

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

Call to Order: By Bob Pavlovich, on January 19, 1989, at  
9:00 a.m.

#### ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

#### HEARING ON HOUSE BILL 129

Presentation and Opening Statement by Sponsor: Rep. Stang, District 52, stated that this bill was proposed by the Department of Justice, and what it does is to provide authority for cease and desist orders when there is reasonable cause to believe that the person is engaged in a business as a new motor vehicle manufacturer, distributor, or importer without being licensed by the department of justice. Every person or firm for commission or profit that engages in the business to buy and sell motor vehicles must be licensed. The department needs the authority to issue these cease and desist orders so that they can get these so-called car dealers off the street.

#### List of Testifying Proponents and What Group They Represent:

Bud Schoen, Motor Vehicles Division

#### List of Testifying Opponents and What Group They Represent:

None

Testimony: Mr. Schoen stated that his division's problems are with the unlicensed dealers. They buy wholesale

some older cars and offer them for sale, and sometimes they can't provide the titles. We go out and warn them of what the law requires of them to become licensed. They don't comply and get a license, they just move to another lot. We just don't have any authority to order them to stop and if we take any action, we butt heads with the authorities.

Questions From Committee Members: There were several questions asked of Mr. Schoen from the committee members.

Closing by Sponsor: Rep. Stang pointed out that this bill did not refer to a person who is selling his own car. Rep. Stang stated in response to Rep. Simon's statement that the burden is on the taxpayer in Lewis and Clark county, that man is not necessarily a taxpayer he is a law breaker. The people in the business of selling cars have to pay for their license and there is no reason for these guys to be allowed to take unfair advantage of things.

#### HEARING ON HOUSE BILL 130

Presentation and Opening Statement by Sponsor: This is an act revising the odometer reading disclosure requirements; revising the length of time a dealer is required to preserve odometer records; and amending Section 61-3-206, MCA. The Federal Truth and Mileage Act in 1986 goes into effect in April, 1989. Montana statutes currently require only vehicles that are five years old or newer to have records kept by the dealers. There is no provision for retention in our state statutes. This bill brings Montana into compliance with the federal statutes.

List of Testifying Proponents and What Group They Represent:  
Bud Schoen, Motor Vehicles Division

Testimony: Mr. Schoen stated that the Fuel and Mileage Act of 1986 also increased the age of the vehicle. It also requires the states to change their titles to require both the buyer and the seller to sign the section on the titles and the names being printed as well as having the signatures. We have to have them sign the documents. Powers of attorneys will no longer be used to sign the odometer readings.

List of Testifying Opponents and What Group They Represent:  
None

Questions From Committee Members: There were a few questions from the committee which Mr. Schoen answered.

Closing by Sponsor: Rep. Stang stated that this was a pretty simple bill, that all it would do is to bring Montana in to compliance with the federal regulations.

HEARING ON HOUSE BILL 150

Presentation and Opening Statement by Sponsor: Rep. Johnson stated the bill amends 30-11-701, MCA, to require the repurchase of inventory from cancelled dealerships selling motorcycles, recreational vehicles, quadcycles, snowmobiles, off-highway vehicles, parts, boats, and engines. At the present time under that same code, farm implements, and parts, industrial and construction equipment and parts and automobiles and trucks and parts are subject to repurchase of the inventory by the manufacturer or wholesaler, if and when that dealership or franchise is withdrawn or cancelled. So, this bill adds the categories listed. It requires the manufacturer or wholesaler to repurchase the inventory from the dealership that loses his franchise or dealership. There is one amendment to this bill which all of you have a copy of that would provide for an immediate effective date and would add a new section on page 3 following line 20.

List of Testifying Proponents and What Group They Represent:

Marvin Holas, Glendive Sales Corp.  
John Zaback, M & R Cycles, Sidney  
Mike Sherwood, MTLA  
Harvey K. Markegard  
Mark Bretz  
Dave Bliss  
Bonnie Tippy  
Ed Leipheimer  
Ken Hoovestol, Montana Snowmobile Assoc.  
Bob's Cycle World, Havre

List of Testifying Opponents and What Group They Represent:  
None

Testimony: See the attached copies of testimony.

