

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 1, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Lynch announced that executive action would be taken on SB 8 today.

EXECUTIVE ACTION ON SB 8

Motion:

Senator Thayer moved that senate bill 8 be amended.

Discussion:

None

Amendments, Discussion, and Votes:

Senator Thayer moved that senate bill 8 do pass as amended.

Recommendation and Vote:

SB 8 passed unanimously with amendments.

HEARING ON SENATE BILL 148Presentation and Opening Statement by Sponsor:

Senator Svrcek, sponsor of the bill, stated that this bill provides for confidentiality of gasoline distributor records. This is in request from a petroleum marketing association. This bill would keep competitors from having access to records so that they might under cut with their pricing. There is an amendment on request of Norris Nickels.

Proponents' Testimony:

Ronna Alexander, representing the Montana petroleum marketers association, spoke in favor of the bill. They have approximately ninety three members in the association, probably sixty of those are licensed. Which means they collect and remit the motor fuel excise tax delivered to the state. This confidentiality bill concerns the information that is filed monthly on tax statements that specifies gallon amounts in certain locations, and destination of products. This bill would simply restrict the departments from releasing that kind of information to just anybody, which is the case right now.

Norris Nickels, administrator of motor fuels, spoke in favor of the bill. They are the only division in the department of revenue that does not have a confidentiality section or statute. By passing this law it will bring it line with the income tax provisions of confidentiality, but it does not go quite as far as the corporation confidentiality. Anybody should not be able to walk into your place of business and ask for your set of records for competitive purposes.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage asked if there are penalties in the confidentiality of the income tax law that should apply to this situation.

Norris Nickels replied that there would have to be some penalty.

Senator Lynch asked who are the people that need to see these files, are they competitors.

Norris Nickels replied that it is most competitors.

Senator Lynch asked what benefit does it do to a competitor to know that the other guy sells so much gas.

Norris Nickels replied that if you were to go through the list on their work papers and that will tell you who they sold to. If it was a good sale, then you can go out and compete for a better price.

Senator Lynch asked what was wrong with that.

Norris Nickels replied that he didn't think they should be the office to provide that time of information.

Senator Williams asked how many people have been wronged by not having this bill in the past seventeen years.

Norris Nickels stated about 20 or 30 people.

Senator Thayer asked why the department want to know who somebody sold to. Could the form be changed.

Norris Nickels replied that there is a regular form that these people fill out. It is the same information that you would put on your income tax, beginning inventory, sales, ending inventory, and the difference in the amount of gallons that are taxable. It is a detailed report every month. It also lists who you sold to, etc.

Senator Thayer asked if the form could be revised, or if it was absolutely necessary for there department.

Norris Nickels replied that it is absolutely necessary, because it verifies the amount of work and the proper amount of tax.

Senator Lynch stated to Ronna Alexander that it seems to him that she represents the group that the very same people are trying to use this information are some of her members.

Ronna Alexander stated that in every industry there are good guys and bad guys. They probably all belong to her group.

Closing by Sponsor:

Senator Svrcek closed by saying that the reason for the bill has been adequately explained.

HEARING ON SENATE BILL 163

Presentation and Opening Statement by Sponsor:

Senator Harp, sponsor of the bill, stated that this bill was heard two years ago named HB 150 introduced by representative Johnson. HB 150 all started with a Yamaha dealership in Sidney, Montana. In 1987 a gentleman wrote to the Yamaha corporation that states they found it necessary to cancel his dealership, and he requested that at their earliest convenience if he could be reimbursed for parts and inventory. The man from the local dealership in Sidney found out that in the existing law in 1987 there was no remedy for a dealer who had manufacture cancel. There was no ability to have his inventory repurchased. After looking back at the minutes of the committee business and industry in the house and the minutes from the senate, and listening to the testimony of the sponsor and the main proponent they state that their interest was solely that if the manufacturer makes the initiation to pull the dealership or franchise, that the manufacturer has the obligation to repurchase. Today we will debate the issue of recreational vehicles (RV's) and RV's alone. There should be legislation on

the books that if a manufacturer wants to make a move to pull a franchise that he has the obligation to repurchase.

Proponents' Testimony:

Jan Cole, working with amerimont financial, spoke in favor of the bill. They purchased a manufacturing plant outside of Bozeman in 1989. The reason they purchased the plant was because it employed about 300 people in their community. She was confident that it would employ about 200 people. She researched the mobile home industry and found that industry to be quite soft. She then pursued the RV industry because it was an industry that needed the same type of facility, it was basically the same type of manufacturing as the mobile home building. When she first started marketing, she realized that she would have to get a fairly sizeable company interested in plants. She sent a fax to carriage inc. in Indiana. The response to the fax was Montana would not be a good location for a RV manufacturing, in fact due to a law that was effective in Montana in 3/7/89 they wouldn't sell any units in Montana. They believed that Montana has made a statement that RV's are not welcome there.

