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CONCURRED IN.

THIRD READING, AMENDMENTS
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 of their duties as such employees; or

2 (c) public officers while performing or in the
3 operation of their duties.

4 (3) A dealer dealing in used motor vehicles only shall
5 purchase a Montana store license."

6 Section 2. Section 61-4-101, MCA, is amended to read:

7 "61-4-101. Application for dealer's license or
8 wholesaler's license. (1) (a) Every A verified application
9 must be filed, by mail or otherwise, in the office of the
10 department by each person, firm, corporation, or association
11 which that, for commission or profit, engages in:

12 (i) the business of buying, selling, exchanging,
13 offering, taking for consignment, ~~soliciting, advertising~~
14 ~~the sale of,~~ or acting as a broker of new motor vehicles,
15 recreational vehicles, used motor vehicles, trailers (except
16 trailers having an unloaded weight of less than 500 pounds),
17 semitrailers, or special mobile equipment as defined in
18 ~~61-1-104 shall file, by mail or otherwise, in the office of~~
19 ~~the department a verified application~~ for licensure as a
20 ~~dealer, on a blank to be furnished by the department for~~
21 ~~that purpose and containing the information required; or~~

22 (ii) business as a wholesaler as defined in [section 9]
23 in order to be licensed as a wholesaler.

24 (b) The sale of more than three motor vehicles or the
25 offering for sale of more than three motor vehicles, if the

1 motor vehicles are not titled in the seller's name, in any 1
2 calendar year is prima facie evidence that a person is
3 engaged in the business of dealing motor vehicles. Licensed
4 wholesalers do not have the privilege of the use of dealer
5 license plates as provided in subsection (2)(b) but are
6 authorized to display and use demonstrator plates under the
7 provisions of 61-4-102(2)(a)(ii). The

8 (c) Each license application and all of the information
9 contained in it must be verified by the Montana highway
10 patrol or an authorized representative of the department on
11 a form to be furnished by the department for that purpose
12 and must contain the information required. Each application
13 must be accompanied by the license fee specified in
14 61-4-102. A dealer's or wholesaler's license must be renewed
15 and paid for annually, and an application for relicensure
16 must be filed not later than January 1 of each year. If an
17 application for renewal of a license has been received by
18 the department prior to the expiration of the license, the
19 dealer licensee may operate his business and display dealer
20 or demonstrator plates under the expired license between
21 January 1 and February 15 following expiration.

22 (2) To qualify for licensure and the issuance and use
23 of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter
24 provided in this subsection, the applicant must furnish the
25 following information and qualify under the following

1 provisions:

2 (a) To qualify as a new motor vehicle dealer and for
3 the use of "D" plates, the applicant must:

4 (i) state the name under which the business is to be
5 conducted and the location of the premises (street address,
6 city, county, and state) where records are kept, sales are
7 made, and stock of motor vehicles is displayed;

8 (ii) state the name and address of all owners or persons
9 having an interest in the business, provided that in the
10 case of a corporation, the names and addresses of the
11 president and secretary are sufficient;

12 (iii) state the name and make of all motor vehicles
13 handled and the name and address of the manufacturer,
14 importer, or distributor with whom the applicant has a
15 written new motor vehicle franchise or sales agreement;

16 (iv) execute a certificate to the effect that the
17 applicant has a permanent building for the display and sale
18 of new motor vehicles at the location of the premises where
19 sales are conducted;

20 (v) execute a certificate to the effect that the
21 applicant has a bona fide service department for the repair,
22 service, and maintenance of motor vehicles; and

23 (vi) execute a certificate to the effect that the
24 applicant is a bona fide dealer in new motor vehicles and
25 that he is recognized by a manufacturer, importer, or

1 distributor as a dealer in new motor vehicles.

2 (b) To qualify as a used motor vehicle dealer and for
3 the use of "UD" plates; or as a recreational vehicle, dealer
4 and for the use of "RV" plates; as a trailer, semitrailer,
5 or special mobile equipment dealer and for the use of "DTR"
6 plates; or as a motorcycle or quadricycle dealer and for the
7 use of "MCD" plates; or as a wholesaler and for the use of
8 demonstrator plates, the applicant must, in addition to the
9 matters set forth in subsections (i) and (ii) of subsection
10 (2)(a) above, provide:

11 (i) a statement that the dealer:

12 (A) applicant has ~~a building or lot and a sign readable~~
13 ~~at a minimum distance of 150 feet indicating the firm name~~
14 ~~as the principal place of business and that vehicles are~~
15 ~~offered for sale; and an established place of business that~~
16 includes a lot or lots upon which motor vehicles may be
17 displayed and a permanent nonresidential building on or
18 contiguous to the lot or lots where records are kept and
19 sales are made; or

20 (B) wholesaler applicant has an established place of
21 business that includes a permanent nonresidential building
22 or office where records are kept in order that those records
23 may be inspected;

24 (ii) a certificate to the effect that the applicant is a
25 bona fide dealer or wholesaler in used motor vehicles,

1 recreational vehicles, trailers, semitrailers, special
2 mobile equipment, motorcycles, or quadricycles. An applicant
3 for a recreational vehicle dealer license must also indicate
4 on the same certificate that he is recognized by a
5 manufacturer, importer, or distributor as a dealer in
6 recreational vehicles.

7 (c) If two or more vehicle dealer or wholesaler
8 businesses share a location, all records, office facilities,
9 and inventory, if applicable, must be physically segregated
10 and clearly identified. Each applicant's established place
11 of business shall display a sign that indicates the firm
12 name and that vehicles are offered for sale. The letters of
13 the sign must be clearly visible and readable to the major
14 avenue of traffic at a minimum distance of 150 feet.

15 ~~(c)~~(d) To qualify for a used motor vehicle dealer's or
16 wholesaler's license, a person must submit an annual
17 application for that license and comply with the provisions
18 of 61-4-102(5) in addition to fulfilling the requirements of
19 subsection (2)(b).

20 ~~(d)~~(e) The provisions of subsection ~~(2)~~(2)(d) do not
21 apply to an applicant who is licensed as a motor vehicle
22 wrecking facility under the provisions of Title 75, chapter
23 10, part 5.

24 (3) (a) The applicant for a dealer's or wholesaler's
25 license shall also file with his application a--good--and

1 ~~sufficient bond in-the-sum of \$5,000,-and-the-bond \$25,000~~
2 ~~for a license as a new motor vehicle dealer, a used motor~~
3 ~~vehicle dealer, a recreational vehicle dealer, a trailer~~
4 ~~dealer, or a wholesaler. However, applicants for a license~~
5 ~~as a trailer dealer or a trailer wholesaler shall file the~~
6 ~~\$25,000 surety bond only if special mobile equipment,~~
7 ~~commercial trailers and semitrailers exceeding 6,000 pounds~~
8 ~~maximum gross loaded weight, mobile homes, or house trailers~~
9 ~~are sold; otherwise, all other trailer dealer, motorcycle~~
10 ~~dealer, or wholesaler license applicants shall file a bond~~
11 ~~in the sum of \$10,000. All bonds must be conditioned that~~
12 ~~the applicant shall conduct his business in accordance with~~
13 ~~the requirements of the law. All bonds must run to the state~~
14 ~~of Montana, must be approved by the department and filed in~~
15 ~~its office, and must be renewed annually.~~

16 (b) A person who suffers loss or damage due to the
17 unlawful conduct of a dealer or wholesaler licensed under
18 this section shall obtain a judgment from a court of
19 competent jurisdiction prior to collecting on the judgment
20 ~~from-the-department bond. The department-is-responsible--for~~
21 ~~payment--under--this-section,-in-an-amount-not-to-exceed-the~~
22 ~~maximum-bond-amount,-only-if--the~~ judgment on--which--the
23 ~~payment--is--based-determines~~ must determine a specific loss
24 or damage amount and concludes conclude that the dealer's
25 licensee's unlawful operation caused the loss or damage

1 before payment on the bond is required."

2 Section 3. Section 61-4-102, MCA, is amended to read:

3 "61-4-102. Fees -- restrictions on licensees. (1) Upon
4 making such application, the applicant shall pay to the
5 department, in addition to the fees required of dealers and
6 wholesalers under the provisions of subsection (2), a fee of
7 \$5. Upon receipt of the application, fee, and bond, as
8 provided above, the department shall examine the
9 application, and may, prior to issuing a license, make
10 individual investigation of the truth of the statements
11 contained in the application. If the department is satisfied
12 that the applicant qualifies for the issuance of a dealer's
13 license under the provisions of this chapter, the
14 department may thereupon issue the same license. The
15 department may refuse, after investigation, to issue a
16 license to an applicant as allowed by law.

17 (2) Registration or license fees shall be paid upon
18 registration or reregistration of dealers in motor vehicles,
19 recreational vehicles, or trailers as follows:

20 (a) (i) all dealers in motor vehicles and recreational
21 vehicles, a fee of \$25, which shall entitle such dealer to
22 one set of number plates, and \$25 additional fee for each
23 additional set of number plates, subject to the following
24 limitations on the number of additional sets allowed a
25 dealer:

1 (A) 5% of the first 100 vehicle sales for the previous
2 year; plus

3 (B) 3% of the next 100 vehicle sales for the previous
4 year; plus

5 (C) 2% of vehicle sales in excess of 200 for the
6 previous year; and

7 (D) any additional sets upon a showing of good cause by
8 the applicant dealer to the department.

9 (ii) in addition to the dealer plates allowed under
10 subsection (2)(a)(i), a dealer who has purchased one or more
11 sets of dealer plates or a licensed wholesaler is entitled
12 to purchase demonstrator plates at a cost determined by the
13 department to offset the cost of production. Demonstrator
14 plates ~~shall~~ must be used in lieu of a dealer plate but only
15 as set forth in subsection (6) and must be distinguished
16 from dealer plates in a manner determined by the department.
17 Wholesaler demonstrator plates must be distinguished from
18 dealer demonstrator plates in a manner determined by the
19 department.

20 (b) dealers in motorcycles, quadricycles, and trailers,
21 including housetrailers, \$45; and

22 (c) wholesalers in used motor vehicles, recreational
23 vehicles, trailers (including semitrailers and special
24 mobile equipment), and motorcycles (including quadricycles),
25 \$30.

1 (3) If any a dealer or wholesaler is originally
 2 registered 6 months after the time of registration as set by
 3 law, the registration or license fee for the remainder of
 4 ~~such the year shall be~~ is one-half of the regular fee above
 5 given.

6 (4) A dealer or wholesaler in motor vehicles,
 7 recreational vehicles, or trailers who ~~shall maintain~~
 8 maintains more than one place of business or who ~~shall~~
 9 ~~maintain~~ any maintains a branch establishment or
 10 establishments must shall register and pay a registration or
 11 license fee for each such place of business or
 12 establishment. A dealer may sell vehicles only from his
 13 licensed place of business unless the dealer notifies the
 14 department 10 days in advance, on a form prescribed by the
 15 department, of the opening date and location of an
 16 off-premises sale. An off-premises sale must be conducted
 17 within the city limits of the city of the dealer's licensed
 18 location or upon an adjacent off-premises site that is
 19 approved by the department and that is within the county of
 20 the dealer's licensed location. The sale may not exceed 6
 21 consecutive business days, and a licensed dealer may not
 22 conduct more than five off-premises sales during any 1
 23 calendar year.

24 (5) A new applicant for a used motor vehicle dealer or
 25 wholesaler license shall pay \$300 to the department in

1 addition to any other sums required by this section or other
 2 provisions of the law. An applicant for a renewal of a used
 3 motor vehicle dealer or wholesaler license shall certify
 4 under oath that he has sold more than five used motor
 5 vehicles during the preceding calendar year or pay an
 6 additional \$300 before he may be licensed.

7 (6) Demonstrator plates provided for in subsection
 8 (2)(a)(ii) may be used only as follows:

9 (a) New and used motor vehicle or recreational vehicle
 10 demonstrator plates may be used:

11 (i) to demonstrate, for no more than 72 hours, an
 12 authorized vehicle held for sale, when operated by an
 13 individual holding a valid operator's license;

14 (ii) on authorized vehicles owned by the firm when
 15 operated by an officer or bona fide full-time employee of
 16 the dealer or wholesaler and used to transport the dealer's
 17 or wholesaler's own tools, parts, and equipment;

18 (iii) on authorized vehicles being tested for repair;

19 (iv) on authorized vehicles being moved to or from a
 20 dealer's place of business for sale;

21 (v) on authorized vehicles being moved to or from
 22 service and repair facilities before sale;

23 (vi) on authorized vehicles being moved to or from
 24 exhibitions within the state, provided any such exhibition
 25 does not exceed a period of 20 days.

1 (b) Mobile home and trailer dealer demonstrator plates
2 may be used:

3 (i) on units hauled to or from the place of business of
4 the manufacturer and the place of business of the dealer or
5 to and from places of business of the dealer;

6 (ii) on mobile homes hauled to a customer's location for
7 setup after sale;

8 (iii) on travel trailers held for sale to demonstrate
9 the towing capability of the vehicle provided that a dated
10 demonstration permit, valid for not more than 72 hours, is
11 carried with the vehicle at all times;

12 (iv) on any motor vehicle owned by the dealer that is
13 used only to move vehicles legally bearing mobile home and
14 travel trailer dealer license plates of the dealer owning
15 any such motor vehicle;

16 (v) on vehicles being moved to or from vehicle
17 exhibitions within the state, provided any such exhibition
18 does not exceed a period of 20 days."