Questions From Committee Members: There were questions from the committee which Mr. Hoovestol, Mr. Zaback and Leipheimer answered.

Closing by Sponsor: Rep. Johnson stated that even though instigation for this bill came from Mr. Holas of the Glendive area, it is a statewide thing because we have people here from all over the state, who are in agreement that this legislation is needed to protect the small business person. I think a part of our charge as the Business and Economic Development committee is to see that we help and retain small businesses in our state, to further economic development.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 129

Motion: Rep. Hansen moved a DO PASS.

Discussion: Rep. Kilpatrick moved an amendment for the effective date to be July 1, 1989.

Amendments and Votes: The amendment was passed unanimously.

Recommendation and Vote: HB 129 as amended passed unanimously.

DISPOSITION OF HOUSE BILL 130

Motion: Rep. Thomas made a DO PASS motion.

Discussion: None

Amendments and Votes: Rep. Johnson moved DO PASS as amended.

Recommendation and Vote: HB 130 as amended passed unanimously.

DISPOSITION OF HOUSE BILL 150

Motion: Rep. Johnson moved a DO PASS as amended.

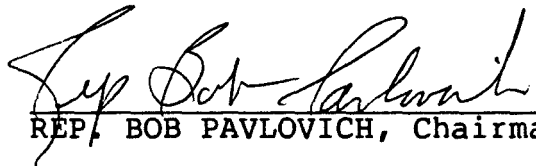
Discussion: None

Amendments and Votes: Passed unanimously.

Recommendation and Vote: HB 150 passed unanimously.

ADJOURNMENT

Adjournment At: 9:45 a.m.

  
REP. BOB PAVLOVICH, Chairman

BP/sp  
1603.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1 19 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

## BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 1/19/89

BILL NO. HB 129

NUMBER 1

[illegible]

TALLY

26

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: passed as amended

ROLL CALL VOTE

## BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 11/9/89 BILL NO. HP 150 NUMBER \_\_\_\_\_

[illegible]

TALLY

16

Sue Pennington  
Secretary

Bob Paylovich  
Chairman

MOTION: Rep. Johnson moved a DO PASS as amended  
passed as amended

## ROLL CALL VOTE

## BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

DATE 1/19/29

BILL NO. HB 130

NUMBER 2

NAME	AYE	NAY
Bob Pavlovich		
Gene DeMars		
Bob Bachini		
Rob Blotkamp		
Stella Hansen		
John Johnson		
Tom Kilpatrick		
Lloyd McCormick		
Don Steppler		
Bill Glaser		
Vernon Keller		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Fred Thomas		
Norm Wallin		

TALLY

16

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: Rep. Johnson moved DO PASS as  
amended.

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 129 (first reading copy -- white) do pass as amended .

Signed:   
Robert Pavlovich, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "BUSINESS"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 2.

Following: line 2

Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1989."

Amendments to House Bill No. 129  
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon  
January 19, 1989

1. Title, line 7.

Following: "BUSINESS"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 2.

Following: line 2

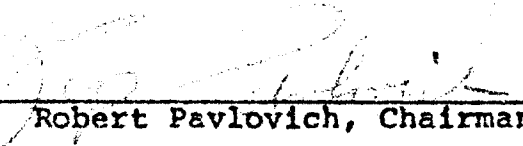
Insert: "NEW SECTION. Section 3. Effective date. [This act] is  
effective July 1, 1989."

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 130 (first reading copy -- white) do pass.

Signed: 

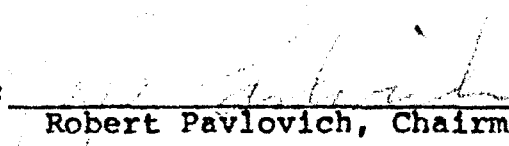
Robert Pavlovich, Chairman

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 150 (first reading copy -- white) do pass as amended .

