

SENATE BILL NO. 158

INTRODUCED BY JERGESON, L. NELSON, WILLIAMS

IN THE SENATE

JANUARY 22, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FIRST READING.

JANUARY 23, 1991                   ON MOTION, REREFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FEBRUARY 2, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 4, 1991                   PRINTING REPORT.

SECOND READING, DO PASS.

FEBRUARY 5, 1991                   ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 5, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 6, 1991                   FIRST READING.

FEBRUARY 7, 1991                   ON MOTION, REREFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FEBRUARY 19, 1991                  COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 8, 1991                    SECOND READING, CONCURRED IN.

MARCH 11, 1991                   THIRD READING, CONCURRED IN.  
AYES, 79; NOES, 19.

RETURNED TO SENATE.

IN THE SENATE

MARCH 12, 1991                   RECEIVED FROM HOUSE.



1 *Senate* BILL NO. *158*  
2 INTRODUCED BY *Jerguson, P. Nelson, Walker*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM  
5 FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED  
6 FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS  
7 AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING  
8 A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP  
9 OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A  
10 DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR  
11 REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET  
12 COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR  
13 DAMAGES AND PENALTIES; AND AMENDING SECTIONS 30-11-702,  
14 30-11-712, AND 30-11-801, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 30-11-801, MCA, is amended to read:

18 **"30-11-801. Definitions.** As used in this part, the  
19 following definitions apply:

20 (1) "Community of interest" means a continuing  
21 financial interest that the grantor and grantee have in  
22 common.

23 (2) "Dealer" means a person who is a grantee of a farm  
24 implements dealership situated in this state.

25 (3) "Dealership" means a contract or agreement,

1 expressed or implied, whether oral or written, including a  
2 franchise as defined in 61-4-201, by which a person is  
3 granted the right to sell or distribute farm implements, in  
4 which there is a community of interest in the business of  
5 offering, selling, or distributing farm implements.

6 (4) "Department" means the department of commerce  
7 established in 2-15-1801.

8 (5) (a) "Designated family member" means the spouse,  
9 child, grandchild, parent, brother, or sister of a dealer  
10 who:

11 (i) in the case of a deceased dealer:

12 (A) is entitled to inherit the dealer's ownership  
13 interest in the dealership under the terms of the dealer's  
14 will;

15 (B) has been designated in writing by a deceased dealer  
16 to succeed him in the dealership; or

17 (C) is entitled to inherit the dealer's ownership  
18 interest in the dealership under the laws of intestate  
19 succession of this state; or

20 (ii) in the case of an incapacitated dealer, has been  
21 appointed by a court as the legal representative of the  
22 dealer's property.

23 (b) The term includes the appointed and qualified  
24 personal representative and the testamentary trustee of a  
25 deceased dealer.



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1 (6) "Designated successor" means a person who, in the  
 2 case of a retiring dealer, is designated in writing by the  
 3 retiring dealer to succeed him in the dealership.

4 ~~(4)~~(7) "Farm implement" means any vehicle, machine, or  
 5 attachment designed or adapted and used exclusively for  
 6 agricultural operations and only incidentally operated or  
 7 used on the highways.

8 ~~(5)~~(8) (a) "Good cause", when used in 30-11-801 through  
 9 30-11-803 and 30-11-811, means:

10 ~~(a)~~(i) failure by a dealer to comply substantially with  
 11 essential and reasonable requirements imposed upon him by  
 12 the grantor or sought to be imposed by the grantor, which  
 13 requirements are not discriminatory as compared with  
 14 requirements imposed on other similarly situated dealers  
 15 either by the terms of the requirements or in the manner of  
 16 their enforcement; or

17 ~~(b)~~(ii) bad faith by the dealer in carrying out the  
 18 terms of the dealership.

19 (b) Good cause, when used in [sections 2 through 9],  
 20 means a showing that succession to a dealership would be  
 21 detrimental to the public interest or to the representation  
 22 of the grantor.

23 ~~(6)~~(9) "Grantor" means a person who grants a  
 24 dealership.

25 ~~(7)~~(10) "Person" means any individual, partnership,

1 association, corporation, or other entity."

2 NEW SECTION. Section 2. Right of designated family  
 3 member or designated successor to succeed in dealership  
 4 ownership. (1) A designated family member or designated  
 5 successor may succeed the dealer in the ownership or  
 6 operation of the dealership under the existing franchise or  
 7 distribution agreement:

8 (a) if, within 120 days of the dealer's death,  
 9 incapacity, or retirement, he gives the grantor written  
 10 notice of his intention to do so; and

11 (b) unless there exists good cause for refusal to honor  
 12 the succession on the part of the grantor.

13 (2) The grantor may request, and the designated family  
 14 member or designated successor shall provide, upon request,  
 15 personal and financial data that is reasonably necessary to  
 16 determine whether the succession should be honored.

17 NEW SECTION. Section 3. Refusal to honor succession to  
 18 ownership -- notice required. (1) If a grantor believes that  
 19 good cause exists for refusing to honor the succession to  
 20 the ownership and operation of a dealership by a designated  
 21 family member or by a designated successor under the  
 22 existing franchise agreement, the grantor may, within 30  
 23 days of receipt of notice of the designated family member's  
 24 or designated successor's intent to succeed the dealer in  
 25 the ownership and operation of the dealership, serve upon

1 the designated family member or designated successor and the  
2 department notice of its refusal to honor the succession and  
3 of its intent to discontinue the existing franchise  
4 agreement with the dealership no sooner than 60 days from  
5 the date the notice is served.

6 (2) The notice must state the specific grounds for the  
7 refusal to honor the succession and the intent to  
8 discontinue the existing franchise agreement with the  
9 dealership no sooner than 60 days from the date the notice  
10 is served.

11 (3) If notice of refusal and discontinuance is not  
12 timely served upon the designated family member or  
13 designated successor and the department or if the department  
14 rules in favor of the complainant in a hearing held pursuant  
15 to [section 4], the franchise agreement must continue in  
16 effect subject to termination only as otherwise permitted by  
17 law.

18 NEW SECTION. Section 4. Procedure to determine right  
19 to succeed. (1) A designated family member or designated  
20 successor who receives notice of the grantor's refusal to  
21 honor his succession to the ownership and operation of the  
22 dealership may, within the 60-day period provided for in  
23 [section 3], file with the department a verified complaint  
24 for a hearing and determination by the department on whether  
25 good cause exists for refusal and discontinuance.

1 (2) The grantor shall establish good cause for refusal  
2 to honor the succession to ownership.

3 (3) The franchise agreement must continue in effect  
4 until the final determination of the issues raised in the  
5 complaint.

6 (4) If the grantor prevails, the department shall  
7 include in its order approving the termination of the  
8 franchise agreement reasonable conditions affording the  
9 complainant an opportunity to receive fair and reasonable  
10 compensation for the value of the dealership.

11 (5) Any decision by the department may be reviewed  
12 pursuant to Title 2, chapter 4, part 7.

13 NEW SECTION. Section 5. Written designation of  
14 succession unaffected. [Sections 2 through 9] do not  
15 preclude a dealer from designating any person as his  
16 successor by written instrument filed with the grantor.

17 NEW SECTION. Section 6. Illegal cancellation of  
18 dealership based on natural disaster. A grantor may not  
19 attempt or threaten to terminate, cancel, fail to renew, or  
20 substantially change the circumstances of a dealership if  
21 the attempt or threat is based on the results of a natural  
22 disaster, including a sustained drought, in the dealership  
23 market area or some other circumstance beyond the dealer's  
24 control.