19 Section 4. Section 61-4-103, MCA, is amended to read:

20 "61-4-103. Assignment of dealer plates. (1) Upon the
21 licensing of a dealer as a new motor vehicle dealer, used
22 motor vehicle dealer, recreational vehicle dealer, or
23 trailer, semitrailer, or special mobile equipment dealer, or
24 a dealer of the motorcycle- or quadricycle-type vehicle, the
25 department shall assign to such the dealer a distinctive

1 serial license number as a dealer and after payment of fees
2 furnish every qualified dealer in motor vehicles with such
3 sets of number plates as required according to need, which
4 need ~~shall~~ must be justified by the dealer with the initial
5 application for license and each renewal. Assigned number
6 plates ~~shall~~ must be similar to number plates furnished to
7 owners of motor vehicles but ~~shall~~ must bear ~~thereon~~, in
8 addition to the serial number assigned such the dealer, the
9 letter "D" if the dealer is authorized to sell new motor
10 vehicles (including trucks and truck trailers); the letters
11 "RV" if the dealer is authorized to sell recreational
12 vehicles; the letters "UD" if the dealer is authorized to
13 sell used motor vehicles (including used trucks and used
14 truck trailers); the letters "DTR" if the dealer is
15 authorized to sell trailers, semitrailers, or special mobile
16 equipment (new or used); and the letters "MCD" if the dealer
17 is authorized to sell vehicles of the motorcycle or
18 quadricycle type (new or used).

19 (2) With the exception of a dealer authorized to sell
20 new motor vehicles (including trucks and truck trailers) and
21 to use the "D" plate or demonstrator plate, ~~no a dealer or~~
22 wholesaler authorized to transact business under the
23 provisions of this section may not offer for sale or trade
24 any vehicle described in this section except such the
25 vehicles ~~as~~ that are authorized by the plates assigned to

1 him. If an applicant wishes to sell more than one type of
 2 vehicle, he shall make application for each separate
 3 authorization. No plate assigned to a dealer or wholesaler
 4 may be used on any vehicle other than the type described in
 5 this section. A wholesaler may not sell a motor vehicle to a
 6 person who is not a licensed dealer. A dealer authorized to
 7 sell new motor vehicles and assigned a "D" plate or
 8 demonstrator plate is authorized to sell both new and used
 9 motor vehicles (including trucks and truck trailers), and
 10 such the plates may be displayed on either new or used motor
 11 vehicles by a licensed dealer in new vehicles.

12 (3) The department shall cause to be placed on each set
 13 of license plates issued to a dealer a serial number
 14 assigned to each dealer and the actual number of license
 15 plates issued to each dealer. The number of the dealer ~~shall~~
 16 must follow the prefix of the county, and the number of
 17 plates issued the dealer ~~shall~~ must follow the prefix of the
 18 county and the number of the dealer, the dealer's number to
 19 be separated from the county prefix by a dash, and the
 20 number of plates issued to a dealer to be separated from the
 21 dealer's number by a dash, as follows: dealer number 4 in
 22 Lewis and Clark County would be numbered 5-4, and if the
 23 dealer were issued three sets of plates, they would be
 24 numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.
 25 Wholesalers who receive demonstrator plates under this part

1 must be issued license plates that are of a similar sequence
 2 to dealer and dealer demonstrator plates and display a
 3 "wholesaler" or "wholesale dealer" identifier conspicuously
 4 displayed upon the plates.

5 (4) Dealers properly licensed under this section are
 6 authorized to use and display dealer's license plates on any
 7 a motor vehicle held for bona fide sale or used in the
 8 conduct of the dealer's business in selling or demonstrating
 9 motor vehicles and operated by or under the control of the
 10 dealer, his officers or employees. For purposes of this
 11 provision, "officers and employees" include only such the
 12 persons listed on the manufacturer's franchise agreement or
 13 the importer's distribution agreement and their spouses or
 14 such other persons upon whom the dealer has paid social
 15 security taxes as a full-time employee. No A dealer's or
 16 wholesaler's license plate ~~shall~~ may not be used or
 17 displayed on vehicles normally used for hire, lease, or
 18 rental or for purposes not incident to the business of a
 19 motor vehicle dealer. Each A dealer is accountable for each
 20 plate issued and shall certify quarterly to the department
 21 the disposition of each dealer plate assigned to the dealer,
 22 including the name, address, and occupation of the person
 23 primarily using each plate.

24 (5) When the department has reasonable cause to
 25 believe, from an investigation made by it or information

1 furnished to it by the sheriff or any other law enforcement
 2 officer, that ~~any--such~~ a dealer or wholesaler has been
 3 improperly licensed, has used the dealer's license in a
 4 manner other than the one herein authorized in this section,
 5 or has provided a material misstatement of fact in an
 6 application for a license, is not qualified as a dealer or
 7 wholesaler under the requirements of this section, or whose
 8 criminal conduct renders him unfit for licensure, the
 9 department may revoke such the dealer's or wholesaler's
 10 license. No A person, firm, corporation, or association
 11 shall may not, for commission or profit, engage in the
 12 business of buying, selling, exchanging, or acting as a
 13 broker of new motor vehicles, trailers, or semitrailers
 14 unless duly licensed in compliance with this section (except
 15 trailers having an unladen weight of less than 500 pounds)."

16 Section 5. Section 61-4-104, MCA, is amended to read:

17 "61-4-104. Record of purchase or sale. Every A dealer
 18 or wholesaler licensed under 61-4-101 shall keep a book or
 19 record of the purchases, sales or exchanges, or receipts for
 20 the purpose of sale of used vehicles and a description of
 21 such the vehicles, together with the name and address of the
 22 seller, of the purchaser, and of the alleged owner or other
 23 person from whom each vehicle was purchased or received or
 24 to whom it was sold or delivered, as the case may be. The
 25 description in the case of motor vehicles shall must also

1 include the engine number, if any, maker's number, if any,
 2 chassis number, if any, and such other numbers or
 3 identification marks as that appear thereon on the motor
 4 vehicle and shall must include a statement that a number has
 5 been obliterated, defaced, or changed if such is the fact.
 6 In the case of a trailer, semitrailer, or special mobile
 7 equipment, the record shall must include the manufacturer's
 8 number and such other numbers or identification marks as
 9 that appear thereon. The dealer shall or wholesaler must
 10 also have in his possession, from the time the motor vehicle
 11 is delivered to him until it has been disposed of by him, a
 12 duly assigned certificate of ownership from the owner of the
 13 motor vehicle to the dealer or wholesaler from-the-time-the
 14 motor-vehicle-is-delivered-to-him-until-it-has-been-disposed
 15 of-by-him. It is a violation of this part for a dealer or
 16 wholesaler to fail to take assignment of all certificates of
 17 ownership or manufacturer's certificates of origin for
 18 vehicles acquired by the licensee or to fail to assign the
 19 certificate of ownership or manufacturer's certificate of
 20 origin for vehicles sold. All records required to be kept in
 21 accordance with this section, in addition to the required
 22 retention of odometer disclosure information under
 23 61-3-206(4), must be physically located and maintained
 24 within the building referred to in 61-4-101(2)(b)(i). An
 25 authorized representative of the department, upon

1 presentation of his credentials, may inspect and have access
2 to and copy any records required under this chapter."

3 Section 6. Section 61-4-105, MCA, is amended to read:

4 "61-4-105. Criminal penalty -- civil penalty imposed by
5 agency. (1) Any person violating the provisions of 61-4-101
6 through 61-4-104 or [section 10] is guilty of a misdemeanor
7 and subject to a fine of not less than \$250 and not more
8 than \$500. For the purposes of this section, every sale of a
9 motor vehicle in violation of the provisions of 61-4-101
10 through 61-4-104 or [section 10] is a separate offense.

11 (2) In addition to all other penalties created by this
12 part, the department is authorized to take appropriate
13 enforcement action on its own initiative. Any person
14 violating the provisions of 61-4-101 through 61-4-104 or
15 [section 10] may be subject to administrative action, in
16 accordance with the contested case procedures of Title 2,
17 chapter 4, as follows:

18 (a) a civil penalty not to exceed \$200 for each
19 violation;

20 (b) suspension of the motor vehicle dealer, wholesaler,
21 or auto auction license not to exceed 5 working days;

22 (c) revocation or denial of the motor vehicle dealer,
23 wholesaler, or auto auction license; or

24 (d) any combination of subsections (2)(a) through
25 (2)(c)."

1 Section 7. Section 61-4-106, MCA, is amended to read:

2 "61-4-106. Transfer of license. A registered dealer or
3 wholesaler, who ~~may sell or dispose~~ sells or disposes of his
4 entire business to ~~any other~~ another person, may have his
5 certificate of registration transferred to ~~such~~ the
6 purchaser upon filing with the department a statement
7 containing the name of the registered dealer or wholesaler,
8 the number under which ~~such--dealer~~ the business is
9 registered, the name of the purchaser, and the location of
10 the place of business so sold. Upon the filing of ~~such~~ the
11 statement, accompanied by a filing fee of \$2, the department
12 shall note upon the registration record of ~~such~~ the dealer
13 or wholesaler the change of ownership. ~~But no~~ A certificate
14 of registration ~~can~~ may not be transferred unless the entire
15 business of the dealer or wholesaler holding ~~such~~ the
16 certificate of registration ~~be~~ is sold and disposed of, and
17 ~~no such~~ a certificate of registration ~~can~~ may not be
18 transferred to any person other than the purchasers of ~~such~~
19 the business."

20 Section 8. Section 61-4-119, MCA, is amended to read:

21 "61-4-119. Penalty. Any A person violating the
22 provisions a provision of 61-4-111 or 61-4-112 is guilty of
23 a misdemeanor and subject to a fine of not less than \$25
24 \$250 and not more than ~~\$100~~ \$500. Every violation of
25 61-4-111 and 61-4-112 is considered a separate offense."

1 NEW SECTION. Section 9. **Wholesaler.** "Wholesaler" means
 2 a person, firm, partnership, association, or corporation who
 3 for a commission or with intent to make a profit or gain of
 4 money or other thing of value sells, exchanges, or attempts
 5 to negotiate a sale or exchange of an interest in a used
 6 motor vehicle, recreational vehicle, trailer, semitrailer,
 7 special mobile equipment, motorcycle, or quadricycle only to
 8 motor vehicle dealers and auto auctions licensed under this
 9 part.

10 NEW SECTION. Section 10. **Application for auto auction**
 11 **license -- general regulations.** (1) A person, firm,
 12 association, or corporation that takes possession of a motor
 13 vehicle owned by another person through consignment,
 14 bailment, or any other arrangement for the purpose of
 15 selling the motor vehicle to the highest bidder when all
 16 buyers are licensed motor vehicle dealers, wholesalers, or
 17 wrecking facilities shall file by mail or otherwise in the
 18 office of the department a verified application for
 19 licensure as an auto auction. The application must be made
 20 in the following manner:

21 (a) Each application and all of the information
 22 contained in it must be verified by the Montana highway
 23 patrol or an authorized representative of the department on
 24 a form to be furnished by the department for that purpose.
 25 The application must provide the following information:

1 (i) the name in which the business is to be conducted
 2 and the location of premises (street address, city, county,
 3 and state) where records are kept, sales are made, and motor
 4 vehicle stock is displayed as an established place of
 5 business that displays a sign indicating the firm name and
 6 that vehicles are offered for sale. The letters on the sign
 7 must be clearly visible and readable to the major avenue of
 8 traffic at a minimum distance of 150 feet.

9 (ii) the name and address of all owners or persons
 10 having an interest in the business. In the case of a
 11 corporation, the names and addresses of the president and
 12 secretary are sufficient.

13 (iii) a statement that the applicant is authorized to
 14 auction used motor vehicles, recreational vehicles,
 15 trailers, semitrailers, special mobile equipment,
 16 motorcycles, and quadricycles under one license. A licensed
 17 auto auction may not auction a new motor vehicle except when
 18 authorized by a new motor vehicle manufacturer, importer,
 19 distributor, or representative thereof, for the purpose of
 20 conducting a closed-factory fleet sale to dispose of new
 21 motor vehicles by the franchisor (manufacturer, distributor,
 22 or importer) to franchisee purchasers when the purchasers
 23 are licensed new motor vehicle dealers purchasing new motor
 24 vehicle line-makes authorized by their respective franchise,
 25 sales, or distributor agreements. An auto auction licensed

1 under the provisions of this section shall notify and update
 2 the department with current fleet sale agreements between
 3 the auto auction and franchisor. An auto auction may not
 4 conduct a factory fleet sale unless authorized or appointed
 5 by a franchisor licensed under part 2 of this chapter.

6 (b) Each application must be accompanied by a bond of
 7 \$25,000 and must be conditioned that the applicant shall
 8 conduct his business in accordance with the requirements of
 9 the law. All bonds must run to the state of Montana, must be
 10 approved by the department and filed in its office, and must
 11 be renewed annually. A person who suffers loss or damage due
 12 to the unlawful conduct of an auto auction licensed under
 13 this section may proceed in the same manner as provided for
 14 licensed dealers and wholesalers in 61-4-101(3)(b).

15 (2) An auto auction's license must be renewed and paid
 16 for annually to the department, and an application for
 17 relicensure must be filed by January 1 of each year. The fee
 18 required for each first-time applicant is \$500 and for
 19 subsequent renewal applications is \$100 each year. Upon
 20 receipt of a properly completed application, fee, and bond,
 21 the department shall issue the auto auction license and
 22 assign an auto auction license number for each applicant in
 23 a manner determined by the department. Auto auctions dealing
 24 in motor vehicles may sell only to licensed dealers and
 25 wholesalers.

1 (3) Auto auctions that are licensed under this section
 2 and that hold a current license number may issue temporary
 3 permits, which may be displayed and used by a buyer to
 4 operate an unregistered vehicle purchased from the auto
 5 auction. The temporary permit is valid for a period of 72
 6 hours from the time of purchase and may be used only for the
 7 purpose of driving or transporting a vehicle from the
 8 auction premises to the purchaser's established place of
 9 business or point of destination. Temporary permits must be
 10 on a form prescribed by the department and must contain the
 11 name, address, and license number of the purchaser, date of
 12 sale, name, address, license number, authorized signature of
 13 the auto auction, and a description of the vehicle,
 14 including its serial number. The department shall collect a
 15 fee of \$10 from the auto auction for each temporary permit,
 16 and the auto auction may charge a vehicle purchaser no more
 17 than \$10 for the issuance of each permit to offset the cost
 18 of the permits. It is unlawful for the auto auction to issue
 19 more than one temporary permit per vehicle sale.