Signed:   
Robert Pavlovich, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3.

Following: line 20

Insert: "NEW SECTION. SECTION 2. Effective date. This act is effective upon passage and approval."

HAB 15  
#1  
140/1915

MARVIN HOLAS  
GLEN DIVE SALES CORP D.B.A. HOLAS MID AMERICA SPORT CENTER  
GLEN DIVE, MONTANA

PROPONENT

OUR PROBLEMS AS A MOTORCYCLE, SNOWMOBILE AND ATV DEALER ARE VERY SIMILAR TO THE FRANCHISE PROBLEMS THAT AUTOMOBILE AND TRUCK DEALERS HAD WHEN THEIR FRANCHISE AGREEMENTS WERE TERMINATED OR CANCELLED BY A MANUFACTURER OR DISTRIBUTOR. FRANCHISE AGREEMENTS ARE DRAFTED FOR A MANUFACTURER OR DISTRIBUTOR BY THEIR LEGAL COUNSEL AND ARE ONE SIDED FOR THE MANUFACTURER OR DISTRIBUTOR. THE DEALER DOES NOT HAVE EQUAL BARGAINING POWER AND THEREFORE, NEEDS THE FRANCHISE PROTECTION OFFERED IN SECTION 30-11-701 M.C.A. WHICH STATES THAT IF A MANUFACTURER, DISTRIBUTOR, WHOLESALER CANCELS A DEALER, THEY WILL HAVE TO REPURCHASE THE DEALERS INVENTORY AND PARTS.

FOR EXAMPLE:

A. IN EASTERN MONTANA WE HAVE HAD DROUGHT CONDITIONS AND VERY LITTLE SNOWFALL, ← THE LAST 3 YEARS. THEREFORE, SNOWMOBILE SALES HAVE BEEN SLOW. IF A MANUFACTURER OR DISTRIBUTOR FEELS THE DEALER DOES NOT ORDER ENOUGH PRODUCT AND MEET QUOTAS, THEY CAN TERMINATE THE FRANCHISE. WITHOUT THE PROTECTION OF THIS SECTION, WE AS DEALERS WOULD BE STUCK WITH OUR REMAINING NEW INVENTORY AND PARTS. IF A DEALER IS STUCK WITH INVENTORY AFTER BEING CANCELLED BY A MANUFACTURER OR DISTRIBUTOR, IT WOULD BE VERY DIFFICULT TO SELL NEW PRODUCT FROM A POSITION OF NO LONGER BEING A FRANCHISED DEALER FOR THAT PRODUCT. THIS WOULD COMPOUND THE PROBLEM OF GETTING RID OF INVENTORY AND, IN ADDITION, INTEREST AND INSURANCE ON THIS PRODUCT WOULD CONTINUE TIL THE PRODUCTS WERE SOLD. THIS

HAB 150  
Exh. #1  
1/10/20

CAN BE VERY COSTLY. IF WE WERE AMENDED INTO THIS SECTION AND THE MANUFACTURER OR DISTRIBUTOR CHOSE TO CANCEL THE FRANCHISE, THEY WOULD HAVE TO REPURCHASE INVENTORY AND PARTS.

B. ANOTHER PROBLEM: A SALES REP FOR A MANUFACTURER OR DISTRIBUTOR CAN ALSO USE MONTANA'S LACK OF FRANCHISE PROTECTION TO THEIR ADVANTAGE TO FORCE A DEALER TO ORDER PRODUCTS BY THREATS OF TERMINATION OR CANCELLATION OF A DEALER FRANCHISE AGREEMENT. THE DEALER KNOWS IF THIS HAPPENS, THE DEALER WILL BE STUCK WITH INVENTORY AND PARTS. I FEEL A DEALER KNOWS BEST WHAT HIS MARKET WILL BEAR AND IF THE DEALER FEELS HE CAN SELL THE PRODUCT, HE WILL ORDER PRODUCT. HE IS IN BUSINESS TO MAKE A PROFIT.