25 NEW SECTION. Section 7. Repurchase of farm implement

1 dealership inventory upon cancellation of dealership. (1) If  
 2 a dealer enters into a written dealership contract or  
 3 agreement with a grantor and the grantor cancels the  
 4 dealership, the grantor shall, at the dealer's request, pay  
 5 to the dealer or credit to the dealer's account, if the  
 6 dealer has outstanding any sums owing the grantor, an amount  
 7 equal to 100% of the net cost of all new, unused, undamaged,  
 8 and complete inventory items, including repair parts, held  
 9 by the dealer at the time of cancellation.

10 (2) Payment or allowance of credit to the dealer's  
 11 account of the sum required in subsection (1) must be made  
 12 upon return of the inventory items to the grantor and upon  
 13 payment by the dealer of any shipping charges necessitated  
 14 by the return of the items. Title to the inventory items  
 15 passes to the grantor upon making the payment or allowance.

16 NEW SECTION. Section 8. violation -- penalty. A person  
 17 violating the provisions of [sections 2 through 9] shall  
 18 upon conviction be fined an amount not to exceed \$5,000.

19 NEW SECTION. Section 9. Civil damages. A dealer  
 20 suffering pecuniary loss due to a violation of [sections 2  
 21 through 9] who prevails in a civil action for the loss is  
 22 entitled to damages equal to three times the pecuniary loss,  
 23 together with court costs and reasonable attorney fees.

24 **Section 10.** Section 30-11-702, MCA, is amended to read:  
 25 "30-11-702. Repurchase of inventory items upon

1 cancellation of dealership or distribution contract. (1) ~~If~~  
 2 Except as provided in [section 7], if a retailer enters into  
 3 a written dealership contract and either the wholesaler,  
 4 manufacturer, distributor, or retailer cancels the contract,  
 5 such wholesaler, manufacturer, or distributor shall, at the  
 6 retailer's request, pay to the retailer, or credit to the  
 7 retailer's account if the retailer has outstanding any sums  
 8 owing the wholesaler, manufacturer, or distributor, an  
 9 amount equal to:

10 (a) 100% of the net cost of all new, unused, undamaged,  
 11 and complete inventory items, except repair parts, held by  
 12 the dealer at the time of cancellation; and

13 (b) 85% of the current net price of each repair part  
 14 carried on the most recent price list or catalog provided by  
 15 the manufacturer or distributor and held by the dealer at  
 16 the time of cancellation.

17 (2) If a wholesaler enters into a written distribution  
 18 contract and either the wholesaler, manufacturer, or  
 19 distributor cancels the contract, the manufacturer or  
 20 distributor shall, at the wholesaler's request, pay to the  
 21 wholesaler, or credit to the wholesaler's account if the  
 22 wholesaler has outstanding any sums owing to the  
 23 manufacturer or distributor, an amount equal to:

24 (a) 100% of the net cost of all new, unused, undamaged,  
 25 and complete inventory items, except repair parts, held by

1 the wholesaler at the time of cancellation; and

2 (b) 85% of the current net price of each repair part  
3 carried on the most recent price list or catalog provided by  
4 the manufacturer or distributor and held by the wholesaler  
5 at the time of cancellation.

6 (3) Payment or allowance of credit to the retailer's or  
7 wholesaler's account of the sum required in subsection (1)  
8 or (2) must be made upon return of the inventory items to  
9 the wholesaler, manufacturer, or distributor. Title to such  
10 inventory items passes to the wholesaler, manufacturer, or  
11 distributor upon making such payment."

12 **Section 11.** Section 30-11-712, MCA, is amended to read:

13 "30-11-712. Civil liability. If any wholesaler,  
14 manufacturer, or distributor fails or refuses to repurchase  
15 any inventory as required by 30-11-702 and [section 7(1)],  
16 the wholesaler, manufacturer, or distributor is liable in a  
17 civil action for 100% of the current net price of the  
18 inventory, plus any freight charges paid by the retailer or  
19 wholesaler, the retailer's or wholesaler's attorney fees,  
20 and court costs."

21 NEW SECTION. **Section 12. Severability.** If a part of  
22 [this act] is invalid, all valid parts that are severable  
23 from the invalid part remain in effect. If a part of [this  
24 act] is invalid in one or more of its applications, the part  
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. **Section 13. Codification instruction.**

3 [Sections 2 through 9] are intended to be codified as an  
4 integral part of Title 30, chapter 11, part 8, and the  
5 provisions of Title 30, chapter 11, part 8, apply to  
6 [sections 2 through 9].

-End-

RE-REFERRED AND APPROVED BY COMMITTEE ON AGRICULTURE LIVESTOCK AND IRRIGATION AS AMENDED

SENATE BILL NO. 158

INTRODUCED BY JERGESON, L. NELSON, WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR DAMAGES AND PENALTIES; AND AMENDING SECTIONS 30-11-702, 30-11-712, AND 30-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 30-11-801, MCA, is amended to read:

"30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who:

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will;

(B) has been designated in writing by a deceased dealer to succeed him in the dealership; or

(C) is entitled to inherit the dealer's ownership interest in the dealership under the laws of intestate succession of this state; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a

SECOND READING

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1 deceased dealer.

2 (6) "Designated successor" means a person who, in the  
3 case of a retiring dealer, is designated in writing by the  
4 retiring dealer to succeed him in the dealership.

5 †4†(7) "Farm implement" means any vehicle, machine, or  
6 attachment designed or adapted and used exclusively for  
7 agricultural operations and only incidentally operated or  
8 used on the highways.

9 †5†(8) (a) "Good cause", when used in 30-11-801 through  
10 30-11-803 and 30-11-811, means:

11 †a†(i) failure by a dealer to comply substantially with  
12 essential and reasonable requirements imposed upon him by  
13 the grantor or sought to be imposed by the grantor, which  
14 requirements are not discriminatory as compared with  
15 requirements imposed on other similarly situated dealers  
16 either by the terms of the requirements or in the manner of  
17 their enforcement; or

18 †b†(ii) bad faith by the dealer in carrying out the  
19 terms of the dealership.

20 (b) Good cause, when used in [sections 2 through 9 8],  
21 means a showing that succession to a dealership would be  
22 detrimental to the public interest or to the representation  
23 of the grantor.

24 †6†(9) "Grantor" means a person who grants a  
25 dealership.

1 †7†(10) "Person" means any individual, partnership,  
2 association, corporation, or other entity."

3 NEW SECTION. Section 2. Right of designated family  
4 member or designated successor to succeed in dealership  
5 ownership. (1) A designated family member or designated  
6 successor may succeed the dealer in the ownership or  
7 operation of the dealership under the existing franchise or  
8 distribution agreement:

9 (a) if, within 120 days of the dealer's death,  
10 incapacity, or retirement, he gives the grantor written  
11 notice of his intention to do so; and

12 (b) unless there exists good cause for refusal to honor  
13 the succession on the part of the grantor.

14 (2) The grantor may request, and the designated family  
15 member or designated successor shall provide, upon request,  
16 personal and financial data that is reasonably necessary to  
17 determine whether the succession should be honored.

