such franchise; or

(ii) has had such franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended.

(b) For a period of four years from the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer, 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. 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.

Sec. 8. Minnesota Statutes 2008, section 80E.14, is amended by adding a subdivision to read:

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.

Sec. 9. **EFFECTIVE DATE.**

Sections 1 to 8 are effective the day after final enactment.