NORTH DAKOTA HAS MOTORCYCLE, ATV, AND SNOWMOBILE REPURCHASE LAWS. IF THE FRANCHISE IS CANCELLED BY THE MANUFACTURER OR DISTRIBUTOR, THE PRODUCTS AND PARTS MUST BE REPURCHASED UNDER TITLE 51, CHAPTER 20, PART 01, NORTH DAKOTA CENTURY CODE.

I FEEL OUR PRODUCTS SHOULD BE AMENDED INTO SECTION 30-11-701 M.C.A., WHICH NOW INCLUDES FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AUTOMOBILES AND TRUCKS. WE ALSO NEED THE PROTECTION OF THIS MONTANA LAW.

#2  
HB 350

# M & R Cycles

RTE. 1 - BOX 174A - SIDNEY, MT 59270 - (406) 482-2398

DLI-#216970.

3-17-87

Yamaha Motor Corp.  
6555 Kattella Ave  
Cypress Ca. 90630

Dear Sirs

Since you have Found it Necessary to cancell us as a  
Yamaha. Motorcycle, Atv, & snowmobile dealer, I am Enclosing  
a List of parts we have in stock

Please Let Me Know at your Earliest convenience  
when & where I can send these parts. and How many  
dollars. I can Export.

Also please Advise what to do with special tools  
& Equipment.

Sincerely,

John A. Zolack

HB 150

Exh #2

1/10/88



# YAMAHA MOTOR CORPORATION, U.S.A.

6555 KATELLA AVENUE • CYPRESS, CALIFORNIA 90630

MAIL ADDRESS: P.O. BOX 6555, CYPRESS, CALIFORNIA 90630

PHONE: (714) 761-7300

March 27, 1987

John Zaback  
M & R Cycles  
Route 1, Box 174A  
Sidney, MT 59207

Dear Mr. Zaback:

Your letter of March 17, 1987, has been referred to my desk for review. Under the contract we have the option, but not the obligation to repurchase product and parts. We are choosing not to exercise this option, and do not intend to repurchase your parts or tools.

Don Baldwin, your ex District Manger, may be able to suggest dealers to you which may be interested in purchasing your parts. You should contact Mr. Baldwin on this, directly.

Sincerely,

RUSSELL D. JURA  
General Counsel

RDJ:sm

cc: Jim Musser  
Don Baldwin

123  
H8

BEFORE THE DEPARTMENT OF JUSTICE  
DIVISION OF MOTOR VEHICLES  
STATE OF MONTANA

---

YAMAHA MOTOR CORPORATION, U.S.A.,	)	
	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Docket No. 820
	)	
GREAT NORTHWEST RECREATION CENTER.	)	
	)	
Respondent.	)	

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MOTION TO COMPEL DISCOVERY AND  
SUPPORTING MEMORANDUM

COMES NOW Great Northwest Recreation Center ("Great Northwest") and moves for entry of an order compelling Yamaha Motor Corporation, U.S.A. ("Yamaha") to answer certain interrogatories and produce certain documents under Rule 37 of the Montana Rules of Civil Procedure. Yamaha should be compelled to fully answer Great Northwest's discovery requests for the following reasons:

STATEMENT OF FACTS

Yamaha filed answers to Great Northwest's First Interrogatories, First Request for Production of Documents and Second Request for Production of Documents on May 31, 1988. In its answers to Great Northwest's discovery requests, Yamaha objected in whole or in part to:

H1B 150  
Exh. #3  
1/29/89

(1) Great Northwest's Interrogatories No. 6, 13, 14 and 15;

(2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6; and

(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5.

The Hearing Officer has advised that copies of Yamaha's responses to Great Northwest's discovery requests have been filed with him. Accordingly, copies of Yamaha's answers have not been attached to this memorandum.