18 NEW SECTION. Section 3. Refusal to honor succession to  
19 ownership -- notice required. (1) If a grantor believes that  
20 good cause exists for refusing to honor the succession to  
21 the ownership and operation of a dealership by a designated  
22 family member or by a designated successor under the  
23 existing franchise agreement, the grantor may, within 30  
24 days of receipt of notice of the designated family member's  
25 or designated successor's intent to succeed the dealer in

1 the ownership and operation of the dealership, serve upon  
 2 the designated family member or designated successor and the  
 3 department notice of its refusal to honor the succession and  
 4 of its intent to discontinue the existing franchise  
 5 agreement with the dealership no sooner than 60 days from  
 6 the date the notice is served.

7 (2) The notice must state the specific grounds for the  
 8 refusal to honor the succession and the intent to  
 9 discontinue the existing franchise agreement with the  
 10 dealership no sooner than 60 days from the date the notice  
 11 is served.

12 (3) If notice of refusal and discontinuance is not  
 13 timely served upon the designated family member or  
 14 designated successor and the department or if the department  
 15 rules in favor of the complainant in a hearing held pursuant  
 16 to [section 4], the franchise agreement must continue in  
 17 effect subject to termination only as otherwise permitted by  
 18 law.

19 NEW SECTION. Section 4. Procedure to determine right  
 20 to succeed. (1) A designated family member or designated  
 21 successor who receives notice of the grantor's refusal to  
 22 honor his succession to the ownership and operation of the  
 23 dealership may, within the 60-day period provided for in  
 24 [section 3], file with the department a verified complaint  
 25 for a hearing and determination by the department on whether

1 good cause exists for refusal and discontinuance.

2 (2) The grantor shall establish good cause for refusal  
 3 to honor the succession to ownership.

4 (3) The franchise agreement must continue in effect  
 5 until the final determination of the issues raised in the  
 6 complaint.

7 (4) If the grantor prevails, the department shall  
 8 include in its order approving the termination of the  
 9 franchise agreement reasonable conditions affording the  
 10 complainant an opportunity to receive fair and reasonable  
 11 compensation for the value of the dealership.

12 (5) Any decision by the department may be reviewed  
 13 pursuant to Title 2, chapter 4, part 7.

14 NEW SECTION. Section 5. Written designation of  
 15 succession unaffected. [Sections 2 through 9 8] do not  
 16 preclude a dealer from designating any person as his  
 17 successor by written instrument filed with the grantor.

18 NEW SECTION. Section 6. Illegal cancellation of  
 19 dealership based on natural disaster. A grantor may not  
 20 attempt or threaten to terminate, cancel, fail to renew, or  
 21 substantially change the circumstances of a dealership if  
 22 the attempt or threat is based on the results of a natural  
 23 disaster, including a sustained drought, in the dealership  
 24 market area or some other circumstance beyond the dealer's  
 25 control.

1 NEW SECTION. ~~Section 7. Repurchase of farm implement~~  
 2 ~~dealership inventory upon cancellation of dealership, (1) If~~  
 3 ~~a dealer enters into a written dealership contract or~~  
 4 ~~agreement with a grantor and the grantor cancels the~~  
 5 ~~dealership, the grantor shall, at the dealer's request, pay~~  
 6 ~~to the dealer or credit to the dealer's account, if the~~  
 7 ~~dealer has outstanding any sums owing the grantor, an amount~~  
 8 ~~equal to 100% of the net cost of all new, unused, undamaged,~~  
 9 ~~and complete inventory items, including repair parts, held~~  
 10 ~~by the dealer at the time of cancellation.~~

11 ~~(2) Payment or allowance of credit to the dealer's~~  
 12 ~~account of the sum required in subsection (1) must be made~~  
 13 ~~upon return of the inventory items to the grantor and upon~~  
 14 ~~payment by the dealer of any shipping charges necessitated~~  
 15 ~~by the return of the items. Title to the inventory items~~  
 16 ~~passes to the grantor upon making the payment or allowance.~~

17 NEW SECTION. Section 7. Violation -- penalty. A person  
 18 violating the provisions of [sections 2 through 9 8] shall  
 19 upon conviction be fined an amount not to exceed \$5,000.

20 NEW SECTION. Section 8. Civil damages. A dealer  
 21 suffering pecuniary loss due to a violation of [sections 2  
 22 through 9 8] who prevails in a civil action for the loss is  
 23 entitled to damages equal to three times the pecuniary loss,  
 24 together with court costs and reasonable attorney fees.

25 Section 9. Section 30-11-702, MCA, is amended to read:

1 "30-11-702. Repurchase of inventory items upon  
 2 cancellation of dealership or distribution contract. (1) ~~If~~  
 3 ~~Except as provided in {section 7}, if~~ IF a retailer enters  
 4 into a written dealership contract and either the  
 5 wholesaler, manufacturer, distributor, or retailer cancels  
 6 the contract, such wholesaler, manufacturer, or distributor  
 7 shall, at the retailer's request, pay to the retailer, or  
 8 credit to the retailer's account if the retailer has  
 9 outstanding any sums owing the wholesaler, manufacturer, or  
 10 distributor, an amount equal to:

11 (a) 100% of the net cost of all new, unused, undamaged,  
 12 and complete inventory items, ~~except repair parts,~~ held by  
 13 the dealer at the time of cancellation, PLUS COST OF FREIGHT  
 14 TO RETURN THE INVENTORY; and

15 (b) 85% 100% of the current net price of each repair  
 16 part carried on the most recent price list or catalog OR THE  
 17 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
 18 LISTED AS provided by the manufacturer or distributor and  
 19 held by the dealer at the time of cancellation, PLUS COST OF  
 20 FREIGHT TO RETURN THE REPAIR PARTS.

21 (2) If a wholesaler enters into a written distribution  
 22 contract and either the wholesaler, manufacturer, or  
 23 distributor cancels the contract, the manufacturer or  
 24 distributor shall, at the wholesaler's request, pay to the  
 25 wholesaler, or credit to the wholesaler's account if the

1 wholesaler has outstanding any sums owing to the  
2 manufacturer or distributor, an amount equal to:

3 (a) 100% of the net cost of all new, unused, undamaged,  
4 and complete inventory items, except repair parts, held by  
5 the wholesaler at the time of cancellation; and

6 (b) ~~85%~~ 100% of the current net price of each repair  
7 part carried on the most recent price list or catalog OR THE  
8 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
9 LISTED AS provided by the manufacturer or distributor and  
10 held by the wholesaler at the time of cancellation.

11 (3) Payment or allowance of credit to the retailer's or  
12 wholesaler's account of the sum required in subsection (1)  
13 or (2) must be made upon return of the inventory items to  
14 the wholesaler, manufacturer, or distributor. Title to such  
15 inventory items passes to the wholesaler, manufacturer, or  
16 distributor upon making such payment."

17 ~~Section 11. Section 30-11-712, MCA, is amended to read:~~  
18 ~~"30-11-712. Civil liability. If any wholesaler,~~  
19 ~~manufacturer, or distributor fails or refuses to repurchase~~  
20 ~~any inventory as required by 30-11-702 and {section 7(1)};~~  
21 ~~the wholesaler, manufacturer, or distributor is liable in a~~  
22 ~~civil action for 100% of the current net price of the~~  
23 ~~inventory, plus any freight charges paid by the retailer or~~  
24 ~~wholesaler, the retailer's or wholesaler's attorney fees,~~  
25 ~~and court costs."~~

1 NEW SECTION. Section 10. Severability. If a part of  
2 [this act] is invalid, all valid parts that are severable  
3 from the invalid part remain in effect. If a part of [this  
4 act] is invalid in one or more of its applications, the part  
5 remains in effect in all valid applications that are  
6 severable from the invalid applications.