20 (4) A licensed auto auction may apply for and may be
 21 authorized by the department to purchase and use license
 22 plates of a type and amount approved by the department, upon
 23 payment of a fee to the department to offset the cost of
 24 production. Licensed auto auctions may use the license
 25 plates to transport inventory vehicles from a point of

1 storage or a point of delivery in this state to the auto
 2 auction's place of business, for road testing authorized
 3 vehicles, or for moving vehicles for purposes of repairing,
 4 painting, upholstering, polishing, and related activities.
 5 One license plate is required to be conspicuously displayed
 6 on the rear of the vehicle. Auto auctions may appoint
 7 designated persons, partnerships, corporations, service
 8 stations, or repair garages to use the license plate only
 9 when conducting work for the auto auction involving
 10 repairing, painting, upholstering, polishing, or performing
 11 of similar types of work upon a vehicle. Upon application
 12 for an auto auction license, the applicant, if requesting
 13 the license plates, shall submit a sworn affidavit on a form
 14 prescribed by the department, listing each authorized person
 15 designated by the auction to use the license plates. The
 16 auto auction is responsible for reporting any changes to the
 17 affidavit within 72 hours after the amendment has occurred.
 18 An auto auction licensed under the provisions of this
 19 section is liable for the proper use of the license plates,
 20 which may not be used for private purposes. The department
 21 may revoke an auto auction's 72-hour temporary permit and
 22 license plate privileges if an auction issues, authorizes
 23 the use of, or uses a temporary permit or the license plate
 24 in violation of the provisions of this section.

25 (5) (a) Each auto auction shall keep a book or record,

1 in a form and manner subject to approval by the department,
 2 of the purchases, sales, or exchanges or the receipts for
 3 the purpose of sale of any motor vehicle, a properly
 4 completed copy of a temporary permit issued to a vehicle
 5 purchaser, the date of title transfer, and a description of
 6 the motor vehicle, together with the name and address of the
 7 seller, the purchaser, and the alleged owner or other person
 8 from whom the motor vehicle was purchased or received or to
 9 whom it was sold or delivered. The description in the case
 10 of a motor vehicle must include:

11 (i) the identification number or engine number, if any;
 12 (ii) other numbers or identification marks on the motor
 13 vehicle; and
 14 (iii) a statement that a number has been obliterated,
 15 defaced, or changed, if it has.

16 (b) An auto auction licensed under this section shall
 17 validate the sale of a motor vehicle through its auction by
 18 stamping its name and license number upon the certificate of
 19 ownership at a location on the front or back of the
 20 certificate, at the margin in the assignment section as
 21 executed between the transferor and transferee. An auto
 22 auction's stamp must be legible and may not interfere with
 23 the information recorded on the certificate between
 24 transferor and transferee. If the certificate of ownership
 25 lacks adequate space for the auto auction to place its

1 stamp, the auction may provide the transferee a copy of
 2 auction invoice bearing the name and license number of the
 3 auction, along with an indication of the vehicle year, make,
 4 model, and identification number; name, address, and
 5 signature of transferor; name, license number, and signature
 6 of transferee; and the date the vehicle was sold through the
 7 auction.

8 (c) The invoice must be attached to the certificate of
 9 ownership and must be presented to the department with any
 10 application for title.

11 (d) An auto auction shall retain, for 5 years, odometer
 12 disclosure information, including the name of the owner on
 13 the date the auto auction took possession of the motor
 14 vehicle, the name of the buyer, the vehicle identification
 15 number, and the odometer reading on the date the auto
 16 auction took possession of the motor vehicle. The odometer
 17 information may be retained in any way that is
 18 systematically retrievable and is not required to be
 19 maintained on any special disclosure form. The information
 20 may be part of the auction receipt or invoice or be
 21 maintained as a portion of a computer data base or manual
 22 file. An auto auction that executes a transfer of ownership
 23 as an agent on behalf of a seller or buyer is liable for
 24 providing an odometer disclosure statement for the seller or
 25 an odometer disclosure acknowledgement for the buyer under

1 the provisions of 61-3-206.

2 NEW SECTION. Section 11. **Twenty-day permit limitation**
 3 **on issuance -- violation -- penalty.** (1) A dealer may not
 4 issue more than one 20-day permit under 61-4-111 or 61-4-112
 5 per vehicle sale.

6 (2) A dealer who violates the provisions of subsection
 7 (1) is subject to revocation of the privilege to issue
 8 20-day permits for a period of time determined by the
 9 department.

10 NEW SECTION. Section 12. **Code commissioner**
 11 **instruction.** Unless the context clearly requires otherwise,
 12 the code commissioner shall change "dealer" to read "dealer
 13 and wholesaler" or "dealer or wholesaler", as the usage
 14 requires, in 61-1-117, 61-2-405, 61-3-206, 61-3-508,
 15 61-4-205, and 61-10-214.

16 NEW SECTION. Section 13. **Codification instruction.** (1)
 17 [Section 9] is intended to be codified as an integral part
 18 of Title 61, chapter 1, part 3, and the provisions of Title
 19 61, chapter 1, part 3, apply to [section 9].

20 (2) [Sections 10 and 11] are intended to be codified as
 21 an integral part of Title 61, chapter 4, part 1, and the
 22 provisions of Title 61, chapter 4, part 1, apply to
 23 [sections 10 and 11].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0323, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the licensing of wholesaler motor vehicle operations.


ASSUMPTIONS:

1. There will be 150 new wholesaler licenses issued at \$30 each, with 200 used car dealers switching to wholesalers and paying a \$5 higher fee.
2. There are 50,000 vehicles sold at auto auctions each year with 15% requiring a temporary permit to be moved.
3. 10,000 new forms will be printed by the Registrar's Bureau of the Department of Justice at \$0.25 each, plus \$100 will be required for postage.
4. Current law is represented by the executive budget recommendation for the Registrar's Bureau.

FISCAL IMPACT:

Department of Justice-Registrar's Bureau

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Expenses	808,700	811,300	2,600	816,300	818,900	2,600
<u>Funding:</u>						
General Fund (01)	808,700	811,300	2,600	816,300	818,900	2,600
<u>Revenue:</u>						
General Fund:						
Wholesale Dealer Permit (01)	0	5,500	5,500	0	5,500	5,500
Auto Auction License (01)	0	2,000	2,000	0	400	400
Temporary Permit-auto auction (01)	0	75,000	75,000	0	75,000	75,000
Total	0	82,500	82,500	0	80,900	80,900
General Fund Impact			79,900			78,300


 ROD SUNDSTED, BUDGET DIRECTOR DATE 2-14-91
 Office of Budget and Program Planning


 THOMAS A. (TOM) BECK, PRIMARY SPONSOR DATE 2/15/91

Fiscal Note for SB0323, as introduced

SB 323

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

1 SENATE BILL NO. 323
2 INTRODUCED BY T. BECK
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE
6 REQUIREMENT THAT ONLY LICENSED MOTOR VEHICLE DEALERS MAY
7 OFFER, SOLICIT, OR ADVERTISE THE SALE OF MOTOR VEHICLES;
8 PROVIDING A NUMERICAL QUALIFICATION OF VEHICLE SALES FOR
9 PERSONS ACTING AS DEALERS OF MOTOR VEHICLES; PROVIDING FOR
10 THE LICENSING OF WHOLESALER OPERATIONS; CLARIFYING
11 ASSIGNMENT OF RECREATIONAL VEHICLE DEALER LICENSE PLATES FOR
12 A LICENSED RECREATIONAL VEHICLE DEALER; PROVIDING
13 QUALIFICATIONS FOR A LICENSEE'S ESTABLISHED PLACE OF
14 BUSINESS; INCREASING THE DOLLAR AMOUNT OF LICENSEES' SURETY
15 BONDS; SETTING FORTH A FEE STRUCTURE AND PROVISIONS RELATED
16 TO LICENSED WHOLESALERS; AMENDING THE DEPARTMENTAL BASIS FOR
17 DENIAL AND REVOCATION OF DEALER AND WHOLESALER LICENSES;
18 PROVIDING AUTHORIZATION FOR OFF-PREMISES SALES BY LICENSED
19 MOTOR VEHICLE DEALERSHIPS; REQUIRING LICENSED MOTOR VEHICLE
20 DEALER AND WHOLESALER RECORDS TO BE KEPT UPON CERTAIN
21 PREMISES; PROVIDING FOR TRANSFER OF LICENSE FOR LICENSED
22 WHOLESALERS; PROVIDING THE DEPARTMENT OF JUSTICE WITH
23 AUTHORITY TO REVOKE A LICENSED MOTOR VEHICLE DEALER'S 20-DAY
24 PERMIT PRIVILEGES; PROVIDING FOR THE LICENSING AND
25 REGULATION OF AUTO AUCTIONS DEALING IN MOTOR VEHICLES; AND

1 AMENDING SECTIONS 61-1-314, 61-4-101, 61-4-102, 61-4-103,
2 61-4-104, 61-4-105, 61-4-106, AND 61-4-119, MCA."

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 61-1-314, MCA, is amended to read:

6 "61-1-314. Dealer. (1) "Dealer" means any:
7 (a) a person, firm, association, or corporation which,
8 for commission or profit, engages in whole or in part in the
9 business of buying, selling, exchanging, or acting as a
10 broker of either new or used motor vehicles, or both, and
11 who qualifies for issuance of a dealer's license under
12 61-4-101 through 61-4-105; or
13 (b) an owner of real property who allows more than
14 three new or used motor vehicles not titled in the property
15 owner's name to be offered for sale on the property during 1
16 calendar year unless the property is leased to a motor
17 vehicle dealer licensed under 61-4-101 and the vehicles
18 offered for sale are bona fide units of the licensed
19 dealer's inventory.

20 (2) The term "dealer" does not include the following:
21 (a) receivers, trustees, administrators, executors,
22 guardians, or other persons appointed by or acting under a
23 judgment or order of any court of competent jurisdiction;
24 (b) employees of such the persons included in
25 subsection (2)(a) when engaged in the specific performance



1 of their duties as such employees; or

2 (c) public officers while performing or in the
3 operation of their duties.

4 (3) A dealer dealing in used motor vehicles only shall
5 purchase a Montana store license."

6 **Section 2.** Section 61-4-101, MCA, is amended to read:

7 "61-4-101. Application for dealer's license or
8 wholesaler's license. (1) (a) Every A verified application
9 must be filed, by mail or otherwise, in the office of the
10 department by each person, firm, corporation, or association
11 which that, for commission or profit, engages in:

12 (i) the business of buying, selling, exchanging,
13 offering, taking for consignment, ~~soliciting, advertising~~
14 ~~the sale of,~~ or acting as a broker of new motor vehicles,
15 recreational vehicles, used motor vehicles, trailers (except
16 trailers having an unloaded weight of less than 500 pounds),
17 semitrailers, or special mobile equipment as defined in
18 ~~61-1-104 shall file, by mail or otherwise, in the office of~~
19 ~~the department a verified application~~ for licensure as a
20 ~~dealer, on a blank to be furnished by the department for~~
21 ~~that purpose and containing the information required; or~~

22 (ii) business as a wholesaler as defined in [section 9]
23 in order to be licensed as a wholesaler.

24 (b) The sale of more than three motor vehicles or the
25 offering for sale of more than three motor vehicles, if the

1 motor vehicles are not titled in the seller's name, in any 1
2 calendar year is prima facie evidence that a person is
3 engaged in the business of dealing motor vehicles. Licensed
4 wholesalers do not have the privilege of the use of dealer
5 license plates as provided in subsection (2)(b) but are
6 authorized to display and use demonstrator plates under the
7 provisions of 61-4-102(2)(a)(ii). The

8 (c) Each license application and all of the information
9 contained in it must be verified by the Montana highway
10 patrol or an authorized representative of the department on
11 a form to be furnished by the department for that purpose
12 and must contain the information required. Each application
13 must be accompanied by the license fee specified in
14 61-4-102. A dealer's or wholesaler's license must be renewed
15 and paid for annually, and an application for relicensure
16 must be filed not later than January 1 of each year. If an
17 application for renewal of a license has been received by
18 the department prior to the expiration of the license, the
19 dealer licensee may operate his business and display dealer
20 or demonstrator plates under the expired license between
21 January 1 and February 15 following expiration.

22 (2) To qualify for licensure and the issuance and use
23 of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter
24 provided in this subsection, the applicant must furnish the
25 following information and qualify under the following

1 provisions:

2 (a) To qualify as a new motor vehicle dealer and for
3 the use of "D" plates, the applicant must:

4 (i) state the name under which the business is to be
5 conducted and the location of the premises (street address,
6 city, county, and state) where records are kept, sales are
7 made, and stock of motor vehicles is displayed;

8 (ii) state the name and address of all owners or persons
9 having an interest in the business, provided that in the
10 case of a corporation, the names and addresses of the
11 president and secretary are sufficient;

12 (iii) state the name and make of all motor vehicles
13 handled and the name and address of the manufacturer,
14 importer, or distributor with whom the applicant has a
15 written new motor vehicle franchise or sales agreement;

16 (iv) execute a certificate to the effect that the
17 applicant has a permanent building for the display and sale
18 of new motor vehicles at the location of the premises where
19 sales are conducted;

20 (v) execute a certificate to the effect that the
21 applicant has a bona fide service department for the repair,
22 service, and maintenance of motor vehicles; and

23 (vi) execute a certificate to the effect that the
24 applicant is a bona fide dealer in new motor vehicles and
25 that he is recognized by a manufacturer, importer, or

1 distributor as a dealer in new motor vehicles.