In some cases Yamaha objected to Great Northwest's discovery requests but then provided the answers or documents in question without waiving the right to assert those objections at the hearing (see, for example, Yamaha's objections to Great Northwest Interrogatory No. 6 and First Request for Production No. 1). In other instances, Yamaha objected to Great Northwest's discovery requests and indicated that copies of the documents in question would be made available for inspection at Yamaha's Cypress, California offices provided that no such inspection would constitute a waiver of Yamaha's objection to the discovery request (see, for example, Yamaha's objections to Great Northwest's First Request for Production No. 1 and 3). Yamaha has objected and refused to produce any documents or answers in response to Interrogatories No. 13 and 15 and Second

Request for Production No. 1, 2, 4 and 5).

ARGUMENT

• Great Northwest's discovery requests will result in the production of relevant and material evidence concerning Yamaha's real reasons for terminating Great Northwest's franchise. Great Northwest readily admits that it has suffered through some glum financial times as a result of the depressed Montana economy, the devastating national decrease in the sales of motorcycles and the poor snowmobile market in Montana over the past several winters. Great Northwest has been a faithful Yamaha dealer for over 16 years and Great Northwest will recover from these tough economic times if Yamaha is prevented from driving Great Northwest out of business.

Yamaha's termination notice, answers to discovery and the testimony of Don Baldwin at his June 6, 1988 deposition would have the Department believe that Yamaha's reasons for termination relate to alleged breaches of the franchise agreements between Yamaha and Great Northwest. These alleged breaches are not the real reason Yamaha wants to terminate Great Northwest's franchises. Yamaha stated in its objection to interrogatory No. 6 that it would refuse to provide information about similarly situated dealers because its decision to terminate Great Northwest's franchise agreements was based on Great Northwest's "activities from the date of

approval of Great Northwest's Chapter 11 plan only." Great Northwest's Chapter 11 plan was approved by the Montana Bankruptcy Court on June 8, 1987. Yamaha's decision to terminate Great Northwest's franchises was made before June of 1987 and for reasons unrelated to Great Northwest's alleged breaches of the franchise agreements. Yamaha's real reasons for terminating Great Northwest's franchises relate to its desire to drive Great Northwest out of business and establish a new dealer who, overloaded with ITT Yamaha credit, will sell more units but only survive for two or three years. Great Northwest's discovery requests to Yamaha are designed to produce information that will document this fact.

Don Baldwin is Yamaha's Senior District Manager for Montana and Northern Wyoming. At Mr. Baldwin's deposition on June 6, 1988, he was asked a series of questions concerning a January 24, 1987 telephone conversation between Mr. Baldwin and Harvey Markegard, owner of Great Northwest (copies of Mr. Baldwin's deposition will not be available until the hearing). That telephone conversation took place almost 6 months before Great Northwest's bankruptcy plan was approved. The telephone conversation was taped by Mr. Markegard and Mr. Baldwin's statements during that telephone conversation contradict his deposition testimony. (A copy of the complete tape will be introduced at the hearing and is available for

( review at the law offices of counsel for Great Northwest.) Mr. Baldwin denied during his deposition that it was Yamaha's intention to drive Great Northwest out of business. Mr. Baldwin further denied that he told Mr. Markegard that the sales department of Yamaha believes "new blood" is needed in the Billings Yamaha dealership. Mr. Baldwin said exactly the opposite on January 24, 1987:

BALDWIN: And Yamaha's direction, Harvey, I'll tell you, absolutely, it is to take you out of the business. Because that is what Rod Stout and the credit department and Jim Musser and everyone in that area, these are the guys that are pushing you out of business. They do not want you because you broke the trust. You know, they just, they don't trust you anymore, for whatever, I don't know what the reason is but when they have a dealer do that, they don't want anything to do with the dealership. So, that's what you're up against, very, very honestly, that is the feeling I get from, you know, the credit department.

HARVEY: Have you actually talked to this guy in Chicago?