7 NEW SECTION. Section 11. Codification instruction.  
8 [Sections 2 through 9 8] are intended to be codified as an  
9 integral part of Title 30, chapter 11, part 8, and the  
10 provisions of Title 30, chapter 11, part 8, apply to  
11 [sections 2 through 9 8].

12 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS  
13 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

## 1 SENATE BILL NO. 158

2 INTRODUCED BY JERGESON, L. NELSON, WILLIAMS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM  
5 FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED  
6 FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS  
7 AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING  
8 A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP  
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10 DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR  
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15 EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:18 **Section 1.** Section 30-11-801, MCA, is amended to read:19 **"30-11-801. Definitions.** As used in this part, the  
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22 financial interest that the grantor and grantee have in  
23 common.24 (2) "Dealer" means a person who is a grantee of a farm  
25 implements dealership situated in this state.

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3 franchise as defined in 61-4-201, by which a person is  
4 granted the right to sell or distribute farm implements, in  
5 which there is a community of interest in the business of  
6 offering, selling, or distributing farm implements.

7 (4) "Department" means the department of commerce  
8 established in 2-15-1801.9 (5) (a) "Designated family member" means the spouse,  
10 child, grandchild, parent, brother, or sister of a dealer  
11 who:

12 (i) in the case of a deceased dealer:

13 (A) is entitled to inherit the dealer's ownership  
14 interest in the dealership under the terms of the dealer's  
15 will;16 (B) has been designated in writing by a deceased dealer  
17 to succeed him in the dealership; or18 (C) is entitled to inherit the dealer's ownership  
19 interest in the dealership under the laws of intestate  
20 succession of this state; or21 (ii) in the case of an incapacitated dealer, has been  
22 appointed by a court as the legal representative of the  
23 dealer's property.24 (b) The term includes the appointed and qualified  
25 personal representative and the testamentary trustee of a

THIRD READING

1 deceased dealer.

2 (6) "Designated successor" means a person who, in the  
3 case of a retiring dealer, is designated in writing by the  
4 retiring dealer to succeed him in the dealership.

5 †4†(7) "Farm implement" means any vehicle, machine, or  
6 attachment designed or adapted and used exclusively for  
7 agricultural operations and only incidentally operated or  
8 used on the highways.

9 †5†(8) (a) "Good cause", when used in 30-11-801 through  
10 30-11-803 and 30-11-811, means:

11 †a†(i) failure by a dealer to comply substantially with  
12 essential and reasonable requirements imposed upon him by  
13 the grantor or sought to be imposed by the grantor, which  
14 requirements are not discriminatory as compared with  
15 requirements imposed on other similarly situated dealers  
16 either by the terms of the requirements or in the manner of  
17 their enforcement; or

18 †b†(ii) bad faith by the dealer in carrying out the  
19 terms of the dealership.

20 (b) Good cause, when used in [sections 2 through 9 8],  
21 means a showing that succession to a dealership would be  
22 detrimental to the public interest or to the representation  
23 of the grantor.

24 †6†(9) "Grantor" means a person who grants a  
25 dealership.

1 †7†(10) "Person" means any individual, partnership,  
2 association, corporation, or other entity."

3 NEW SECTION. Section 2. Right of designated family  
4 member or designated successor to succeed in dealership  
5 ownership. (1) A designated family member or designated  
6 successor may succeed the dealer in the ownership or  
7 operation of the dealership under the existing franchise or  
8 distribution agreement:

9 (a) if, within 120 days of the dealer's death,  
10 incapacity, or retirement, he gives the grantor written  
11 notice of his intention to do so; and

12 (b) unless there exists good cause for refusal to honor  
13 the succession on the part of the grantor.

14 (2) The grantor may request, and the designated family  
15 member or designated successor shall provide, upon request,  
16 personal and financial data that is reasonably necessary to  
17 determine whether the succession should be honored.

18 NEW SECTION. Section 3. Refusal to honor succession to  
19 ownership -- notice required. (1) If a grantor believes that  
20 good cause exists for refusing to honor the succession to  
21 the ownership and operation of a dealership by a designated  
22 family member or by a designated successor under the  
23 existing franchise agreement, the grantor may, within 30  
24 days of receipt of notice of the designated family member's  
25 or designated successor's intent to succeed the dealer in

1 the ownership and operation of the dealership, serve upon  
 2 the designated family member or designated successor and the  
 3 department notice of its refusal to honor the succession and  
 4 of its intent to discontinue the existing franchise  
 5 agreement with the dealership no sooner than 60 days from  
 6 the date the notice is served.

7 (2) The notice must state the specific grounds for the  
 8 refusal to honor the succession and the intent to  
 9 discontinue the existing franchise agreement with the  
 10 dealership no sooner than 60 days from the date the notice  
 11 is served.

12 (3) If notice of refusal and discontinuance is not  
 13 timely served upon the designated family member or  
 14 designated successor and the department or if the department  
 15 rules in favor of the complainant in a hearing held pursuant  
 16 to [section 4], the franchise agreement must continue in  
 17 effect subject to termination only as otherwise permitted by  
 18 law.

19 NEW SECTION. Section 4. Procedure to determine right  
 20 to succeed. (1) A designated family member or designated  
 21 successor who receives notice of the grantor's refusal to  
 22 honor his succession to the ownership and operation of the  
 23 dealership may, within the 60-day period provided for in  
 24 [section 3], file with the department a verified complaint  
 25 for a hearing and determination by the department on whether

1 good cause exists for refusal and discontinuance.

2 (2) The grantor shall establish good cause for refusal  
 3 to honor the succession to ownership.

4 (3) The franchise agreement must continue in effect  
 5 until the final determination of the issues raised in the  
 6 complaint.

7 (4) If the grantor prevails, the department shall  
 8 include in its order approving the termination of the  
 9 franchise agreement reasonable conditions affording the  
 10 complainant an opportunity to receive fair and reasonable  
 11 compensation for the value of the dealership.

12 (5) Any decision by the department may be reviewed  
 13 pursuant to Title 2, chapter 4, part 7.

14 NEW SECTION. Section 5. Written designation of  
 15 succession unaffected. [Sections 2 through 9 8] do not  
 16 preclude a dealer from designating any person as his  
 17 successor by written instrument filed with the grantor.

18 NEW SECTION. Section 6. Illegal cancellation of  
 19 dealership based on natural disaster. A grantor may not  
 20 attempt or threaten to terminate, cancel, fail to renew, or  
 21 substantially change the circumstances of a dealership if  
 22 the attempt or threat is based on the results of a natural  
 23 disaster, including a sustained drought, in the dealership  
 24 market area or some other circumstance beyond the dealer's  
 25 control.