2 (b) To qualify as a used motor vehicle dealer and for
3 the use of "UD" plates; or as a recreational vehicle, dealer
4 and for the use of "RV" plates; as a trailer, semitrailer,
5 or special mobile equipment dealer and for the use of "DTR"
6 plates; or as a motorcycle or quadricycle dealer and for the
7 use of "MCD" plates; or as a wholesaler and for the use of
8 demonstrator plates, the applicant must, in addition to the
9 matters set forth in subsections (i) and (ii) of subsection
10 (2)(a) above, provide:

11 (i) a statement that the dealer:

12 (A) applicant has a building or lot and a sign readable
13 at a minimum distance of 150 feet indicating the firm name
14 as the principal place of business--and--that--vehicles--are
15 offered--for--sale; and an established place of business that
16 includes a lot or lots upon which motor vehicles may be
17 displayed and a permanent nonresidential building on or
18 contiguous to the lot or lots where records are kept and
19 sales are made; or

20 (B) wholesaler applicant has an established place of
21 business that includes a permanent nonresidential building
22 or office where records are kept in order that those records
23 may be inspected;

24 (ii) a certificate to the effect that the applicant is a
25 bona fide dealer or wholesaler in used motor vehicles,

1 recreational vehicles, trailers, semitrailers, special
2 mobile equipment, motorcycles, or quadricycles. An applicant
3 for a recreational vehicle dealer license must also indicate
4 on the same certificate that he is recognized by a
5 manufacturer, importer, or distributor as a dealer in
6 recreational vehicles.

7 (c) If two or more vehicle dealer or wholesaler
8 businesses share a location, all records, office facilities,
9 and inventory, if applicable, must be physically segregated
10 and clearly identified. Each applicant's established place
11 of business shall display a sign that indicates the firm
12 name and that vehicles are offered for sale. The letters of
13 the sign must be clearly visible and readable to the major
14 avenue of traffic at a minimum distance of 150 feet.

15 ~~(d)~~ To qualify for a used motor vehicle dealer's or
16 wholesaler's license, a person must submit an annual
17 application for that license and comply with the provisions
18 of 61-4-102(5) in addition to fulfilling the requirements of
19 subsection (2)(b).

20 ~~(d)~~(e) The provisions of subsection ~~(2)(d)~~(2)(e) do not
21 apply to an applicant who is licensed as a motor vehicle
22 wrecking facility under the provisions of Title 75, chapter
23 10, part 5.

24 (3) (a) The applicant for a dealer's or wholesaler's
25 license shall also file with his application a--good--and

1 ~~sufficient bond in-the-sum of \$5,000--and-the-bond \$25,000~~
2 ~~for a license as a new motor vehicle dealer, a used motor~~
3 ~~vehicle dealer, a recreational vehicle dealer, a trailer~~
4 ~~dealer, or a wholesaler. However, applicants for a license~~
5 ~~as a trailer dealer or a trailer wholesaler shall file the~~
6 ~~\$25,000 surety bond only if special mobile equipment,~~
7 ~~commercial trailers and semitrailers exceeding 6,000 pounds~~
8 ~~maximum gross loaded weight, mobile homes, or house trailers~~
9 ~~are sold; otherwise, all other trailer dealer, motorcycle~~
10 ~~dealer, or wholesaler license applicants shall file a bond~~
11 ~~in the sum of \$10,000. All bonds must be conditioned that~~
12 ~~the applicant shall conduct his business in accordance with~~
13 ~~the requirements of the law. All bonds must run to the state~~
14 ~~of Montana, must be approved by the department and filed in~~
15 ~~its office, and must be renewed annually.~~

16 (b) A person who suffers loss or damage due to the
17 unlawful conduct of a dealer or wholesaler licensed under
18 this section shall obtain a judgment from a court of
19 competent jurisdiction prior to collecting ~~on~~ the judgment
20 ~~from-the-department bond. The department-is-responsible--for~~
21 ~~payment--under--this-section,--in-an-amount-not-to-exceed-the~~
22 ~~maximum-bond-amount,--only-if--the~~ judgment ~~on--which--the~~
23 ~~payment--is--based-determines~~ must determine a specific loss
24 or damage amount and ~~concludes~~ conclude that the dealer's
25 licensee's unlawful operation caused the loss or damage

1 before payment on the bond is required."

2 **Section 3.** Section 61-4-102, MCA, is amended to read:

3 **"61-4-102. Fees -- restrictions on licensees.** (1) Upon
 4 making such application, the applicant shall pay to the
 5 department, in addition to the fees required of dealers and
 6 wholesalers under the provisions of subsection (2), a fee of
 7 \$5. Upon receipt of the application, fee, and bond, as
 8 provided above, the department shall examine the
 9 application, and may, prior to issuing a license, make
 10 individual investigation of the truth of the statements
 11 contained in the application. If the department is satisfied
 12 that the applicant qualifies for the issuance of a dealer's
 13 license under the provisions of this chapter, it the
 14 department may thereupon issue the same license. The
 15 department may refuse, after investigation, to issue a
 16 license to an applicant as allowed by law.

17 (2) Registration or license fees shall be paid upon
 18 registration or reregistration of dealers in motor vehicles,
 19 recreational vehicles, or trailers as follows:

20 (a) (i) all dealers in motor vehicles and recreational
 21 vehicles, a fee of \$25, which shall entitle such dealer to
 22 one set of number plates, and \$25 additional fee for each
 23 additional set of number plates, subject to the following
 24 limitations on the number of additional sets allowed a
 25 dealer:

1 (A) 5% of the first 100 vehicle sales for the previous
 2 year; plus

3 (B) 3% of the next 100 vehicle sales for the previous
 4 year; plus

5 (C) 2% of vehicle sales in excess of 200 for the
 6 previous year; and

7 (D) any additional sets upon a showing of good cause by
 8 the applicant dealer to the department.

9 (ii) in addition to the dealer plates allowed under
 10 subsection (2)(a)(i), a dealer who has purchased one or more
 11 sets of dealer plates or a licensed wholesaler is entitled
 12 to purchase demonstrator plates at a cost determined by the
 13 department to offset the cost of production. Demonstrator
 14 plates ~~shall~~ must be used in lieu of a dealer plate but only
 15 as set forth in subsection (6) and must be distinguished
 16 from dealer plates in a manner determined by the department.
 17 Wholesaler demonstrator plates must be distinguished from
 18 dealer demonstrator plates in a manner determined by the
 19 department.

20 (b) dealers in motorcycles, quadricycles, and trailers,
 21 including housetrailers, \$45; and

22 (c) wholesalers in used motor vehicles, recreational
 23 vehicles, trailers (including semitrailers and special
 24 mobile equipment), and motorcycles (including quadricycles),
 25 \$30.

1 (3) If any a dealer or wholesaler is originally
 2 registered 6 months after the time of registration as set by
 3 law, the registration or license fee for the remainder of
 4 such ~~the year shall be~~ is one-half of the regular fee above
 5 given.

6 (4) A dealer or wholesaler in motor vehicles,
 7 recreational vehicles, or trailers who ~~shall--maintain~~
 8 maintains more than one place of business or who ~~shall~~
 9 ~~maintain---any~~ maintains a branch establishment or
 10 establishments ~~must shall~~ register and pay a registration or
 11 license fee for each such place of business or
 12 establishment. A dealer may sell vehicles only from his
 13 licensed place of business unless the dealer notifies the
 14 department 10 days in advance, on a form prescribed by the
 15 department, of the opening date and location of an
 16 off-premises sale. An EXCEPT FOR RECREATIONAL VEHICLE
 17 DEALERS, AN off-premises sale must be conducted within the
 18 city limits of the city of the dealer's licensed location or
 19 upon an adjacent off-premises site that is approved by the
 20 department and that is within the county of the dealer's
 21 licensed location. The sale may not exceed 6 10 consecutive
 22 business days, and a licensed dealer may not conduct more
 23 than five 10 off-premises sales during any 1 calendar year.

24 (5) A new applicant for a used motor vehicle dealer or
 25 wholesaler license shall pay \$300 to the department in

1 addition to any other sums required by this section or other
 2 provisions of the law. An applicant for a renewal of a used
 3 motor vehicle dealer or wholesaler license shall certify
 4 under oath that he has sold more than five used motor
 5 vehicles during the preceding calendar year or pay an
 6 additional \$300 before he may be licensed.

7 (6) Demonstrator plates provided for in subsection
 8 (2)(a)(ii) may be used only as follows:

9 (a) New and used motor vehicle or recreational vehicle
 10 demonstrator plates may be used:

11 (i) to demonstrate, for no more than 72 hours, an
 12 authorized vehicle held for sale, when operated by an
 13 individual holding a valid operator's license;

14 (ii) on authorized vehicles owned by the firm when
 15 operated by an officer or bona fide full-time employee of
 16 the dealer or wholesaler and used to transport the dealer's
 17 or wholesaler's own tools, parts, and equipment;

18 (iii) on authorized vehicles being tested for repair;

19 (iv) on authorized vehicles being moved to or from a
 20 dealer's place of business for sale;

21 (v) on authorized vehicles being moved to or from
 22 service and repair facilities before sale;

23 (vi) on authorized vehicles being moved to or from
 24 exhibitions within the state, provided any such exhibition
 25 does not exceed a period of 20 days.

1 (b) Mobile home and trailer dealer demonstrator plates
2 may be used:

3 (i) on units hauled to or from the place of business of
4 the manufacturer and the place of business of the dealer or
5 to and from places of business of the dealer;

6 (ii) on mobile homes hauled to a customer's location for
7 setup after sale;

8 (iii) on travel trailers held for sale to demonstrate
9 the towing capability of the vehicle provided that a dated
10 demonstration permit, valid for not more than 72 hours, is
11 carried with the vehicle at all times;

12 (iv) on any motor vehicle owned by the dealer that is
13 used only to move vehicles legally bearing mobile home and
14 travel trailer dealer license plates of the dealer owning
15 any such motor vehicle;

16 (v) on vehicles being moved to or from vehicle
17 exhibitions within the state, provided any such exhibition
18 does not exceed a period of 20 days."

19 **Section 4.** Section 61-4-103, MCA, is amended to read:

20 "61-4-103. **Assignment of dealer plates.** (1) Upon the
21 licensing of a dealer as a new motor vehicle dealer, used
22 motor vehicle dealer, recreational vehicle dealer, or
23 trailer, semitrailer, or special mobile equipment dealer, or
24 a dealer of the motorcycle- or quadricycle-type vehicle, the
25 department shall assign to such the dealer a distinctive

1 serial license number as a dealer and after payment of fees
2 furnish every qualified dealer in motor vehicles with such
3 sets of number plates as required according to need, which
4 need ~~shall~~ must be justified by the dealer with the initial
5 application for license and each renewal. Assigned number
6 plates ~~shall~~ must be similar to number plates furnished to
7 owners of motor vehicles but ~~shall~~ must bear thereon, in
8 addition to the serial number assigned such the dealer, the
9 letter "D" if the dealer is authorized to sell new motor
10 vehicles (including trucks and truck trailers); the letters
11 "RV" if the dealer is authorized to sell recreational
12 vehicles; the letters "UD" if the dealer is authorized to
13 sell used motor vehicles (including used trucks and used
14 truck trailers); the letters "DTR" if the dealer is
15 authorized to sell trailers, semitrailers, or special mobile
16 equipment (new or used); and the letters "MCD" if the dealer
17 is authorized to sell vehicles of the motorcycle or
18 quadricycle type (new or used).

19 (2) With the exception of a dealer authorized to sell
20 new motor vehicles (including trucks and truck trailers) and
21 to use the "D" plate or demonstrator plate, no a dealer or
22 wholesaler authorized to transact business under the
23 provisions of this section may not offer for sale or trade
24 any vehicle described in this section except such the
25 vehicles as that are authorized by the plates assigned to

1 him. If an applicant wishes to sell more than one type of
 2 vehicle, he shall make application for each separate
 3 authorization. No plate assigned to a dealer or wholesaler
 4 may be used on any vehicle other than the type described in
 5 this section. A wholesaler may not sell a motor vehicle to a
 6 person who is not a licensed dealer. A dealer authorized to
 7 sell new motor vehicles and assigned a "D" plate or
 8 demonstrator plate is authorized to sell both new and used
 9 motor vehicles (including trucks and truck trailers), and
 10 such the plates may be displayed on either new or used motor
 11 vehicles by a licensed dealer in new vehicles.

12 (3) The department shall cause to be placed on each set
 13 of license plates issued to a dealer a serial number
 14 assigned to each dealer and the actual number of license
 15 plates issued to each dealer. The number of the dealer ~~shall~~
 16 must follow the prefix of the county, and the number of
 17 plates issued the dealer ~~shall~~ must follow the prefix of the
 18 county and the number of the dealer, the dealer's number to
 19 be separated from the county prefix by a dash, and the
 20 number of plates issued to a dealer to be separated from the
 21 dealer's number by a dash, as follows: dealer number 4 in
 22 Lewis and Clark County would be numbered 5-4, and if the
 23 dealer were issued three sets of plates, they would be
 24 numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.
 25 Wholesalers who receive demonstrator plates under this part

1 must be issued license plates that are of a similar sequence
 2 to dealer and dealer demonstrator plates and display a
 3 "wholesaler" or "wholesale dealer" identifier conspicuously
 4 displayed upon the plates.