BALDWIN: Well, yeah, but he, I have talked to him a couple of times, and really all I do is just say, well Helena is open and I heard that Great Falls might want to sell and he called Great Falls and Chris doesn't want to sell now, he's relocated, he's got the missile base and everything is looking very positive up there. Uh, I said, I asked him, you know, what you had said, and you just said you weren't interested, that is as much as I can say there.

HARVEY: Yeah.

BALDWIN: He said well it's not for sale. Evidentially you were very emphatic about it.

HARVEY: About that time I was, but Jesus, you know, that was before I really found out what Yamaha's attitude was.

BALDWIN: Yeah. Well, then you put yourself in my shoes, okay, as a DM. And a guy who is out here keeping his job strictly with sales and the sales volume, and I have a dealer in Billings, Montana that has ordered 1 snowmobile this year. And I don't know what you would order next year, but I'll bet you wouldn't order more than a dozen snowmobiles if you really got ripping next year. And, I know, that if I had a different dealer in Billings, Montana, a new dealer, the guy is going to step up and order 30-40 sleds.

HARVEY: Uh-hum.

BALDWIN: Okay, so I have to look at that and, of course, I'm the sales department as much as Don Morey is or anyone else and that's all of the mentality in the thinking in sales department is, we need new blood, we need a change in Billings, Montana. And, so its not just in credit, it is also sales that is pushing this.

[Verbatim transcript of January 24, 1987 telephone conversation between Donald Baldwin and Harvey Markegard.]

Mr. Baldwin also denied during his June 6, 1988 deposition that he told Mr. Markegard that Yamaha doesn't care whether its dealers make it financially because Yamaha will simply start a new guy in business who will purchase a bunch of new units but only survive for two or three years. Mr. Baldwin made the following statements to Mr. Markegard on January 24, 1987:

BALDWIN: So, I am trying to be very upfront and, you know, being very honest with you, I am very candid, I think, to a fault many times.

HARVEY: Do they realize what the economy is around here, especially,

BALDWIN: I don't think it makes any difference, Harvey. They realize that if another dealer comes in there that that dealer would stay alive another two or three years, they're going to move a lot of products

through him, and they're going to break him, they're going to put somebody else in. It happens, it just perpetuates itself, it's a beautiful system the Japanese live on. You know, uh, one guy doesn't make it, they'll find someone else who will go in and do it. And until he saturates his market or he burns out, and there's a great deal of burn out out there.

HARVEY: Um-huh.

BALDWIN: You know, where the dealers are just so discouraged, a lot of the burn out comes because they are so financially strapped that they can't do anything. If you started a new store and you came into business with \$50,000 operating capital and you had that left after you got a Yamaha dealership, and you had your doors open, boy you could do a lot of things, couldn't you?

HARVEY: Um-huh.

BALDWIN: Promote, advertise and just go great guns just like this little guy up here in Columbia Falls did. Uh, they just took on outboard motors and \_\_\_\_\_, so here again, I think that is their salvation because, like I've told them, I think that you're going to find some saturation in your market, you sold so damned many four wheelers last year that that market has got to fall for you a little bit. The only real salvation for their retail business is to diversify a little bit and find a broader customer base with a different product, which is exactly what you've done with your stereo.

HARVEY: Um-huh [Id.].

It is clear that Yamaha has embarked upon a course of action designed to drive Great Northwest out of business. Yamaha has appealed the Bankruptcy Court's approval of Great Northwest's reorganization plan to Judge Battin. Just a few days after the hearing officer in this matter ruled that the snowmobile and power generation franchise agreements were not subject to the Department of Justice's jurisdiction under Title

61, Chapter 4, MCA, Yamaha terminated those franchise agreements (see May 27, 1988 letter to Great Northwest from Yamaha attached as Exhibit 1). Now Yamaha has imposed a greater financial burden on Great Northwest by objecting to legitimate and timely discovery requests from Great Northwest.

