

(1) milkfat content is more than 0.5 percent but not more than 2.0 percent;

(2) total milk solids content per gallon before the addition of bulky flavors is not less than .49 pounds and not less than 1.3 pounds of total food solids per gallon; and

(3) the weight per gallon is not less than 4.0 pounds.

Sec. 8. Minnesota Statutes 1988, section 32.55, is amended by adding a subdivision to read:

Subd. 17. NONFAT ICE CREAM. "Nonfat ice cream" means a frozen food that is made from the same ingredients and in the same manner as for ice cream except that:

(1) milkfat content is less than 0.5 percent;

(2) total milk solids content per gallon before the addition of bulky flavors is not less than .45 pounds and not less than 1.3 pounds of total food solids per gallon; and

(3) the weight per gallon is not less than 4.0 pounds.

Sec. 9. **[32.55] COMPLIANCE WITH FEDERAL REGULATIONS.**

(a) Frozen yogurt, frozen low-fat yogurt, and frozen nonfat yogurt must comply with Code of Federal Regulations, title 21, and sections 32.55 to 32.90.

(b) Reduced-fat ice cream, low-fat ice cream, and nonfat ice cream must comply with the frozen dessert provisions in Code of Federal Regulations, title 21, part 135.

Sec. 10. **EFFECTIVE DATE.**

Section 8 and section 9 as it applies to nonfat ice cream are effective January 1, 1991.

Presented to the governor April 3, 1990

Signed by the governor April 6, 1990, 11:02 a.m.

CHAPTER 408—H.F.No. 2321

An act relating to consumer protection; requiring an itemized statement for certain automobile purchase price refunds; amending Minnesota Statutes 1988, sections 325F.662, subdivision 8; and 325F.665, subdivisions 3 and 6.

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

Section 1. Minnesota Statutes 1988, section 325F.662, subdivision 8, is amended to read:

Subd. 8. **REFUNDS.** (a) A refund, as provided under subdivision 2, must consist of the full purchase price of the used motor vehicle and all other charges, including but not limited to excise tax, registration tax, license fees, and reimbursement for towing expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile driven or ten percent of the purchase price, whichever is less. Refunds must include the amount stated by the dealer as the trade-in value of any vehicle traded in and applied to the purchase price of the used motor vehicle. Refunds must be made to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles.

(b) The amount of the excise tax to be paid by the dealer to the consumer under paragraph (a) is the tax paid by the consumer when the vehicle was purchased less an amount equal to the tax paid multiplied by a fraction, the denominator of which is the purchase price of the vehicle and the numerator of which is the allowance deducted from the refund for the consumer's use of the vehicle.

(c) A dealer must give the consumer an itemized statement listing each of the amounts refunded under this subdivision. If the amount of excise tax refunded is not separately stated, or if the dealer does not apply for a refund of the tax within one year of the return of the motor vehicle, the department of public safety may refund the excise tax, as determined under paragraph (b), directly to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles.

Sec. 2. Minnesota Statutes 1988, section 325F.665, subdivision 3, is amended to read:

Subd. 3. **MANUFACTURER'S DUTY TO REFUND OR REPLACE.** (a) If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price, including the cost of any options or other modifications arranged, installed, or made by the manufacturer, its agent, or its authorized dealer within 30 days after the date of original delivery, and all other charges including, but not limited to, sales or excise tax, license fees and registration fees, reimbursement for towing and rental vehicle expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair,

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less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile driven or ten percent of the purchase price, whichever is less. If the manufacturer offers a replacement vehicle under this section, the consumer has the option of rejecting the replacement vehicle and requiring the manufacturer to provide a refund. Refunds must be made to the consumer, and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles. Refunds shall include the amount stated by the dealer as the trade-in value of a consumer's used motor vehicle, plus any additional amount paid by the consumer for the new motor vehicle. A manufacturer must give to the consumer an itemized statement listing each of the amounts refunded under this section. If the amount of sales or excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one year of the return of the motor vehicle, the department of public safety may refund the tax, as determined under paragraph (h), directly to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles. A reasonable allowance for use is that amount directly attributable to use by the consumer and any previous consumer during any period in which the use and market value of the motor vehicle are not substantially impaired. It is an affirmative defense to any claim under this section (1) that an alleged nonconformity does not substantially impair the use or market value, or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(b) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist, or (2) the vehicle is out of service by reason of repair for a cumulative total of 30 or more business days during the term or during the period, whichever is the earlier date.

(c) If the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle and is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(d) The term of an applicable express warranty, the two-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, or fire, flood, or other natural disaster.

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(e) The presumption contained in paragraph (b) applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested.

(f) The expiration of the time periods set forth in paragraph (b) does not bar a consumer from receiving a refund or replacement vehicle under paragraph (a) if the reasonable number of attempts to correct the nonconformity causing the substantial impairment occur within three years following the date of original delivery of the new motor vehicle to a consumer, provided the consumer first reported the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranty.