1 ~~NEW SECTION. Section 7. Repurchase of farm implement~~  
 2 ~~dealership inventory upon cancellation of dealership. (1) If~~  
 3 ~~a dealer enters into a written dealership contract or~~  
 4 ~~agreement with a grantor and the grantor cancels the~~  
 5 ~~dealership, the grantor shall, at the dealer's request, pay~~  
 6 ~~to the dealer or credit to the dealer's account, if the~~  
 7 ~~dealer has outstanding any sums owing the grantor, an amount~~  
 8 ~~equal to 100% of the net cost of all new, unused, undamaged,~~  
 9 ~~and complete inventory items, including repair parts, held~~  
 10 ~~by the dealer at the time of cancellation.~~

11 ~~(2) Payment or allowance of credit to the dealer's~~  
 12 ~~account of the sum required in subsection (1) must be made~~  
 13 ~~upon return of the inventory items to the grantor and upon~~  
 14 ~~payment by the dealer of any shipping charges necessitated~~  
 15 ~~by the return of the items. Title to the inventory items~~  
 16 ~~passes to the grantor upon making the payment or allowance.~~

17 NEW SECTION. Section 7. Violation -- penalty. A person  
 18 violating the provisions of [sections 2 through 9 8] shall  
 19 upon conviction be fined an amount not to exceed \$5,000.

20 NEW SECTION. Section 8. Civil damages. A dealer  
 21 suffering pecuniary loss due to a violation of [sections 2  
 22 through 9 8] who prevails in a civil action for the loss is  
 23 entitled to damages equal to three times the pecuniary loss,  
 24 together with court costs and reasonable attorney fees.

25 **Section 9.** Section 30-11-702, MCA, is amended to read:

1 "30-11-702. Repurchase of inventory items upon  
 2 cancellation of dealership or distribution contract. (1) If  
 3 ~~Except as provided in {section 7}~~ if IF a retailer enters  
 4 into a written dealership contract and either the  
 5 wholesaler, manufacturer, distributor, or retailer cancels  
 6 the contract, such wholesaler, manufacturer, or distributor  
 7 shall, at the retailer's request, pay to the retailer, or  
 8 credit to the retailer's account if the retailer has  
 9 outstanding any sums owing the wholesaler, manufacturer, or  
 10 distributor, an amount equal to:

11 (a) 100% of the net cost of all new, unused, undamaged,  
 12 and complete inventory items, ~~except repair parts,~~ held by  
 13 the dealer at the time of cancellation, PLUS COST OF FREIGHT  
 14 TO RETURN THE INVENTORY; and

15 (b) ~~85%~~ 100% of the current net price of each repair  
 16 part carried on the most recent price list or catalog OR THE  
 17 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
 18 LISTED AS provided by the manufacturer or distributor and  
 19 held by the dealer at the time of cancellation, PLUS COST OF  
 20 FREIGHT TO RETURN THE REPAIR PARTS.

21 (2) If a wholesaler enters into a written distribution  
 22 contract and either the wholesaler, manufacturer, or  
 23 distributor cancels the contract, the manufacturer or  
 24 distributor shall, at the wholesaler's request, pay to the  
 25 wholesaler, or credit to the wholesaler's account if the



1 wholesaler has outstanding any sums owing to the  
2 manufacturer or distributor, an amount equal to:

3 (a) 100% of the net cost of all new, unused, undamaged,  
4 and complete inventory items, except repair parts, held by  
5 the wholesaler at the time of cancellation; and

6 (b) 85% 100% of the current net price of each repair  
7 part carried on the most recent price list or catalog OR THE  
8 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
9 LISTED AS provided by the manufacturer or distributor and  
10 held by the wholesaler at the time of cancellation.

11 (3) Payment or allowance of credit to the retailer's or  
12 wholesaler's account of the sum required in subsection (1)  
13 or (2) must be made upon return of the inventory items to  
14 the wholesaler, manufacturer, or distributor. Title to such  
15 inventory items passes to the wholesaler, manufacturer, or  
16 distributor upon making such payment."

17 ~~Section 11, Section 30-11-712, MCA, is amended to read:~~  
18 ~~"30-11-712, Civil liability, if any wholesaler,~~  
19 ~~manufacturer, or distributor fails or refuses to repurchase~~  
20 ~~any inventory as required by 30-11-702 and {section 711}~~  
21 ~~the wholesaler, manufacturer, or distributor is liable in a~~  
22 ~~civil action for 100% of the current net price of the~~  
23 ~~inventory, plus any freight charges paid by the retailer or~~  
24 ~~wholesaler, the retailer's or wholesaler's attorney fees,~~  
25 ~~and court costs."~~

1 NEW SECTION. Section 10. Severability. If a part of  
2 [this act] is invalid, all valid parts that are severable  
3 from the invalid part remain in effect. If a part of [this  
4 act] is invalid in one or more of its applications, the part  
5 remains in effect in all valid applications that are  
6 severable from the invalid applications.

7 NEW SECTION. Section 11. Codification instruction.  
8 [Sections 2 through 9 8] are intended to be codified as an  
9 integral part of Title 30, chapter 11, part 8, and the  
10 provisions of Title 30, chapter 11, part 8, apply to  
11 [sections 2 through 9 8].

12 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS  
13 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

## 1 SENATE BILL NO. 158

2 INTRODUCED BY JERGSON, L. NELSON, WILLIAMS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM  
5 FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED  
6 FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS  
7 AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING  
8 A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP  
9 OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A  
10 DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR  
11 REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET  
12 COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR  
13 DAMAGES AND PENALTIES; AND AMENDING SECTIONS 30-11-702,  
14 30-11-712, AND 30-11-801, MCA; AND PROVIDING AN IMMEDIATE  
15 EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:18 **Section 1.** Section 30-11-801, MCA, is amended to read:19 "30-11-801. Definitions. As used in this part, the  
20 following definitions apply:21 (1) "Community of interest" means a continuing  
22 financial interest that the grantor and grantee have in  
23 common.24 (2) "Dealer" means a person who is a grantee of a farm  
25 implements dealership situated in this state.1 (3) "Dealership" means a contract or agreement,  
2 expressed or implied, whether oral or written, including a  
3 franchise as defined in 61-4-201, by which a person is  
4 granted the right to sell or distribute farm implements, in  
5 which there is a community of interest in the business of  
6 offering, selling, or distributing farm implements.7 (4) "Department" means the department of commerce  
8 established in 2-15-1801.9 (5) (a) "Designated family member" means the spouse,  
10 child, grandchild, parent, brother, or sister of a dealer  
11 who:

12 (i) in the case of a deceased dealer:

13 (A) is entitled to inherit the dealer's ownership  
14 interest in the dealership under the terms of the dealer's  
15 will;16 (B) has been designated in writing by a deceased dealer  
17 to succeed him in the dealership; or18 (C) is entitled to inherit the dealer's ownership  
19 interest in the dealership under the laws of intestate  
20 succession of this state; or21 (ii) in the case of an incapacitated dealer, has been  
22 appointed by a court as the legal representative of the  
23 dealer's property.24 (b) The term includes the appointed and qualified  
25 personal representative and the testamentary trustee of aREFERENCE BILL  
SB 158

1 deceased dealer.

2 (6) "Designated successor" means a person who, in the  
3 case of a retiring dealer, is designated in writing by the  
4 retiring dealer to succeed him in the dealership.

5 f4}(7) "Farm implement" means any vehicle, machine, or  
6 attachment designed or adapted and used exclusively for  
7 agricultural operations and only incidentally operated or  
8 used on the highways.

9 f5}(8) (a) "Good cause", when used in 30-11-801 through  
10 30-11-803 and 30-11-811, means:

11 f4}(i) failure by a dealer to comply substantially with  
12 essential and reasonable requirements imposed upon him by  
13 the grantor or sought to be imposed by the grantor, which  
14 requirements are not discriminatory as compared with  
15 requirements imposed on other similarly situated dealers  
16 either by the terms of the requirements or in the manner of  
17 their enforcement; or

18 f4}(ii) bad faith by the dealer in carrying out the  
19 terms of the dealership.