Great Northwest's Interrogatories No. 13 and 15, First Request for Production No. 1, 2 and 3, and Second Request for Production No. 1, 2, 4 and 5 are of great relevance to the matters just discussed. These discovery requests seek information regarding the recruitment, retention, longevity, financing and termination of Yamaha dealers. It is clear from Mr. Baldwin's conversation with Harvey Markegard on January 24, 1987 that it is Yamaha's policy to "burn out" dealers through market saturation or over extension of credit and start up a new dealer every two or three years. Don Baldwin admitted during his deposition that every dealer in his district except Great Northwest finances with ITT Yamaha. Mr. Baldwin further indicated that the average floor plan financing for each of those dealers is between \$200,000.00 and \$250,000.00. He also testified that 16 of the 32 dealers in his district had been in business five years or less (Mr. Baldwin testified at the bankruptcy hearing on March 24, 1987 that there were 27 dealers in his district). Dealer history and the financing and termination of those dealerships are relevant issues in this

proceeding.

Yamaha has even objected to producing copies of "all policy statements, memoranda, meeting minutes, letters, or other written documents concerning Yamaha's analysis or discussions of the termination of the franchise agreements with Great Northwest" (see Great Northwest's Second Request for Production No. 1). Great Northwest is not asking Yamaha to produce privileged information, although the question of what documents are protected by the attorney-client privilege is a matter that should be decided by the Hearing Examiner and not Yamaha. It is inconceivable that the internal discussion of the termination of Great Northwest's franchises would be the subject of only two interoffice memoranda (see Exhibit 16 attached to Yamaha's answers to Great Northwest's discovery requests). Great Northwest respectfully requests that all documents be produced and that any claims of privilege be decided by the Hearing Examiner.


For all of the foregoing reasons Great Northwest respectfully requests that the Hearing Examiner enter an order requiring Yamaha to answer fully and completely:

- (1) Great Northwest's Interrogatories 6, 13, 14 and 15;
- (2) Great Northwest's First Request for Production of Documents No. 1, 2 and 6;

(3) Great Northwest's Second Request for Production of Documents No. 1, 2, 4 and 5; and

(4) That Yamaha be directed to pay the reasonable attorney fees and costs incurred by Great Northwest in filing this motion to compel discovery.

Respectfully submitted this 7th day of June, 1988.





G. Steven Brown  
1313 Eleventh Avenue  
Helena, MT 59601  
Attorney for Great Northwest  
Recreation Center

CERTIFICATE OF SERVICE

I, G. Steven Brown, Attorney for the Great Northwest Recreation Center, hereby certify that I did, on the 7th day of June, 1988, serve a copy by mail of the foregoing and attached Motion to Compel Discovery upon opposing counsel as follows:

Lawrence A. Murphy  
Attorney at Law  
520 St. John's Building  
25 South Ewing  
Helena, MT 59601

Hand Delivered  
6/7/88  
approx. 4:30 P.M.  




G. Steven Brown  
Attorney for Great Northwest  
Recreation Center

## VISITORS' REGISTER

Business & Economic Devlop COMMITTEEBILL NO. HB's 129 130 150 DATE 1/19/89SPONSOR Stang Stang Johnson

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MARVIN HOLAS	GIENNIE MT	<del>X</del>	
<del>Ed J. Johnson</del>	<del>Butte</del>	<del>X</del>	
John A. Zebach	Jidney	X	
HARVEY K. MARKGARD	ELLINGS	X	
MARK A. BAETZ <sup>Mark Baetz</sup>	MISSOULA	X	
Dennis Nuttall	Bozeman	X	
Ken Hoopestol	MT. Snowmobile Assn.	HB-150	
Bud Schwan	Reg. Bureau	✓	
Bob Robinson	Motor Veh. Div.	129-130 ✓	
Dave Bliss	Orinad	HB 150	
Mike Sherwood	MTLA	HB 150	
Keith Bapre	Mt. Nurca Assn'		
Donna Lopez	MTLA & PTA	HB 150	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.