5 (4) Dealers properly licensed under this section are
 6 authorized to use and display dealer's license plates on any
 7 a motor vehicle held for bona fide sale or used in the
 8 conduct of the dealer's business in selling or demonstrating
 9 motor vehicles and operated by or under the control of the
 10 dealer, his officers or employees. For purposes of this
 11 provision, "officers and employees" include only such the
 12 persons listed on the manufacturer's franchise agreement or
 13 the importer's distribution agreement and their spouses or
 14 such other persons upon whom the dealer has paid social
 15 security taxes as a full-time employee. No A dealer's or
 16 wholesaler's license plate ~~shall~~ may not be used or
 17 displayed on vehicles normally used for hire, lease, or
 18 rental or for purposes not incident to the business of a
 19 motor vehicle dealer. Each A dealer is accountable for each
 20 plate issued and shall certify quarterly to the department
 21 the disposition of each dealer plate assigned to the dealer,
 22 including the name, address, and occupation of the person
 23 primarily using each plate.

24 (5) When the department has reasonable cause to
 25 believe, from an investigation made by it or information

1 furnished to it by the sheriff or any other law enforcement
 2 officer, that any-such a dealer or wholesaler has been
 3 improperly licensed, has used the dealer's license in a
 4 manner other than the one herein authorized in this section,
 5 or has provided a material misstatement of fact in an
 6 application for a license, is not qualified as a dealer or
 7 wholesaler under the requirements of this section, or whose
 8 criminal conduct renders him unfit for licensure, the
 9 department may revoke such the dealer's or wholesaler's
 10 license. No A person, firm, corporation, or association
 11 shall may not, for commission or profit, engage in the
 12 business of buying, selling, exchanging, or acting as a
 13 broker of new motor vehicles, trailers, or semitrailers
 14 unless duly licensed in compliance with this section (except
 15 trailers having an unladen weight of less than 500 pounds)."

16 **Section 5.** Section 61-4-104, MCA, is amended to read:

17 "61-4-104. Record of purchase or sale. Every A dealer
 18 or wholesaler licensed under 61-4-101 shall keep a book or
 19 record of the purchases, sales or exchanges, or receipts for
 20 the purpose of sale of used vehicles and a description of
 21 such the vehicles, together with the name and address of the
 22 seller, of the purchaser, and of the alleged owner or other
 23 person from whom each vehicle was purchased or received or
 24 to whom it was sold or delivered, as the case may be. The
 25 description in the case of motor vehicles shall must also

1 include the engine number, if any, maker's number, if any,
 2 chassis number, if any, and such other numbers or
 3 identification marks as that appear thereon on the motor
 4 vehicle and shall must include a statement that a number has
 5 been obliterated, defaced, or changed if such is the fact.
 6 In the case of a trailer, semitrailer, or special mobile
 7 equipment, the record shall must include the manufacturer's
 8 number and such other numbers or identification marks as
 9 that appear thereon. The dealer shall or wholesaler must
 10 also have in his possession, from the time the motor vehicle
 11 is delivered to him until it has been disposed of by him, a
 12 duly assigned certificate of ownership from the owner of the
 13 motor vehicle to the dealer or wholesaler from-the-time--the
 14 motor-vehicle-is-delivered-to-him-until-it-has-been-disposed
 15 of--by--him. It is a violation of this part for a dealer or
 16 wholesaler to fail to take assignment of all certificates of
 17 ownership or manufacturer's certificates of origin for
 18 vehicles acquired by the licensee or to fail to assign the
 19 certificate of ownership or manufacturer's certificate of
 20 origin for vehicles sold. All records required to be kept in
 21 accordance with this section, in addition to the required
 22 retention of odometer disclosure information under
 23 61-3-206(4), must be physically located and maintained
 24 within the building referred to in 61-4-101(2)(b)(i). An
 25 authorized representative of the department, upon

1 presentation of his credentials, may inspect and have access
2 to and copy any records required under this chapter."

3 **Section 6.** Section 61-4-105, MCA, is amended to read:

4 "61-4-105. Criminal penalty -- civil penalty imposed by
5 agency. (1) Any person violating the provisions of 61-4-101
6 through 61-4-104 or [section 10] is guilty of a misdemeanor
7 and subject to a fine of not less than \$250 and not more
8 than \$500. For the purposes of this section, every sale of a
9 motor vehicle in violation of the provisions of 61-4-101
10 through 61-4-104 or [section 10] is a separate offense.

11 (2) In addition to all other penalties created by this
12 part, the department is authorized to take appropriate
13 enforcement action on its own initiative. Any person
14 violating the provisions of 61-4-101 through 61-4-104 or
15 [section 10] may be subject to administrative action, in
16 accordance with the contested case procedures of Title 2,
17 chapter 4, as follows:

18 (a) a civil penalty not to exceed \$200 for each
19 violation;

20 (b) suspension of the motor vehicle dealer, wholesaler,
21 or auto auction license not to exceed 5 working days;

22 (c) revocation or denial of the motor vehicle dealer,
23 wholesaler, or auto auction license; or

24 (d) any combination of subsections (2)(a) through
25 (2)(c)."

1 **Section 7.** Section 61-4-106, MCA, is amended to read:

2 "61-4-106. Transfer of license. A registered dealer or
3 wholesaler, who ~~may sell or dispose~~ sells or disposes of his
4 entire business to ~~any other~~ another person, may have his
5 certificate of registration transferred to ~~such the~~
6 purchaser upon filing with the department a statement
7 containing the name of the registered dealer or wholesaler,
8 the number under which ~~such--dealer~~ the business is
9 registered, the name of the purchaser, and the location of
10 the place of business so sold. Upon the filing of ~~such the~~
11 statement, accompanied by a filing fee of \$2, the department
12 shall note upon the registration record of ~~such the~~ dealer
13 or wholesaler the change of ownership. ~~But no A~~ certificate
14 of registration ~~can may not~~ be transferred unless the entire
15 business of the dealer or wholesaler holding ~~such the~~
16 certificate of registration ~~be is~~ sold and disposed of, and
17 ~~no--such~~ a certificate of registration ~~can may not~~ be
18 transferred to any person other than the purchasers of ~~such~~
19 the business."

20 **Section 8.** Section 61-4-119, MCA, is amended to read:

21 "61-4-119. Penalty. Any A person violating the
22 ~~provisions a provision~~ of 61-4-111 or 61-4-112 is guilty of
23 a misdemeanor and subject to a fine of not less than ~~\$25~~
24 \$250 and not more than ~~\$100~~ \$500. Every violation of
25 61-4-111 and 61-4-112 is considered a separate offense."

1 NEW SECTION. **Section 9. Wholesaler.** "Wholesaler" means
 2 a person, firm, partnership, association, or corporation who
 3 for a commission or with intent to make a profit or gain of
 4 money or other thing of value sells, exchanges, or attempts
 5 to negotiate a sale or exchange of an interest in a used
 6 motor vehicle, recreational vehicle, trailer, semitrailer,
 7 special mobile equipment, motorcycle, or quadricycle only to
 8 motor vehicle dealers and auto auctions licensed under this
 9 part.

10 NEW SECTION. **Section 10. Application for auto auction**
 11 **license -- general regulations.** (1) A person, firm,
 12 association, or corporation that takes possession of a motor
 13 vehicle owned by another person through consignment,
 14 bailment, or any other arrangement for the purpose of
 15 selling the motor vehicle to the highest bidder when all
 16 buyers are licensed motor vehicle dealers, wholesalers, or
 17 wrecking facilities shall file by mail or otherwise in the
 18 office of the department a verified application for
 19 licensure as an auto auction. The application must be made
 20 in the following manner:

21 (a) Each application and all of the information
 22 contained in it must be verified by the Montana highway
 23 patrol or an authorized representative of the department on
 24 a form to be furnished by the department for that purpose.
 25 The application must provide the following information:

1 (i) the name in which the business is to be conducted
 2 and the location of premises (street address, city, county,
 3 and state) where records are kept, sales are made, and motor
 4 vehicle stock is displayed as an established place of
 5 business that displays a sign indicating the firm name and
 6 that vehicles are offered for sale. The letters on the sign
 7 must be clearly visible and readable to the major avenue of
 8 traffic at a minimum distance of 150 feet.

9 (ii) the name and address of all owners or persons
 10 having an interest in the business. In the case of a
 11 corporation, the names and addresses of the president and
 12 secretary are sufficient.

13 (iii) a statement that the applicant is authorized to
 14 auction used motor vehicles, recreational vehicles,
 15 trailers, semitrailers, special mobile equipment,
 16 motorcycles, and quadricycles under one license. A licensed
 17 auto auction may not auction a new motor vehicle except when
 18 authorized by a new motor vehicle manufacturer, importer,
 19 distributor, or representative thereof, for the purpose of
 20 conducting a closed-factory fleet sale to dispose of new
 21 motor vehicles by the franchisor (manufacturer, distributor,
 22 or importer) to franchisee purchasers when the purchasers
 23 are licensed new motor vehicle dealers purchasing new motor
 24 vehicle line-makes authorized by their respective franchise,
 25 sales, or distributor agreements. An auto auction licensed

1 under the provisions of this section shall notify and update
2 the department with current fleet sale agreements between
3 the auto auction and franchisor. An auto auction may not
4 conduct a factory fleet sale unless authorized or appointed
5 by a franchisor licensed under part 2 of this chapter.

6 (b) Each application must be accompanied by a bond of
7 \$25,000 and must be conditioned that the applicant shall
8 conduct his business in accordance with the requirements of
9 the law. All bonds must run to the state of Montana, must be
10 approved by the department and filed in its office, and must
11 be renewed annually. A person who suffers loss or damage due
12 to the unlawful conduct of an auto auction licensed under
13 this section may proceed in the same manner as provided for
14 licensed dealers and wholesalers in 61-4-101(3)(b).

15 (2) An auto auction's license must be renewed and paid
16 for annually to the department, and an application for
17 relicensure must be filed by January 1 of each year. The fee
18 required for each first-time applicant is \$500 and for
19 subsequent renewal applications is \$100 each year. Upon
20 receipt of a properly completed application, fee, and bond,
21 the department shall issue the auto auction license and
22 assign an auto auction license number for each applicant in
23 a manner determined by the department. Auto auctions dealing
24 in motor vehicles may sell only to licensed dealers and
25 wholesalers.

1 (3) Auto auctions that are licensed under this section
2 and that hold a current license number may issue temporary
3 permits, which may be displayed and used by a buyer to
4 operate an unregistered vehicle purchased from the auto
5 auction. The temporary permit is valid for a period of 72
6 hours from the time of purchase and may be used only for the
7 purpose of driving or transporting a vehicle from the
8 auction premises to the purchaser's established place of
9 business or point of destination. Temporary permits must be
10 on a form prescribed by the department and must contain the
11 name, address, and license number of the purchaser, date of
12 sale, name, address, license number, authorized signature of
13 the auto auction, and a description of the vehicle,
14 including its serial number. The department shall collect a
15 fee of \$10 from the auto auction for each temporary permit,
16 and the auto auction may charge a vehicle purchaser no more
17 than \$10 for the issuance of each permit to offset the cost
18 of the permits. It is unlawful for the auto auction to issue
19 more than one temporary permit per vehicle sale.

20 (4) A licensed auto auction may apply for and may be
21 authorized by the department to purchase and use license
22 plates of a type and amount approved by the department, upon
23 payment of a fee to the department to offset the cost of
24 production. Licensed auto auctions may use the license
25 plates to transport inventory vehicles from a point of

1 storage or a point of delivery in this state to the auto
 2 auction's place of business, for road testing authorized
 3 vehicles, or for moving vehicles for purposes of repairing,
 4 painting, upholstering, polishing, and related activities.
 5 One license plate is required to be conspicuously displayed
 6 on the rear of the vehicle. Auto auctions may appoint
 7 designated persons, partnerships, corporations, service
 8 stations, or repair garages to use the license plate only
 9 when conducting work for the auto auction involving
 10 repairing, painting, upholstering, polishing, or performing
 11 of similar types of work upon a vehicle. Upon application
 12 for an auto auction license, the applicant, if requesting
 13 the license plates, shall submit a sworn affidavit on a form
 14 prescribed by the department, listing each authorized person
 15 designated by the auction to use the license plates. The
 16 auto auction is responsible for reporting any changes to the
 17 affidavit within 72 hours after the amendment has occurred.
 18 An auto auction licensed under the provisions of this
 19 section is liable for the proper use of the license plates,
 20 which may not be used for private purposes. The department
 21 may revoke an auto auction's 72-hour temporary permit and
 22 license plate privileges if an auction issues, authorizes
 23 the use of, or uses a temporary permit or the license plate
 24 in violation of the provisions of this section.

25 (5) (a) Each auto auction shall keep a book or record,

1 in a form and manner subject to approval by the department,
 2 of the purchases, sales, or exchanges or the receipts for
 3 the purpose of sale of any motor vehicle, a properly
 4 completed copy of a temporary permit issued to a vehicle
 5 purchaser, the date of title transfer, and a description of
 6 the motor vehicle, together with the name and address of the
 7 seller, the purchaser, and the alleged owner or other person
 8 from whom the motor vehicle was purchased or received or to
 9 whom it was sold or delivered. The description in the case
 10 of a motor vehicle must include:

11 (i) the identification number or engine number, if any;
 12 (ii) other numbers or identification marks on the motor
 13 vehicle; and

14 (iii) a statement that a number has been obliterated,
 15 defaced, or changed, if it has.

16 (b) An auto auction licensed under this section shall
 17 validate the sale of a motor vehicle through its auction by
 18 stamping its name and license number upon the certificate of
 19 ownership at a location on the front or back of the
 20 certificate, at the margin in the assignment section as
 21 executed between the transferor and transferee. An auto
 22 auction's stamp must be legible and may not interfere with
 23 the information recorded on the certificate between
 24 transferor and transferee. If the certificate of ownership
 25 lacks adequate space for the auto auction to place its

1 stamp, the auction may provide the transferee a copy of
 2 auction invoice bearing the name and license number of the
 3 auction, along with an indication of the vehicle year, make,
 4 model, and identification number; name, address, and
 5 signature of transferor; name, license number, and signature
 6 of transferee; and the date the vehicle was sold through the
 7 auction.