20 (b) Good cause, when used in [sections 2 through 9 8],  
21 means a showing that succession to a dealership would be  
22 detrimental to the public interest or to the representation  
23 of the grantor.

24 f6}(9) "Grantor" means a person who grants a  
25 dealership.

1 f7}(10) "Person" means any individual, partnership,  
2 association, corporation, or other entity."

3 NEW SECTION. Section 2. Right of designated family  
4 member or designated successor to succeed in dealership  
5 ownership. (1) A designated family member or designated  
6 successor may succeed the dealer in the ownership or  
7 operation of the dealership under the existing franchise or  
8 distribution agreement:

9 (a) if, within 120 days of the dealer's death,  
10 incapacity, or retirement, he gives the grantor written  
11 notice of his intention to do so; and

12 (b) unless there exists good cause for refusal to honor  
13 the succession on the part of the grantor.

14 (2) The grantor may request, and the designated family  
15 member or designated successor shall provide, upon request,  
16 personal and financial data that is reasonably necessary to  
17 determine whether the succession should be honored.

18 NEW SECTION. Section 3. Refusal to honor succession to  
19 ownership -- notice required. (1) If a grantor believes that  
20 good cause exists for refusing to honor the succession to  
21 the ownership and operation of a dealership by a designated  
22 family member or by a designated successor under the  
23 existing franchise agreement, the grantor may, within 30  
24 days of receipt of notice of the designated family member's  
25 or designated successor's intent to succeed the dealer in

1 the ownership and operation of the dealership, serve upon  
 2 the designated family member or designated successor and the  
 3 department notice of its refusal to honor the succession and  
 4 of its intent to discontinue the existing franchise  
 5 agreement with the dealership no sooner than 60 days from  
 6 the date the notice is served.

7 (2) The notice must state the specific grounds for the  
 8 refusal to honor the succession and the intent to  
 9 discontinue the existing franchise agreement with the  
 10 dealership no sooner than 60 days from the date the notice  
 11 is served.

12 (3) If notice of refusal and discontinuance is not  
 13 timely served upon the designated family member or  
 14 designated successor and the department or if the department  
 15 rules in favor of the complainant in a hearing held pursuant  
 16 to [section 4], the franchise agreement must continue in  
 17 effect subject to termination only as otherwise permitted by  
 18 law.

19 NEW SECTION. Section 4. Procedure to determine right  
 20 to succeed. (1) A designated family member or designated  
 21 successor who receives notice of the grantor's refusal to  
 22 honor his succession to the ownership and operation of the  
 23 dealership may, within the 60-day period provided for in  
 24 [section 3], file with the department a verified complaint  
 25 for a hearing and determination by the department on whether

1 good cause exists for refusal and discontinuance.

2 (2) The grantor shall establish good cause for refusal  
 3 to honor the succession to ownership.

4 (3) The franchise agreement must continue in effect  
 5 until the final determination of the issues raised in the  
 6 complaint.

7 (4) If the grantor prevails, the department shall  
 8 include in its order approving the termination of the  
 9 franchise agreement reasonable conditions affording the  
 10 complainant an opportunity to receive fair and reasonable  
 11 compensation for the value of the dealership.

12 (5) Any decision by the department may be reviewed  
 13 pursuant to Title 2, chapter 4, part 7.

14 NEW SECTION. Section 5. Written designation of  
 15 succession unaffected. [Sections 2 through 9 8] do not  
 16 preclude a dealer from designating any person as his  
 17 successor by written instrument filed with the grantor.

18 NEW SECTION. Section 6. Illegal cancellation of  
 19 dealership based on natural disaster. A grantor may not  
 20 attempt or threaten to terminate, cancel, fail to renew, or  
 21 substantially change the circumstances of a dealership if  
 22 the attempt or threat is based on the results of a natural  
 23 disaster, including a sustained drought, in the dealership  
 24 market area or some other circumstance beyond the dealer's  
 25 control.

~~NEW SECTION. Section 7. Repurchase of farm implement dealership inventory upon cancellation of dealership. (1) If a dealer enters into a written dealership contract or agreement with a grantor and the grantor cancels the dealership, the grantor shall, at the dealer's request, pay to the dealer or credit to the dealer's account, if the dealer has outstanding any sums owing the grantor, an amount equal to 100% of the net cost of all new, unused, undamaged, and complete inventory items, including repair parts, held by the dealer at the time of cancellation.~~

~~(2) Payment or allowance of credit to the dealer's account of the sum required in subsection (1) must be made upon return of the inventory items to the grantor and upon payment by the dealer of any shipping charges necessitated by the return of the items. Title to the inventory items passes to the grantor upon making the payment or allowance.~~

~~NEW SECTION. Section 7. Violation -- penalty. A person violating the provisions of [sections 2 through 9 8] shall upon conviction be fined an amount not to exceed \$5,000.~~

~~NEW SECTION. Section 8. Civil damages. A dealer suffering pecuniary loss due to a violation of [sections 2 through 9 8] who prevails in a civil action for the loss is entitled to damages equal to three times the pecuniary loss, together with court costs and reasonable attorney fees.~~

~~Section 9. Section 30-11-702, MCA, is amended to read:~~

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~Except as provided in [section 7], if~~ IF a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, ~~except repair parts,~~ held by the dealer at the time of cancellation, PLUS COST OF FREIGHT TO RETURN THE INVENTORY; and

(b) ~~85%~~ 100% of the current net price of each repair part carried on the most recent price list or catalog OR THE LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS LISTED AS provided by the manufacturer or distributor and held by the dealer at the time of cancellation, PLUS COST OF FREIGHT TO RETURN THE REPAIR PARTS.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the

1 wholesaler has outstanding any sums owing to the  
2 manufacturer or distributor, an amount equal to:

3 (a) 100% of the net cost of all new, unused, undamaged,  
4 and complete inventory items, except repair parts, held by  
5 the wholesaler at the time of cancellation; and

6 (b) ~~85%~~ 100% of the current net price of each repair  
7 part carried on the most recent price list or catalog OR THE  
8 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
9 LISTED AS provided by the manufacturer or distributor and  
10 held by the wholesaler at the time of cancellation.

11 (3) Payment or allowance of credit to the retailer's or  
12 wholesaler's account of the sum required in subsection (1)  
13 or (2) must be made upon return of the inventory items to  
14 the wholesaler, manufacturer, or distributor. Title to such  
15 inventory items passes to the wholesaler, manufacturer, or  
16 distributor upon making such payment."

17 ~~Section 11--Section 30-11-712, MCA, is amended to read:~~  
18 ~~"30-11-712--Civil--liability--if--any--wholesaler,~~  
19 ~~manufacturer,--or--distributor--fails--or--refuses--to--repurchase~~  
20 ~~any--inventory--as--required--by--30-11-702--and--{section--7(1)},~~  
21 ~~the--wholesaler,--manufacturer,--or--distributor--is--liable--in--a~~  
22 ~~civil--action--for--100%--of--the--current--net--price--of--the~~  
23 ~~inventory,--plus--any--freight--charges--paid--by--the--retailer--or~~  
24 ~~wholesaler,--the--retailer's--or--wholesaler's--attorney--fees,~~  
25 ~~and--court--costs."~~

1 NEW SECTION. Section 10. Severability. If a part of  
2 [this act] is invalid, all valid parts that are severable  
3 from the invalid part remain in effect. If a part of [this  
4 act] is invalid in one or more of its applications, the part  
5 remains in effect in all valid applications that are  
6 severable from the invalid applications.