(g) At the time of purchase or lease, the manufacturer must provide directly to the consumer a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER THE STATE'S LEMON LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE OR YOUR LEASE PAYMENTS. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE. YOU ALSO HAVE A RIGHT TO SUBMIT YOUR CASE TO THE CONSUMER ARBITRATION PROGRAM WHICH THE MANUFACTURER MUST OFFER IN MINNESOTA."

(h) The amount of the sales or excise tax to be paid by the manufacturer to the consumer under paragraph (a) shall be the tax paid by the consumer when the vehicle was purchased less an amount equal to the tax paid multiplied by a fraction, the denominator of which is the purchase price of the vehicle and the numerator of which is the allowance deducted from the refund for the consumer's use of the vehicle.

Sec. 3. Minnesota Statutes 1988, section 325F.665, subdivision 6, is amended to read:

Subd. 6. **ALTERNATIVE DISPUTE SETTLEMENT MECHANISM.** (a) Any manufacturer doing business in this state, entering into franchise agreements for the sale of its motor vehicles in this state, or offering express warranties on its motor vehicles sold or distributed for sale in this state shall operate, or participate in, an informal dispute settlement mechanism located in the state of Minnesota which complies with the provisions of the Code of Federal Regulations, title 16, part 703, and the requirements of this section. The provisions of subdivision 3 concerning refunds or replacement do not apply to a consumer who has not first used this mechanism before commencing a civil action, unless

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the manufacturer allows a consumer to commence an action without first using this mechanism.

(b) An informal dispute settlement mechanism provided for by this section shall, at the time a request for arbitration is made, provide to the consumer and to each person who will arbitrate the consumer's dispute, information about this section as approved and directed by the attorney general, in consultation with interested parties. The informal dispute settlement mechanism shall permit the parties to present or submit any arguments based on this section and shall not prohibit or discourage the consideration of any such arguments. In developing and approving information about this section as provided herein, the attorney general is not subject to the rulemaking provisions of chapter 14.

(c) If, in an informal dispute settlement mechanism, it is decided that a consumer is entitled to a replacement vehicle or refund under subdivision 3, then any refund or replacement offered by the manufacturer or selected by a consumer shall include and itemize all amounts authorized by subdivision 3. If the amount of excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one year of the return of the motor vehicle, the department of public safety may refund the excise tax, as determined under subdivision 3, paragraph (h), directly to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles.

(d) No documents shall be received by any informal dispute settlement mechanism unless those documents have been provided to each of the parties in the dispute at or prior to the mechanism's meeting, with an opportunity for the parties to comment on the documents either in writing or orally. If a consumer is present during the informal dispute settlement mechanism's meeting, the consumer may request postponement of the mechanism's meeting to allow sufficient time to review any documents presented at the time of the meeting which had not been presented to the consumer prior to the meeting.

(e) The informal dispute settlement mechanism shall allow each party to appear and make an oral presentation in the state of Minnesota unless the consumer agrees to submit the dispute for decision on the basis of documents alone or by telephone, or unless the party fails to appear for an oral presentation after reasonable prior written notice. If the consumer agrees to submit the dispute for decision on the basis of documents alone, then manufacturer or dealer representatives may not participate in the discussion or decision of the dispute.

(f) Consumers shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the informal dispute settlement hearing.

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(g) Where there has been a recent attempt by the manufacturer to repair a consumer's vehicle, but no response has yet been received by the informal dispute mechanism from the consumer as to whether the repairs were successfully completed, the parties must be given the opportunity to present any additional information regarding the manufacturer's recent repair attempt before any final decision is rendered by the informal dispute settlement mechanism. This provision shall not prejudice a consumer's rights under this section.

(h) If the manufacturer knows that a technical service bulletin directly applies to the specific mechanical problem being disputed by the consumer, then the manufacturer shall provide the technical service bulletin to the consumer at reasonable cost. The mechanism shall review any such technical service bulletins submitted by either party.

(i) A consumer may be charged a fee to participate in an informal dispute settlement mechanism required by this section, but the fee may not exceed the conciliation court filing fee in the county where the arbitration is conducted.

(j) Any party to the dispute has the right to be represented by an attorney in an informal dispute settlement mechanism.

(k) The informal dispute settlement mechanism has all the evidence-gathering powers granted an arbitrator under section 572.14.

(l) A decision issued in an informal dispute settlement mechanism required by this section may be in writing and signed.

Presented to the governor April 3, 1990

Signed by the governor April 6, 1990, 11:03 a.m.

CHAPTER 409—H.F.No. 1921

An act relating to waste; prohibiting the placement of certain dry cell batteries in mixed municipal solid waste; requiring labeling of certain batteries by electrode content; establishing maximum content levels of mercury in batteries; requiring that batteries in certain consumer products be easily removable; providing penalties; proposing coding for new law in Minnesota Statutes, chapters 115A and 325E.

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

Section 1. [115A.9155] DISPOSAL OF CERTAIN DRY CELL BATTERIES.

Subdivision 1. PROHIBITION. A person may not place in mixed municipal solid waste a dry cell battery containing mercuric oxide electrode, silver

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