8 (c) The invoice must be attached to the certificate of
 9 ownership and must be presented to the department with any
 10 application for title.

11 (d) An auto auction shall retain, for 5 years, odometer
 12 disclosure information, including the name of the owner on
 13 the date the auto auction took possession of the motor
 14 vehicle, the name of the buyer, the vehicle identification
 15 number, and the odometer reading on the date the auto
 16 auction took possession of the motor vehicle. The odometer
 17 information may be retained in any way that is
 18 systematically retrievable and is not required to be
 19 maintained on any special disclosure form. The information
 20 may be part of the auction receipt or invoice or be
 21 maintained as a portion of a computer data base or manual
 22 file. An auto auction that executes a transfer of ownership
 23 as an agent on behalf of a seller or buyer is liable for
 24 providing an odometer disclosure statement for the seller or
 25 an odometer disclosure acknowledgement for the buyer under

1 the provisions of 61-3-206.

2 NEW SECTION. **Section 11. Twenty-day permit limitation**
 3 **on issuance -- violation -- penalty.** (1) A dealer may not
 4 issue more than one 20-day permit under 61-4-111 or 61-4-112
 5 per vehicle sale.

6 (2) A dealer who violates the provisions of subsection
 7 (1) is subject to revocation of the privilege to issue
 8 20-day permits for a period of time determined by the
 9 department.

10 NEW SECTION. **Section 12. Code** ~~commissioner~~
 11 **instruction.** Unless the context clearly requires otherwise,
 12 the code commissioner shall change "dealer" to read "dealer
 13 and wholesaler" or "dealer or wholesaler", as the usage
 14 requires, in 61-1-117, 61-2-405, 61-3-206, 61-3-508,
 15 61-4-205, and 61-10-214.

16 NEW SECTION. **Section 13. Codification instruction.** (1)
 17 [Section 9] is intended to be codified as an integral part
 18 of Title 61, chapter 1, part 3, and the provisions of Title
 19 61, chapter 1, part 3, apply to [section 9].

20 (2) [Sections 10 and 11] are intended to be codified as
 21 an integral part of Title 61, chapter 4, part 1, and the
 22 provisions of Title 61, chapter 4, part 1, apply to
 23 [sections 10 and 11].

-End-

1 SENATE BILL NO. 323

2 INTRODUCED BY T. BECK

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE
6 REQUIREMENT THAT ONLY LICENSED MOTOR VEHICLE DEALERS MAY
7 OFFER, SOLICIT, OR ADVERTISE THE SALE OF MOTOR VEHICLES;
8 PROVIDING A NUMERICAL QUALIFICATION OF VEHICLE SALES FOR
9 PERSONS ACTING AS DEALERS OF MOTOR VEHICLES; PROVIDING FOR
10 THE LICENSING OF WHOLESALER OPERATIONS; CLARIFYING
11 ASSIGNMENT OF RECREATIONAL VEHICLE DEALER LICENSE PLATES FOR
12 A LICENSED RECREATIONAL VEHICLE DEALER; PROVIDING
13 QUALIFICATIONS FOR A LICENSEE'S ESTABLISHED PLACE OF
14 BUSINESS; INCREASING THE DOLLAR AMOUNT OF LICENSEES' SURETY
15 BONDS; SETTING FORTH A FEE STRUCTURE AND PROVISIONS RELATED
16 TO LICENSED WHOLESALERS; AMENDING THE DEPARTMENTAL BASIS FOR
17 DENIAL AND REVOCATION OF DEALER AND WHOLESALER LICENSES;
18 PROVIDING AUTHORIZATION FOR OFF-PREMISES SALES BY LICENSED
19 MOTOR VEHICLE DEALERSHIPS; REQUIRING LICENSED MOTOR VEHICLE
20 DEALER AND WHOLESALER RECORDS TO BE KEPT UPON CERTAIN
21 PREMISES; PROVIDING FOR TRANSFER OF LICENSE FOR LICENSED
22 WHOLESALERS; PROVIDING THE DEPARTMENT OF JUSTICE WITH
23 AUTHORITY TO REVOKE A LICENSED MOTOR VEHICLE DEALER'S 20-DAY
24 PERMIT PRIVILEGES; PROVIDING FOR THE LICENSING AND
25 REGULATION OF AUTO AUCTIONS DEALING IN MOTOR VEHICLES; AND

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 323
Representative Mercer

March 18, 1991 11:54 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 323 (third reading copy -- blue).

Signed: MERCER
Representative Mercer

And, that such amendments to Senate Bill 323 read as follows:

1. Page 2, line 15.
Following: "owner's"
Insert: "or the seller's"

ADOPT

REJECT

HOUSE
SB323

SB0323.1
581153CW.HSF

1 SENATE BILL NO. 323
 2 INTRODUCED BY T. BECK
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE
 6 REQUIREMENT THAT ONLY LICENSED MOTOR VEHICLE DEALERS MAY
 7 OFFER, SOLICIT, OR ADVERTISE THE SALE OF MOTOR VEHICLES;
 8 PROVIDING A NUMERICAL QUALIFICATION OF VEHICLE SALES FOR
 9 PERSONS ACTING AS DEALERS OF MOTOR VEHICLES; PROVIDING FOR
 10 THE LICENSING OF WHOLESALER OPERATIONS; CLARIFYING
 11 ASSIGNMENT OF RECREATIONAL VEHICLE DEALER LICENSE PLATES FOR
 12 A LICENSED RECREATIONAL VEHICLE DEALER; PROVIDING
 13 QUALIFICATIONS FOR A LICENSEE'S ESTABLISHED PLACE OF
 14 BUSINESS; INCREASING THE DOLLAR AMOUNT OF LICENSEES' SURETY
 15 BONDS; SETTING FORTH A FEE STRUCTURE AND PROVISIONS RELATED
 16 TO LICENSED WHOLESALERS; AMENDING THE DEPARTMENTAL BASIS FOR
 17 DENIAL AND REVOCATION OF DEALER AND WHOLESALER LICENSES;
 18 PROVIDING AUTHORIZATION FOR OFF-PREMISES SALES BY LICENSED
 19 MOTOR VEHICLE DEALERSHIPS; REQUIRING LICENSED MOTOR VEHICLE
 20 DEALER AND WHOLESALER RECORDS TO BE KEPT UPON CERTAIN
 21 PREMISES; PROVIDING FOR TRANSFER OF LICENSE FOR LICENSED
 22 WHOLESALERS; PROVIDING THE DEPARTMENT OF JUSTICE WITH
 23 AUTHORITY TO REVOKE A LICENSED MOTOR VEHICLE DEALER'S 20-DAY
 24 PERMIT PRIVILEGES; PROVIDING FOR THE LICENSING AND
 25 REGULATION OF AUTO AUCTIONS DEALING IN MOTOR VEHICLES; AND

1 AMENDING SECTIONS 61-1-314, 61-4-101, 61-4-102, 61-4-103,
 2 61-4-104, 61-4-105, 61-4-106, AND 61-4-119, MCA."
 3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 5 **Section 1.** Section 61-1-314, MCA, is amended to read:
 6 "61-1-314. Dealer. (1) "Dealer" means any:
 7 (a) a person, firm, association, or corporation which,
 8 for commission or profit, engages in whole or in part in the
 9 business of buying, selling, exchanging, or acting as a
 10 broker of either new or used motor vehicles, or both, and
 11 who qualifies for issuance of a dealer's license under
 12 61-4-101 through 61-4-105; or
 13 (b) an owner of real property who allows more than
 14 three new or used motor vehicles not titled in the property
 15 owner's OR THE SELLER'S name to be offered for sale on the
 16 property during 1 calendar year unless the property is
 17 leased to a motor vehicle dealer licensed under 61-4-101 and
 18 the vehicles offered for sale are bona fide units of the
 19 licensed dealer's inventory.
 20 (2) The term "dealer" does not include the following:
 21 (a) receivers, trustees, administrators, executors,
 22 guardians, or other persons appointed by or acting under a
 23 judgment or order of any court of competent jurisdiction;
 24 (b) employees of such the persons included in
 25 subsection (2)(a) when engaged in the specific performance



1 of their duties as such employees; or

2 (c) public officers while performing or in the
3 operation of their duties.

4 (3) A dealer dealing in used motor vehicles only shall
5 purchase a Montana store license."

6 **Section 2.** Section 61-4-101, MCA, is amended to read:

7 **"61-4-101. Application for dealer's license or**
8 **wholesaler's license. (1) (a) Every A verified application**
9 **must be filed, by mail or otherwise, in the office of the**
10 **department by each person, firm, corporation, or association**
11 **which that, for commission or profit, engages in:**

12 (i) the business of buying, selling, exchanging,
13 offering, taking for consignment, ~~soliciting, advertising~~
14 ~~the sale of,~~ or acting as a broker of new motor vehicles,
15 recreational vehicles, used motor vehicles, trailers (except
16 trailers having an unloaded weight of less than 500 pounds),
17 semitrailers, or special mobile equipment as defined in
18 61-1-104 ~~shall file, by mail or otherwise, in the office of~~
19 ~~the department a verified application~~ for licensure as a
20 ~~dealer, on a blank to be furnished by the department for~~
21 ~~that purpose and containing the information required; or~~

22 (ii) business as a wholesaler as defined in [section 9]
23 in order to be licensed as a wholesaler.

24 (b) The sale of more than three motor vehicles or the
25 offering for sale of more than three motor vehicles, if the

1 motor vehicles are not titled in the seller's name, in any 1
2 calendar year is prima facie evidence that a person is
3 engaged in the business of dealing motor vehicles. Licensed
4 wholesalers do not have the privilege of the use of dealer
5 license plates as provided in subsection (2)(b) but are
6 authorized to display and use demonstrator plates under the
7 provisions of 61-4-102(2)(a)(ii). The

8 (c) Each license application and all of the information
9 contained in it must be verified by the Montana highway
10 patrol or an authorized representative of the department on
11 a form to be furnished by the department for that purpose
12 and must contain the information required. Each application
13 must be accompanied by the license fee specified in
14 61-4-102. A dealer's or wholesaler's license must be renewed
15 and paid for annually, and an application for relicensure
16 must be filed not later than January 1 of each year. If an
17 application for renewal of a license has been received by
18 the department prior to the expiration of the license, the
19 dealer licensee may operate his business and display dealer
20 or demonstrator plates under the expired license between
21 January 1 and February 15 following expiration.

22 (2) To qualify for licensure and the issuance and use
23 of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter
24 provided in this subsection, the applicant must furnish the
25 following information and qualify under the following

1 provisions:

- 2 (a) To qualify as a new motor vehicle dealer and for
3 the use of "D" plates, the applicant must:
- 4 (i) state the name under which the business is to be
5 conducted and the location of the premises (street address,
6 city, county, and state) where records are kept, sales are
7 made, and stock of motor vehicles is displayed;
- 8 (ii) state the name and address of all owners or persons
9 having an interest in the business, provided that in the
10 case of a corporation, the names and addresses of the
11 president and secretary are sufficient;
- 12 (iii) state the name and make of all motor vehicles
13 handled and the name and address of the manufacturer,
14 importer, or distributor with whom the applicant has a
15 written new motor vehicle franchise or sales agreement;
- 16 (iv) execute a certificate to the effect that the
17 applicant has a permanent building for the display and sale
18 of new motor vehicles at the location of the premises where
19 sales are conducted;
- 20 (v) execute a certificate to the effect that the
21 applicant has a bona fide service department for the repair,
22 service, and maintenance of motor vehicles; and
- 23 (vi) execute a certificate to the effect that the
24 applicant is a bona fide dealer in new motor vehicles and
25 that he is recognized by a manufacturer, importer, or

1 distributor as a dealer in new motor vehicles.

- 2 (b) To qualify as a used motor vehicle dealer and for
3 the use of "UD" plates; or as a recreational vehicle, dealer
4 and for the use of "RV" plates; as a trailer, semitrailer,
5 or special mobile equipment dealer and for the use of "DTR"
6 plates; or as a motorcycle or quadricycle dealer and for the
7 use of "MCD" plates; or as a wholesaler and for the use of
8 demonstrator plates, the applicant must, in addition to the
9 matters set forth in subsections (i) and (ii) of subsection
10 (2)(a) above, provide:
- 11 (i) a statement that the dealer:
- 12 (A) applicant has a building or lot and a sign readable
13 at a minimum distance of 150 feet indicating the firm name
14 as the principal place of business and that vehicles are
15 offered for sale, and an established place of business that
16 includes a lot or lots upon which motor vehicles may be
17 displayed and a permanent nonresidential building on or
18 contiguous to the lot or lots where records are kept and
19 sales are made; or
- 20 (B) wholesaler applicant has an established place of
21 business that includes a permanent nonresidential building
22 or office where records are kept in order that those records
23 may be inspected;
- 24 (ii) a certificate to the effect that the applicant is a
25 bona fide dealer or wholesaler in used motor vehicles,

1 recreational vehicles, trailers, semitrailers, special
 2 mobile equipment, motorcycles, or quadricycles. An applicant
 3 for a recreational vehicle dealer license must also indicate
 4 on the same certificate that he is recognized by a
 5 manufacturer, importer, or distributor as a dealer in
 6 recreational vehicles.

7 (c) If two or more vehicle dealer or wholesaler
 8 businesses share a location, all records, office facilities,
 9 and inventory, if applicable, must be physically segregated
 10 and clearly identified. Each applicant's established place
 11 of business shall display a sign that indicates the firm
 12 name and that vehicles are offered for sale. The letters of
 13 the sign must be clearly visible and readable to the major
 14 avenue of traffic at a minimum distance of 150 feet.

15 ~~(e)~~(d) To qualify for a used motor vehicle dealer's or
 16 wholesaler's license, a person must submit an annual
 17 application for that license and comply with the provisions
 18 of 61-4-102(5) in addition to fulfilling the requirements of
 19 subsection (2)(b).