Elmer Sieler, owner and president of S-S manufacturing, stated that they spend anywhere from one hundred to one hundred fifty thousand dollars a year going out to Seattle, and Salt Lake. They have spent a lot of time dealers showing them their product and selling the product to a dealer. A lot of time and money involved. After you get financed through a financial institution, the dealer takes the product to the RV lot, and he can't sell it. He has not had a dealer do this in the state. The dealer can call up and say that he doesn't like the campers up to three years later, and the seller has to give the dealer back the money he paid for it. It is very unfair.

Ed Shaffer, president and owner of cascade campers ltd, spoke in favor of the bill. He stated that Elmer Sieler had stated his position. Aside from the fairness stand point, they are a relatively small manufacturing in the RV business. Both Elmer Sieler and himself are the only RV manufacturing businesses in Montana. At this time of year, it is very slow for the business and if he had a particular Montana dealer hand back his inventory right now there would be sixty less Montanans working this come summer. It would simply put them belly up. He would defy any dealer to tell him that it is fair that he can come back and buy inventory that he has made a mistake in ordering. It is not fair.

Harley Gosney, an individual from Kalispell, Montana, stated that he was in favor of the bill, and that he agrees one hundred percent with Ed Shaffer.

Mona Jamison, representing the manufacturers association, spoke in favor of the bill (See Exhibit 1).

Opponents' Testimony:

Dianne Louttit, president of the Montana manufactured housing and RV association, spoke in opposition of the bill (See Exhibit 4).

Jacob Hart, representing Hart's RV in Butte, spoke opposition of the bill. He feels that the bill as it presently reads legitimizes the RV business in the state. The manufacturers now take a harder look at the people they set up with in the state of Montana. They won't set up on a dirt lot that would be here one day and gone the next. In the past five years there has been three prowler dealers in the city of Helena. Everyone of them went broke. They came in and set up on a dirt lot, cut prices so that nobody could make a fair profit in the state. Since this bill has passed it no longer sets up dealers in Helena or Bozeman, because they can't find anybody that is legitimate. The buy back agreement is one sided against the dealer, but the dealers do not have the economic power that the manufacturers do. They would be willing to look at the terms, they feel that 36 months is too long and are willing to negotiate.

Tim Opie, owner of herst RV in Helena, spoke in opposition of the bill. He stated that this isn't a back lot service, he is setting up a service department going with one particular line. When he went to get flooring he applied at three different places to get credit. He was turned down by all three companies do to the fact that he was too new to the business, and that they did not to give that small amount that he was applying for because they felt it was too expensive to come into an outlying area like Helena to come in and service. They would possibly look at him six month later if he needed more money. He went to the valley bank in Helena and they supplied him with enough flooring to get into the business, and also gave him a three year guarantee for his flooring. The people in Montana have got to protect the small businessman in Montana.

Stuart Doggett, representing the Montana manufactured housing and RV association, spoke in opposition of the bill. He stated that he has a letter from Mark Bretz who could not be at the hearing today (See Exhibit 5). Jake Hart referred to the fact that his association met with the representative of the RVI manufacturers this fall in regards to the overall scheduling date. At that time Stuarts association said that they were willing to book back the thirty six month provision. From that time on they have not communicated with them, there was nothing back as far as that agreement, the legislation started and now sitting before you is SB 163. He handed out some minutes from HB 150 from 1989 (See Exhibit 2).

Bonnie Tippy, representing the Montana manufactured housing and RV association, spoke in opposition of the bill. She attended the hearing in 1989 on HB 150. It was discussed at length the body of the statute that was being amended. There was a great deal of discussion in the committee last session about the thirty six month provision by the statute. She remembers very clearly some discussion about perhaps amending the body of the statute. It wasn't motorcycle dealers that were unhappy, it was the snowmobile dealers. You have been told that the way this

bill is drafted, the way it is really going to work in practice, is that if the manufacturer comes forward and says you are canceled. That isn't what happens in practice, in practice they force you to buy too much inventory, they will put someone up in business next door to you, in practice this bill totally guts your intent for 1989 RV dealers. That isn't fair.

Questions From Committee Members:

Senator Kennedy asked what is flooring.

Tim Opie stated that flooring is the line of credit received from a lending institution to finance the vehicles referred to.

Senator Williams asked if the manufacturers floor plan.

Ed Shaffer replied by saying that no they don't. A lot of the dealers buy COD. For those who do floor, they require the manufacturer to sign a repurchasing agreement saying that if the dealer should fail, and cannot pay for inventory, then they as the manufacturer must stand behind that agreement and buy back that inventory from the finance company that captures it.

Senator Thayer asked Mona Jamison how many dealers have canceled their contracts with the manufacturers.

Mona Jamison replied that she knows of one.

Senator Thayer asked about the provision that the dealer has the ability to cancel, was that already in the law to cover all of the other groups.

Bonnie Tippy replied yes, the only thing that the bill did in 1989 was to add those recreational vehicles.

Senator Thayer asked if we have had that much trouble with the law that we have these unscrupulous dealers canceling, has that really been that big of a problem.

Bonnie Tippy replied that it has not.

Senator Hager asked if Mr. Hart was currently shipping units into the state.

Jake Hart replied yes.

Senator Hager asked if Mr. Hart had to sign any special agreement to by pass this law.

Jake Hart replied no.