7 NEW SECTION. Section 11. Codification instruction.  
8 [Sections 2 through 9 8] are intended to be codified as an  
9 integral part of Title 30, chapter 11, part 8, and the  
10 provisions of Title 30, chapter 11, part 8, apply to  
11 [sections 2 through 9 8].

12 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS  
13 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

GOVERNOR'S AMENDMENTS TO  
SENATE BILL 158  
(REFERENCE COPY, AS AMENDED)  
MARCH 22, 1991

1. Title, lines 12 through 13  
Following: "A DEALERSHIP;"  
Strike: "PROVIDING FOR DAMAGES AND PENALTIES;"
2. Page 2, beginning at line 22 and continuing on page 3  
Strike: lines 11-25 on page 2 and lines 1-4 on page 3  
Insert: "(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer."
3. Page 4, lines 3-17  
Strike: New Section 2 in its entirety  
Insert: "NEW SECTION Section 2. Transfer. No grantor may unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person which the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. Such requirements shall be specified and made available to any dealer upon request but in no case shall extend beyond business, financial, character and experience qualifications.  
If a grantor determines that a proposed transferee does not meet such requirements, it shall give the dealer written notice stating the specific reasons for withholding consent."
4. Page 6, lines 24 and 25  
Following: "area"  
Strike: remainder of line 24 through "control" on line 25
5. Page 7, lines 17-19  
Strike: New Section 7 in its entirety  
Re-number subsequent subsections :
6. Page 7, line 23  
Following: "to"  
Strike: "three times"
7. Page 9, line 13  
Following: "made"  
Strike: "upon"  
Insert: "within sixty days of the"

## SENATE BILL NO. 158

INTRODUCED BY JERGESON, L. NELSON, WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR DAMAGES AND--PENALTIES; AND AMENDING SECTIONS 30-11-702, 30-11-712, AND 30-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 30-11-801, MCA, is amended to read:

"30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer. who:

(i) ~~in the case of a deceased dealer;~~

(A) ~~is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will;~~

(B) ~~has been designated in writing by a deceased dealer to succeed him in the dealership; or~~

(C) ~~is entitled to inherit the dealer's ownership interest in the dealership under the laws of intestate succession of this state; or~~

(ii) ~~in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property;~~

(b) ~~The term includes the appointed and qualified personal representative and the testamentary trustee of a~~



1 deceased-dealer:

2 (6) "Designated successor" means a person who, in the  
 3 case of a retiring dealer, is designated in writing by the  
 4 retiring dealer to succeed him in the dealership.

5 (6) "DESIGNATED SUCCESSOR" MEANS A PERSON DESIGNATED IN  
 6 WRITING BY THE RETIRING DEALER TO SUCCEED HIM IN THE  
 7 DEALERSHIP OR, IN THE CASE OF AN INCAPACITATED DEALER, A  
 8 PERSON APPOINTED BY A COURT AS THE LEGAL REPRESENTATIVE OF  
 9 THE DEALER'S PROPERTY OR THE APPOINTED AND QUALIFIED  
 10 PERSONAL REPRESENTATIVE AND THE TESTAMENTARY TRUSTEE OF A  
 11 DECEASED DEALER.

12 (4)(7) "Farm implement" means any vehicle, machine, or  
 13 attachment designed or adapted and used exclusively for  
 14 agricultural operations and only incidentally operated or  
 15 used on the highways.

16 (5)(8) (a) "Good cause", when used in 30-11-801 through  
 17 30-11-803 and 30-11-811, means:

18 (a)(i) failure by a dealer to comply substantially with  
 19 essential and reasonable requirements imposed upon him by  
 20 the grantor or sought to be imposed by the grantor, which  
 21 requirements are not discriminatory as compared with  
 22 requirements imposed on other similarly situated dealers  
 23 either by the terms of the requirements or in the manner of  
 24 their enforcement; or

25 (b)(ii) bad faith by the dealer in carrying out the

1 terms of the dealership.

2 (b) Good cause, when used in [sections 2 through 9 8],  
 3 means a showing that succession to a dealership would be  
 4 detrimental to the public interest or to the representation  
 5 of the grantor.

6 (6)(9) "Grantor" means a person who grants a  
 7 dealership.

8 (7)(10) "Person" means any individual, partnership,  
 9 association, corporation, or other entity."

10 NEW SECTION. Section 2. Right of designated family  
 11 member or designated successor to succeed in dealership  
 12 ownership. (1) A designated family member or designated  
 13 successor may succeed the dealer in the ownership or  
 14 operation of the dealership under the existing franchise or  
 15 distribution agreement:

16 (a) if, within 120 days of the dealer's death,  
 17 incapacity, or retirement, he gives the grantor written  
 18 notice of his intention to do so; and

19 (b) unless there exists good cause for refusal to honor  
 20 the succession on the part of the grantor;

21 (2) The grantor may request, and the designated family  
 22 member or designated successor shall provide, upon request,  
 23 personal and financial data that is reasonably necessary to  
 24 determine whether the succession should be honored;

25 NEW SECTION. SECTION 2. TRANSFER. A GRANTOR MAY NOT

1 UNREASONABLY WITHHOLD CONSENT TO ANY TRANSFER OF THE  
 2 DEALER'S BUSINESS OR TRANSFER OF THE STOCK OR OTHER INTEREST  
 3 IN THE DEALERSHIP TO A DESIGNATED MEMBER OR MEMBERS OF THE  
 4 FAMILY OF THE DEALER, TO THE PRINCIPAL OWNER OF THE  
 5 DEALERSHIP, OR TO A PERSON WHOM THE DEALER WISHES TO  
 6 DESIGNATE AS A DESIGNATED SUCCESSOR. THE GRANTOR MAY REQUIRE  
 7 THAT THE DESIGNATED SUCCESSOR OR DESIGNATED FAMILY MEMBER  
 8 MEET THE REASONABLE REQUIREMENTS OF THE GRANTOR. THE  
 9 REQUIREMENTS MUST BE SPECIFIED AND MADE AVAILABLE TO ANY  
 10 DEALER UPON REQUEST BUT MAY NOT EXTEND BEYOND BUSINESS,  
 11 FINANCIAL, CHARACTER, AND EXPERIENCE QUALIFICATIONS. IF A  
 12 GRANTOR DETERMINES THAT A PROPOSED TRANSFEREE DOES NOT MEET  
 13 THE REQUIREMENTS, THE GRANTOR SHALL GIVE THE DEALER WRITTEN  
 14 NOTICE STATING THE SPECIFIC REASONS FOR WITHHOLDING CONSENT.

15 NEW SECTION. Section 3. Refusal to honor succession to  
 16 ownership -- notice required. (1) If a grantor believes that  
 17 good cause exists for refusing to honor the succession to  
 18 the ownership and operation of a dealership by a designated  
 19 family member or by a designated successor under the  
 20 existing franchise agreement, the grantor may, within 30  
 21 days of receipt of notice of the designated family member's  
 22 or designated successor's intent to succeed the dealer in  
 23 the ownership and operation of the dealership, serve upon  
 24 the designated family member or designated successor and the  
 25 department notice of its refusal to honor the succession and

1 of its intent to discontinue the existing franchise  
 2 agreement with the dealership no sooner than 60 days from  
 3 the date the notice is served.