20 ~~(d)~~(e) The provisions of subsection ~~(2)~~(2)(d) do not
 21 apply to an applicant who is licensed as a motor vehicle
 22 wrecking facility under the provisions of Title 75, chapter
 23 10, part 5.

24 (3) (a) The applicant for a dealer's or wholesaler's
 25 license shall also file with his application ~~a--good--and~~

1 ~~sufficient bond in-the-sum of \$5,000;--and-the-bond \$25,000~~
 2 ~~for a license as a new motor vehicle dealer, a used motor~~
 3 ~~vehicle dealer, a recreational vehicle dealer, a trailer~~
 4 ~~dealer, or a wholesaler. However, applicants for a license~~
 5 ~~as a trailer dealer or a trailer wholesaler shall file the~~
 6 ~~\$25,000 surety bond only if special mobile equipment,~~
 7 ~~commercial trailers and semitrailers exceeding 6,000 pounds~~
 8 ~~maximum gross loaded weight, mobile homes, or house trailers~~
 9 ~~are sold; otherwise, all other trailer dealer, motorcycle~~
 10 ~~dealer, or wholesaler license applicants shall file a bond~~
 11 ~~in the sum of \$10,000. All bonds must be conditioned that~~
 12 ~~the applicant shall conduct his business in accordance with~~
 13 ~~the requirements of the law. All bonds must run to the state~~
 14 ~~of Montana, must be approved by the department and filed in~~
 15 ~~its office, and must be renewed annually.~~

16 (b) A person who suffers loss or damage due to the
 17 unlawful conduct of a dealer or wholesaler licensed under
 18 this section shall obtain a judgment from a court of
 19 competent jurisdiction prior to collecting on the judgment
 20 ~~from-the-department bond~~. ~~The department-is-responsible--for~~
 21 ~~payment--under--this-section;--in-an-amount-not-to-exceed-the~~
 22 ~~maximum-bond-amount;--only-if--the~~ judgment ~~on--which--the~~
 23 ~~payment--is--based-determines~~ must determine a specific loss
 24 or damage amount and ~~concludes~~ conclude that the ~~dealer's~~
 25 licensee's unlawful operation caused the loss or damage

1 before payment on the bond is required."

2 **Section 3.** Section 61-4-102, MCA, is amended to read:

3 **"61-4-102. Fees -- restrictions on licensees.** (1) Upon
4 making such application, the applicant shall pay to the
5 department, in addition to the fees required of dealers and
6 wholesalers under the provisions of subsection (2), a fee of
7 \$5. Upon receipt of the application, fee, and bond, as
8 provided above, the department shall examine the
9 application, and may, prior to issuing a license, make
10 individual investigation of the truth of the statements
11 contained in the application. If the department is satisfied
12 that the applicant qualifies for the issuance of a dealer's
13 license under the provisions of this chapter, it the
14 department may thereupon issue the same license. The
15 department may refuse, after investigation, to issue a
16 license to an applicant as allowed by law.

17 (2) Registration or license fees shall be paid upon
18 registration or reregistration of dealers in motor vehicles,
19 recreational vehicles, or trailers as follows:

20 (a) (i) all dealers in motor vehicles and recreational
21 vehicles, a fee of \$25, which shall entitle such dealer to
22 one set of number plates, and \$25 additional fee for each
23 additional set of number plates, subject to the following
24 limitations on the number of additional sets allowed a
25 dealer:

1 (A) 5% of the first 100 vehicle sales for the previous
2 year; plus

3 (B) 3% of the next 100 vehicle sales for the previous
4 year; plus

5 (C) 2% of vehicle sales in excess of 200 for the
6 previous year; and

7 (D) any additional sets upon a showing of good cause by
8 the applicant dealer to the department.

9 (ii) in addition to the dealer plates allowed under
10 subsection (2)(a)(i), a dealer who has purchased one or more
11 sets of dealer plates or a licensed wholesaler is entitled
12 to purchase demonstrator plates at a cost determined by the
13 department to offset the cost of production. Demonstrator
14 plates ~~shall~~ must be used in lieu of a dealer plate but only
15 as set forth in subsection (6) and must be distinguished
16 from dealer plates in a manner determined by the department.
17 Wholesaler demonstrator plates must be distinguished from
18 dealer demonstrator plates in a manner determined by the
19 department.

20 (b) dealers in motorcycles, quadricycles, and trailers,
21 including housetrainers, \$45; and

22 (c) wholesalers in used motor vehicles, recreational
23 vehicles, trailers (including semitrailers and special
24 mobile equipment), and motorcycles (including quadricycles),
25 \$30.

1 (3) If any a dealer or wholesaler is originally
 2 registered 6 months after the time of registration as set by
 3 law, the registration or license fee for the remainder of
 4 such the year shall-be is one-half of the regular fee above
 5 given.

6 (4) A dealer or wholesaler in motor vehicles,
 7 recreational vehicles, or trailers who ~~shall--maintain~~
 8 maintains more than one place of business or who ~~shall~~
 9 maintain---any maintains a branch establishment or
 10 establishments must shall register and pay a registration or
 11 license fee for each such place of business or
 12 establishment. A dealer may sell vehicles only from his
 13 licensed place of business unless the dealer notifies the
 14 department 10 days in advance, on a form prescribed by the
 15 department, of the opening date and location of an
 16 off-premises sale. An EXCEPT FOR RECREATIONAL VEHICLE
 17 DEALERS, AN off-premises sale must be conducted within the
 18 city limits of the city of the dealer's licensed location or
 19 upon an adjacent off-premises site that is approved by the
 20 department and that is within the county of the dealer's
 21 licensed location. The sale may not exceed 6 10 consecutive
 22 business days, and a licensed dealer may not conduct more
 23 than five 10 off-premises sales during any 1 calendar year.

24 (5) A new applicant for a used motor vehicle dealer or
 25 wholesaler license shall pay \$300 to the department in

1 addition to any other sums required by this section or other
 2 provisions of the law. An applicant for a renewal of a used
 3 motor vehicle dealer or wholesaler license shall certify
 4 under oath that he has sold more than five used motor
 5 vehicles during the preceding calendar year or pay an
 6 additional \$300 before he may be licensed.

7 (6) Demonstrator plates provided for in subsection
 8 (2)(a)(ii) may be used only as follows:

9 (a) New and used motor vehicle or recreational vehicle
 10 demonstrator plates may be used:

11 (i) to demonstrate, for no more than 72 hours, an
 12 authorized vehicle held for sale, when operated by an
 13 individual holding a valid operator's license;

14 (ii) on authorized vehicles owned by the firm when
 15 operated by an officer or bona fide full-time employee of
 16 the dealer or wholesaler and used to transport the dealer's
 17 or wholesaler's own tools, parts, and equipment;

18 (iii) on authorized vehicles being tested for repair;

19 (iv) on authorized vehicles being moved to or from a
 20 dealer's place of business for sale;

21 (v) on authorized vehicles being moved to or from
 22 service and repair facilities before sale;

23 (vi) on authorized vehicles being moved to or from
 24 exhibitions within the state, provided any such exhibition
 25 does not exceed a period of 20 days.

1 (b) Mobile home and trailer dealer demonstrator plates
2 may be used:

3 (i) on units hauled to or from the place of business of
4 the manufacturer and the place of business of the dealer or
5 to and from places of business of the dealer;

6 (ii) on mobile homes hauled to a customer's location for
7 setup after sale;

8 (iii) on travel trailers held for sale to demonstrate
9 the towing capability of the vehicle provided that a dated
10 demonstration permit, valid for not more than 72 hours, is
11 carried with the vehicle at all times;

12 (iv) on any motor vehicle owned by the dealer that is
13 used only to move vehicles legally bearing mobile home and
14 travel trailer dealer license plates of the dealer owning
15 any such motor vehicle;

16 (v) on vehicles being moved to or from vehicle
17 exhibitions within the state, provided any such exhibition
18 does not exceed a period of 20 days."

19 **Section 4.** Section 61-4-103, MCA, is amended to read:

20 "61-4-103. **Assignment of dealer plates.** (1) Upon the
21 licensing of a dealer as a new motor vehicle dealer, used
22 motor vehicle dealer, recreational vehicle dealer, or
23 trailer, semitrailer, or special mobile equipment dealer, or
24 a dealer of the motorcycle- or quadricycle-type vehicle, the
25 department shall assign to such the dealer a distinctive

1 serial license number as a dealer and after payment of fees
2 furnish every qualified dealer in motor vehicles with such
3 sets of number plates as required according to need, which
4 need ~~shall~~ must be justified by the dealer with the initial
5 application for license and each renewal. Assigned number
6 plates ~~shall~~ must be similar to number plates furnished to
7 owners of motor vehicles but ~~shall~~ must bear thereon, in
8 addition to the serial number assigned such the dealer, the
9 letter "D" if the dealer is authorized to sell new motor
10 vehicles (including trucks and truck trailers); the letters
11 "RV" if the dealer is authorized to sell recreational
12 vehicles; the letters "UD" if the dealer is authorized to
13 sell used motor vehicles (including used trucks and used
14 truck trailers); the letters "DTR" if the dealer is
15 authorized to sell trailers, semitrailers, or special mobile
16 equipment (new or used); and the letters "MCD" if the dealer
17 is authorized to sell vehicles of the motorcycle or
18 quadricycle type (new or used).

19 (2) With the exception of a dealer authorized to sell
20 new motor vehicles (including trucks and truck trailers) and
21 to use the "D" plate or demonstrator plate, no a dealer or
22 wholesaler authorized to transact business under the
23 provisions of this section may not offer for sale or trade
24 any vehicle described in this section except such the
25 vehicles as that are authorized by the plates assigned to

1 him. If an applicant wishes to sell more than one type of
 2 vehicle, he shall make application for each separate
 3 authorization. No plate assigned to a dealer or wholesaler
 4 may be used on any vehicle other than the type described in
 5 this section. A wholesaler may not sell a motor vehicle to a
 6 person who is not a licensed dealer. A dealer authorized to
 7 sell new motor vehicles and assigned a "D" plate or
 8 demonstrator plate is authorized to sell both new and used
 9 motor vehicles (including trucks and truck trailers), and
 10 such the plates may be displayed on either new or used motor
 11 vehicles by a licensed dealer in new vehicles.

12 (3) The department shall cause to be placed on each set
 13 of license plates issued to a dealer a serial number
 14 assigned to each dealer and the actual number of license
 15 plates issued to each dealer. The number of the dealer ~~shall~~
 16 must follow the prefix of the county, and the number of
 17 plates issued the dealer ~~shall~~ must follow the prefix of the
 18 county and the number of the dealer, the dealer's number to
 19 be separated from the county prefix by a dash, and the
 20 number of plates issued to a dealer to be separated from the
 21 dealer's number by a dash, as follows: dealer number 4 in
 22 Lewis and Clark County would be numbered 5-4, and if the
 23 dealer were issued three sets of plates, they would be
 24 numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.
 25 Wholesalers who receive demonstrator plates under this part

1 must be issued license plates that are of a similar sequence
 2 to dealer and dealer demonstrator plates and display a
 3 "wholesaler" or "wholesale dealer" identifier conspicuously
 4 displayed upon the plates.

5 (4) Dealers properly licensed under this section are
 6 authorized to use and display dealer's license plates on any
 7 a motor vehicle held for bona fide sale or used in the
 8 conduct of the dealer's business in selling or demonstrating
 9 motor vehicles and operated by or under the control of the
 10 dealer, his officers or employees. For purposes of this
 11 provision, "officers and employees" include only such the
 12 persons listed on the manufacturer's franchise agreement or
 13 the importer's distribution agreement and their spouses or
 14 such other persons upon whom the dealer has paid social
 15 security taxes as a full-time employee. No A dealer's or
 16 wholesaler's license plate ~~shall~~ may not be used or
 17 displayed on vehicles normally used for hire, lease, or
 18 rental or for purposes not incident to the business of a
 19 motor vehicle dealer. Each A dealer is accountable for each
 20 plate issued and shall certify quarterly to the department
 21 the disposition of each dealer plate assigned to the dealer,
 22 including the name, address, and occupation of the person
 23 primarily using each plate.

24 (5) When the department has reasonable cause to
 25 believe, from an investigation made by it or information

1 furnished to it by the sheriff or any other law enforcement
 2 officer, that any-such a dealer or wholesaler has been
 3 improperly licensed, has used the dealer's license in a
 4 manner other than the one herein authorized in this section,
 5 or has provided a material misstatement of fact in an
 6 application for a license, is not qualified as a dealer or
 7 wholesaler under the requirements of this section, or whose
 8 criminal conduct renders him unfit for licensure, the
 9 department may revoke such the dealer's or wholesaler's
 10 license. No A person, firm, corporation, or association
 11 shall may not, for commission or profit, engage in the
 12 business of buying, selling, exchanging, or acting as a
 13 broker of new motor vehicles, trailers, or semitrailers
 14 unless duly licensed in compliance with this section (except
 15 trailers having an unladen weight of less than 500 pounds)."

16 **Section 5.** Section 61-4-104, MCA, is amended to read:

17 "61-4-104. Record of purchase or sale. Every A dealer
 18 or wholesaler licensed under 61-4-101 shall keep a book or
 19 record of the purchases, sales or exchanges, or receipts for
 20 the purpose of sale of used vehicles and a description of
 21 such the vehicles, together with the name and address of the
 22 seller, of the purchaser, and of the alleged owner or other
 23 person from whom each vehicle was purchased or received or
 24 to whom it was sold or delivered, as the case may be. The
 25 description in the case of motor vehicles shall must also

1 include the engine number, if any, maker's number, if any,
 2 chassis number, if any, and such other numbers or
 3 identification marks as that appear thereon on the motor
 4 vehicle and shall must include a statement that a number has
 5 been obliterated, defaced, or changed if such is the fact.
 6 In the case of a trailer, semitrailer, or special mobile
 7 equipment, the record shall must include the manufacturer's
 8 number and such other numbers or identification marks as
 9 that appear thereon. The dealer shall or wholesaler must
 10 also have in his possession, from the time the motor vehicle
 11 is delivered to him until it has been disposed of by him, a
 12 duly assigned certificate of ownership from the owner of the
 13 motor vehicle to the dealer or wholesaler from-the-time--the
 14 motor-vehicle-is-delivered-to-him-until-it-has-been-disposed
 15 of--by--him. It is a violation of this part for a dealer or
 16 wholesaler to fail to take assignment of all certificates of
 17 ownership or manufacturer's certificates of origin for
 18 vehicles acquired by the licensee or to fail to assign the
 19 certificate of ownership or manufacturer's certificate of
 20 origin for vehicles sold. All records required to be kept in
 21 accordance with this section, in addition to the required
 22 retention of odometer disclosure information under
 23 61-3-206(4), must be physically located and maintained
 24 within the building referred to in 61-4-101(2)(b)(i). An
 25 authorized representative of the department, upon

1 presentation of his credentials, may inspect and have access
2 to and copy any records required under this chapter."

3 **Section 6.** Section 61-4-105, MCA, is amended to read:

4 "61-4-105. Criminal penalty -- civil penalty imposed by
5 agency. (1) Any person violating the provisions of 61-4-101
6 through 61-4-104 or [section 10] is guilty of a misdemeanor
7 and subject to a fine of not less than \$250 and not more
8 than \$500. For the purposes of this section, every sale of a
9 motor vehicle in violation of the provisions of 61-4-101
10 through 61-4-104 or [section 10] is a separate offense.

11 (2) In addition to all other penalties created by this
12 part, the department is authorized to take appropriate
13 enforcement action on its own initiative. Any person
14 violating the provisions of 61-4-101 through 61-4-104 or
15 [section 10] may be subject to administrative action, in
16 accordance with the contested case procedures of Title 2,
17 chapter 4, as follows:

18 (a) a civil penalty not to exceed \$200 for each
19 violation;

20 (b) suspension of the motor vehicle dealer, wholesaler,
21 or auto auction license not to exceed 5 working days;

22 (c) revocation or denial of the motor vehicle dealer,
23 wholesaler, or auto auction license; or

24 (d) any combination of subsections (2)(a) through
25 (2)(c)."

1 **Section 7.** Section 61-4-106, MCA, is amended to read:

2 "61-4-106. Transfer of license. A registered dealer or
3 wholesaler, who ~~may sell or dispose~~ sells or disposes of his
4 entire business to ~~any other~~ another person, may have his
5 certificate of registration transferred to ~~such the~~
6 purchaser upon filing with the department a statement
7 containing the name of the registered dealer or wholesaler,
8 the number under which ~~such--dealer~~ the business is
9 registered, the name of the purchaser, and the location of
10 the place of business so sold. Upon the filing of ~~such the~~
11 statement, accompanied by a filing fee of \$2, the department
12 shall note upon the registration record of ~~such the~~ dealer
13 or wholesaler the change of ownership. ~~But no A~~ certificate
14 of registration ~~can may not~~ be transferred unless the entire
15 business of the dealer or wholesaler holding ~~such the~~
16 certificate of registration ~~be is~~ sold and disposed of, and
17 ~~no--such a~~ certificate of registration ~~can may not~~ be
18 transferred to any person other than the purchasers of ~~such~~
19 the business."

20 **Section 8.** Section 61-4-119, MCA, is amended to read:

21 "61-4-119. Penalty. Any ~~A~~ person violating the
22 ~~provisions a provision~~ of 61-4-111 or 61-4-112 is guilty of
23 a misdemeanor and subject to a fine of not less than \$25
24 \$250 and not more than ~~\$100~~ \$500. Every violation of
25 61-4-111 and 61-4-112 is considered a separate offense."

1 NEW SECTION. **Section 9. Wholesaler.** "Wholesaler" means
 2 a person, firm, partnership, association, or corporation who
 3 for a commission or with intent to make a profit or gain of
 4 money or other thing of value sells, exchanges, or attempts
 5 to negotiate a sale or exchange of an interest in a used
 6 motor vehicle, recreational vehicle, trailer, semitrailer,
 7 special mobile equipment, motorcycle, or quadricycle only to
 8 motor vehicle dealers and auto auctions licensed under this
 9 part.

10 NEW SECTION. **Section 10. Application for auto auction**
 11 **license -- general regulations.** (1) A person, firm,
 12 association, or corporation that takes possession of a motor
 13 vehicle owned by another person through consignment,
 14 bailment, or any other arrangement for the purpose of
 15 selling the motor vehicle to the highest bidder when all
 16 buyers are licensed motor vehicle dealers, wholesalers, or
 17 wrecking facilities shall file by mail or otherwise in the
 18 office of the department a verified application for
 19 licensure as an auto auction. The application must be made
 20 in the following manner:

21 (a) Each application and all of the information
 22 contained in it must be verified by the Montana highway
 23 patrol or an authorized representative of the department on
 24 a form to be furnished by the department for that purpose.
 25 The application must provide the following information:

1 (i) the name in which the business is to be conducted
 2 and the location of premises (street address, city, county,
 3 and state) where records are kept, sales are made, and motor
 4 vehicle stock is displayed as an established place of
 5 business that displays a sign indicating the firm name and
 6 that vehicles are offered for sale. The letters on the sign
 7 must be clearly visible and readable to the major avenue of
 8 traffic at a minimum distance of 150 feet.

9 (ii) the name and address of all owners or persons
 10 having an interest in the business. In the case of a
 11 corporation, the names and addresses of the president and
 12 secretary are sufficient.

13 (iii) a statement that the applicant is authorized to
 14 auction used motor vehicles, recreational vehicles,
 15 trailers, semitrailers, special mobile equipment,
 16 motorcycles, and quadricycles under one license. A licensed
 17 auto auction may not auction a new motor vehicle except when
 18 authorized by a new motor vehicle manufacturer, importer,
 19 distributor, or representative thereof, for the purpose of
 20 conducting a closed-factory fleet sale to dispose of new
 21 motor vehicles by the franchisor (manufacturer, distributor,
 22 or importer) to franchisee purchasers when the purchasers
 23 are licensed new motor vehicle dealers purchasing new motor
 24 vehicle line-makes authorized by their respective franchise,
 25 sales, or distributor agreements. An auto auction licensed

1 under the provisions of this section shall notify and update
 2 the department with current fleet sale agreements between
 3 the auto auction and franchisor. An auto auction may not
 4 conduct a factory fleet sale unless authorized or appointed
 5 by a franchisor licensed under part 2 of this chapter.

6 (b) Each application must be accompanied by a bond of
 7 \$25,000 and must be conditioned that the applicant shall
 8 conduct his business in accordance with the requirements of
 9 the law. All bonds must run to the state of Montana, must be
 10 approved by the department and filed in its office, and must
 11 be renewed annually. A person who suffers loss or damage due
 12 to the unlawful conduct of an auto auction licensed under
 13 this section may proceed in the same manner as provided for
 14 licensed dealers and wholesalers in 61-4-101(3)(b).

15 (2) An auto auction's license must be renewed and paid
 16 for annually to the department, and an application for
 17 relicensure must be filed by January 1 of each year. The fee
 18 required for each first-time applicant is \$500 and for
 19 subsequent renewal applications is \$100 each year. Upon
 20 receipt of a properly completed application, fee, and bond,
 21 the department shall issue the auto auction license and
 22 assign an auto auction license number for each applicant in
 23 a manner determined by the department. Auto auctions dealing
 24 in motor vehicles may sell only to licensed dealers and
 25 wholesalers.

1 (3) Auto auctions that are licensed under this section
 2 and that hold a current license number may issue temporary
 3 permits, which may be displayed and used by a buyer to
 4 operate an unregistered vehicle purchased from the auto
 5 auction. The temporary permit is valid for a period of 72
 6 hours from the time of purchase and may be used only for the
 7 purpose of driving or transporting a vehicle from the
 8 auction premises to the purchaser's established place of
 9 business or point of destination. Temporary permits must be
 10 on a form prescribed by the department and must contain the
 11 name, address, and license number of the purchaser, date of
 12 sale, name, address, license number, authorized signature of
 13 the auto auction, and a description of the vehicle,
 14 including its serial number. The department shall collect a
 15 fee of \$10 from the auto auction for each temporary permit,
 16 and the auto auction may charge a vehicle purchaser no more
 17 than \$10 for the issuance of each permit to offset the cost
 18 of the permits. It is unlawful for the auto auction to issue
 19 more than one temporary permit per vehicle sale.

20 (4) A licensed auto auction may apply for and may be
 21 authorized by the department to purchase and use license
 22 plates of a type and amount approved by the department, upon
 23 payment of a fee to the department to offset the cost of
 24 production. Licensed auto auctions may use the license
 25 plates to transport inventory vehicles from a point of

1 storage or a point of delivery in this state to the auto
 2 auction's place of business, for road testing authorized
 3 vehicles, or for moving vehicles for purposes of repairing,
 4 painting, upholstering, polishing, and related activities.
 5 One license plate is required to be conspicuously displayed
 6 on the rear of the vehicle. Auto auctions may appoint
 7 designated persons, partnerships, corporations, service
 8 stations, or repair garages to use the license plate only
 9 when conducting work for the auto auction involving
 10 repairing, painting, upholstering, polishing, or performing
 11 of similar types of work upon a vehicle. Upon application
 12 for an auto auction license, the applicant, if requesting
 13 the license plates, shall submit a sworn affidavit on a form
 14 prescribed by the department, listing each authorized person
 15 designated by the auction to use the license plates. The
 16 auto auction is responsible for reporting any changes to the
 17 affidavit within 72 hours after the amendment has occurred.
 18 An auto auction licensed under the provisions of this
 19 section is liable for the proper use of the license plates,
 20 which may not be used for private purposes. The department
 21 may revoke an auto auction's 72-hour temporary permit and
 22 license plate privileges if an auction issues, authorizes
 23 the use of, or uses a temporary permit or the license plate
 24 in violation of the provisions of this section.

25 (5) (a) Each auto auction shall keep a book or record,

1 in a form and manner subject to approval by the department,
 2 of the purchases, sales, or exchanges or the receipts for
 3 the purpose of sale of any motor vehicle, a properly
 4 completed copy of a temporary permit issued to a vehicle
 5 purchaser, the date of title transfer, and a description of
 6 the motor vehicle, together with the name and address of the
 7 seller, the purchaser, and the alleged owner or other person
 8 from whom the motor vehicle was purchased or received or to
 9 whom it was sold or delivered. The description in the case
 10 of a motor vehicle must include:

11 (i) the identification number or engine number, if any;

12 (ii) other numbers or identification marks on the motor
 13 vehicle; and

14 (iii) a statement that a number has been obliterated,
 15 defaced, or changed, if it has.

16 (b) An auto auction licensed under this section shall
 17 validate the sale of a motor vehicle through its auction by
 18 stamping its name and license number upon the certificate of
 19 ownership at a location on the front or back of the
 20 certificate, at the margin in the assignment section as
 21 executed between the transferor and transferee. An auto
 22 auction's stamp must be legible and may not interfere with
 23 the information recorded on the certificate between
 24 transferor and transferee. If the certificate of ownership
 25 lacks adequate space for the auto auction to place its

1 stamp, the auction may provide the transferee a copy of
 2 auction invoice bearing the name and license number of the
 3 auction, along with an indication of the vehicle year, make,
 4 model, and identification number; name, address, and
 5 signature of transferor; name, license number, and signature
 6 of transferee; and the date the vehicle was sold through the
 7 auction.

8 (c) The invoice must be attached to the certificate of
 9 ownership and must be presented to the department with any
 10 application for title.

11 (d) An auto auction shall retain, for 5 years, odometer
 12 disclosure information, including the name of the owner on
 13 the date the auto auction took possession of the motor
 14 vehicle, the name of the buyer, the vehicle identification
 15 number, and the odometer reading on the date the auto
 16 auction took possession of the motor vehicle. The odometer
 17 information may be retained in any way that is
 18 systematically retrievable and is not required to be
 19 maintained on any special disclosure form. The information
 20 may be part of the auction receipt or invoice or be
 21 maintained as a portion of a computer data base or manual
 22 file. An auto auction that executes a transfer of ownership
 23 as an agent on behalf of a seller or buyer is liable for
 24 providing an odometer disclosure statement for the seller or
 25 an odometer disclosure acknowledgement for the buyer under

1 the provisions of 61-3-206.

2 NEW SECTION. **Section 11. Twenty-day permit limitation**
 3 on issuance -- violation -- penalty. (1) A dealer may not
 4 issue more than one 20-day permit under 61-4-111 or 61-4-112
 5 per vehicle sale.

6 (2) A dealer who violates the provisions of subsection
 7 (1) is subject to revocation of the privilege to issue
 8 20-day permits for a period of time determined by the
 9 department.

10 NEW SECTION. **Section 12. Code commissioner**
 11 instruction. Unless the context clearly requires otherwise,
 12 the code commissioner shall change "dealer" to read "dealer
 13 and wholesaler" or "dealer or wholesaler", as the usage
 14 requires, in 61-1-117, 61-2-405, 61-3-206, 61-3-508,
 15 61-4-205, and 61-10-214.

16 NEW SECTION. **Section 13. Codification instruction.** (1)
 17 [Section 9] is intended to be codified as an integral part
 18 of Title 61, chapter 1, part 3, and the provisions of Title
 19 61, chapter 1, part 3, apply to [section 9].

20 (2) [Sections 10 and 11] are intended to be codified as
 21 an integral part of Title 61, chapter 4, part 1, and the
 22 provisions of Title 61, chapter 4, part 1, apply to
 23 [sections 10 and 11].

-End-