4 (2) The notice must state the specific grounds for the  
 5 refusal to honor the succession and the intent to  
 6 discontinue the existing franchise agreement with the  
 7 dealership no sooner than 60 days from the date the notice  
 8 is served.

9 (3) If notice of refusal and discontinuance is not  
 10 timely served upon the designated family member or  
 11 designated successor and the department or if the department  
 12 rules in favor of the complainant in a hearing held pursuant  
 13 to [section 4], the franchise agreement must continue in  
 14 effect subject to termination only as otherwise permitted by  
 15 law.

16 NEW SECTION. Section 4. Procedure to determine right  
 17 to succeed. (1) A designated family member or designated  
 18 successor who receives notice of the grantor's refusal to  
 19 honor his succession to the ownership and operation of the  
 20 dealership may, within the 60-day period provided for in  
 21 [section 3], file with the department a verified complaint  
 22 for a hearing and determination by the department on whether  
 23 good cause exists for refusal and discontinuance.

24 (2) The grantor shall establish good cause for refusal  
 25 to honor the succession to ownership.

1 (3) The franchise agreement must continue in effect  
2 until the final determination of the issues raised in the  
3 complaint.

4 (4) If the grantor prevails, the department shall  
5 include in its order approving the termination of the  
6 franchise agreement reasonable conditions affording the  
7 complainant an opportunity to receive fair and reasonable  
8 compensation for the value of the dealership.

9 (5) Any decision by the department may be reviewed  
10 pursuant to Title 2, chapter 4, part 7.

11 NEW SECTION. Section 5. Written designation of  
12 succession unaffected. [Sections 2 through 9 8] do not  
13 preclude a dealer from designating any person as his  
14 successor by written instrument filed with the grantor.

15 NEW SECTION. Section 6. Illegal cancellation of  
16 dealership based on natural disaster. A grantor may not  
17 attempt or threaten to terminate, cancel, fail to renew, or  
18 substantially change the circumstances of a dealership if  
19 the attempt or threat is based on the results of a natural  
20 disaster, including a sustained drought, in the dealership  
21 market area or some other circumstance beyond the dealer's  
22 control.

23 NEW SECTION. Section 7. Repurchase of farm implement  
24 dealership inventory upon cancellation of dealership. (1) If  
25 a dealer enters into a written dealership contract or

1 agreement with a grantor and the grantor cancels the  
2 dealership, the grantor shall, at the dealer's request, pay  
3 to the dealer or credit to the dealer's account, if the  
4 dealer has outstanding any sums owing the grantor, an amount  
5 equal to 100% of the net cost of all new, unused, undamaged,  
6 and complete inventory items, including repair parts, held  
7 by the dealer at the time of cancellation.

8 (2) Payment or allowance of credit to the dealer's  
9 account of the sum required in subsection (1) must be made  
10 upon return of the inventory items to the grantor and upon  
11 payment by the dealer of any shipping charges necessitated  
12 by the return of the items. Title to the inventory items  
13 passes to the grantor upon making the payment or allowance.

14 NEW SECTION. Section 7. Violation penalty. A person  
15 violating the provisions of [sections 2 through 9 8] shall  
16 upon conviction be fined an amount not to exceed \$5,000.

17 NEW SECTION. Section 7. Civil damages. A dealer  
18 suffering pecuniary loss due to a violation of [sections 2  
19 through 9 8] who prevails in a civil action for the loss is  
20 entitled to damages equal to three times the pecuniary loss,  
21 together with court costs and reasonable attorney fees.

22 Section 8. Section 30-11-702, MCA, is amended to read:  
23 "30-11-702. Repurchase of inventory items upon  
24 cancellation of dealership or distribution contract. (1) If  
25 Except as provided in section 7, if IF a retailer enters

1 into a written dealership contract and either the  
2 wholesaler, manufacturer, distributor, or retailer cancels  
3 the contract, such wholesaler, manufacturer, or distributor  
4 shall, at the retailer's request, pay to the retailer, or  
5 credit to the retailer's account if the retailer has  
6 outstanding any sums owing the wholesaler, manufacturer, or  
7 distributor, an amount equal to:

8 (a) 100% of the net cost of all new, unused, undamaged,  
9 and complete inventory items, ~~except repair parts,~~ held by  
10 the dealer at the time of cancellation, PLUS COST OF FREIGHT  
11 TO RETURN THE INVENTORY; and

12 (b) ~~85%~~ 100% of the current net price of each repair  
13 part carried on the most recent price list or catalog OR THE  
14 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
15 LISTED AS provided by the manufacturer or distributor and  
16 held by the dealer at the time of cancellation, PLUS COST OF  
17 FREIGHT TO RETURN THE REPAIR PARTS.

18 (2) If a wholesaler enters into a written distribution  
19 contract and either the wholesaler, manufacturer, or  
20 distributor cancels the contract, the manufacturer or  
21 distributor shall, at the wholesaler's request, pay to the  
22 wholesaler, or credit to the wholesaler's account if the  
23 wholesaler has outstanding any sums owing to the  
24 manufacturer or distributor, an amount equal to:

25 (a) 100% of the net cost of all new, unused, undamaged,

1 and complete inventory items, except repair parts, held by  
2 the wholesaler at the time of cancellation; and

3 (b) ~~85%~~ 100% of the current net price of each repair  
4 part carried on the most recent price list or catalog OR THE  
5 LAST CATALOG OR PRICE LIST IN WHICH THE REPAIR PART WAS  
6 LISTED AS provided by the manufacturer or distributor and  
7 held by the wholesaler at the time of cancellation.

8 (3) Payment or allowance of credit to the retailer's or  
9 wholesaler's account of the sum required in subsection (1)  
10 or (2) must be made upon WITHIN 60 DAYS OF THE return of the  
11 inventory items to the wholesaler, manufacturer, or  
12 distributor. Title to such inventory items passes to the  
13 wholesaler, manufacturer, or distributor upon making such  
14 payment."

15 ~~Section 117--Section 30-11-712, MCA, is amended to read:~~

16 ~~"30-11-712--Civil--liability--if--any--wholesaler,~~  
17 ~~manufacturer,--or-distributor-fails-or-refuses-to-repurchase~~  
18 ~~any-inventory-as-required-by-30-11-702-and--{section--7(1)};~~  
19 ~~the--wholesaler, manufacturer, or distributor is liable in a~~  
20 ~~civil-action-for-100%--of--the--current--net--price--of--the~~  
21 ~~inventory,--plus-any-freight-charges-paid-by-the-retailer-or~~  
22 ~~wholesaler, the retailer's or wholesaler's attorney fees,~~  
23 ~~and court costs."~~

24 NEW SECTION. Section 9. Severability. If a part of  
25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this  
2 act] is invalid in one or more of its applications, the part  
3 remains in effect in all valid applications that are  
4 severable from the invalid applications.

5 NEW SECTION. Section 10. Codification instruction.  
6 [Sections 2 through 9 8 7] are intended to be codified as an  
7 integral part of Title 30, chapter 11, part 8, and the  
8 provisions of Title 30, chapter 11, part 8, apply to  
9 [sections 2 through 9 8 7].

10 NEW SECTION. SECTION 11. EFFECTIVE DATE. [THIS ACT] IS  
11 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-