Senator Hager asked if Mr. Opie buys units from out of state.

Tim Opie replied yes.

Senator Gage asked how does this protect the retailers out there that it makes it so tough on that guy that it takes him out of business. There is the tenure law on the books for teachers, but there are a million ways of getting rid of a teacher in the state of Montana for example.

Mona Jamison stated that there is nothing wrong with people entering into contracts and agreements, and in many incidences the manufacturer would like to, but the dealer would prefer not to have the specifics of a contract. That doesn't mean all dealers, it is all a matter of fairness.

Senator Kennedy asked if this could be handled on a private sector on a business type chain.

Jake Hart replied that currently there are no provisions for the manufacturers to do that. They will not bind an agreement with a dealer.

Senator Kennedy asked one of the manufacturers if they make a deal with the people that if they buy their campers that they will take them back if they can't sell them.

Ed Shaffer replied that all that his agreements are handshakes and verbal.

Senator Williams asked that Mr. Opie briefly state what his problems with fleetwood were.

Tim Opie replied that the problems they had with that were corrected with the bill.

Senator Noble asked Diane Louttit how many people belong to her organization.

Bonnie Tippy replied that there are approximately thirty RV dealers that are members.

Senator Noble asked how many RV dealers out here that would qualify to their organization in the state.

Stuart Doggett replied that there are approximately sixty or seventy dealers.

Senator Noble asked if Mr. Shaffer sells most of his campers in Montana.

Ed Shaffer replied that about 10% of his market is in Montana.

Senator Noble asked how many other states Mr. Shaffer sells to.

Ed Shaffer replied that he sells to thirteen other states.

Closing by Sponsor:

Senator Harp closed by saying that originally this bill was brought up for two areas meaning motorcycles and snow cats. At the last minute they changed the definition of the bill, and included RV's. The main proponent and sponsor were only asking for one thing, and that was if the manufacturer made a move to terminate a franchise, then they would repurchase. They assumed by changing the definition, they did not assume that they were dealing with the dealers.

EXECUTIVE ACTION ON SB 188

Motion:

Senator Noble made the motion to do pass SB 188.

Discussion:

None.

Amendments, Discussion, and Votes:

SB 188 passed unanimously.

EXECUTIVE ACTION ON SB 176

Motion:

Senator Gage moved that SB 176 do not pass.

Discussion:

Senator Thayer asked Senator Gage why he thought that it should not pass.

Senator Gage replied that he felt there are too many regulations already.

Senator Lynch stated that he thinks that this is a consumer protection bill, and that somebody ought to know who is running it. If two tenths of an FTE saves one person from losing some savings and losing their investments it is worthwhile putting into law. He stated that he would speak against the bill.

Amendments, Discussion, and Votes:

The movement to do not pass SB 176 failed 3 to 6 votes.

Senator Kennedy motioned to amend the amended version of the bill.

The amended version has been amended unanimously.

Senator Williams stated that since it is Senator Brown's bill, and he hasn't had much input maybe they should wait until Monday to act on it.

Senator Lynch stated that they would wait for one more input and decide on Monday, February 4, 1991.

Recommendation and Vote:

None.

EXECUTIVE ACTION ON SB 163

Motion:

None.

Discussion:

Senator Thayer stated that this bill is unfair to both the manufacturer and the dealer. There is two things wrong with the current law. One being that three years is too long, both sides

February 1, 1991

Page 9 of 9

testified that they could live with one year. If they could put in some restrictive language so that a dealer just couldn't cancel for any reason.

Senator Lynch stated that they would have executive action on February 4, 1991 so the committee could decide what they wanted to do with this bill.

Amendments, Discussion, and Votes:

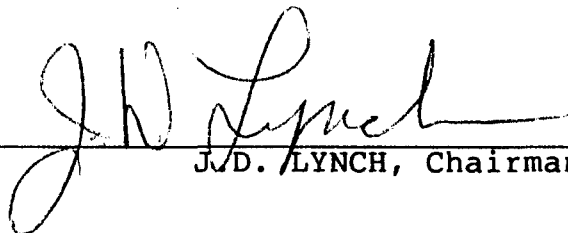
None

Recommendation and Vote:

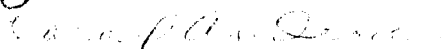
None

ADJOURNMENT

Adjournment At: 12:00 a.m.



J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/1/91 Bill No. SB176 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: TO AMEND THE AMENDED VERSION

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/1/91 Bill No. SB176 Time 10:00

NAME	YES	NO
Senator Bruski		✓
Senator Franklin		✓
Senator Gage	✓	
Senator Hager	✓	
Senator Noble	✓	
Senator Thayer		✓
Senator Williams		✓
Senator Kennedy		✓
Senator Lynch		✓

Dara Anderson

Secretary

JD Lynch

Chairman

Motion:

Do Not Pass -

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/1/91 Bill No. SB8 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: TO AMEND SB8

Amendments to Senate Bill No. 8
first Reading Copy

Requested by Senator Mazurek
For the Committee on Business and Industry

Prepared by Bart Campbell
January 31, 1991

1. Page 6, line 14.
Following: "(3)"
Strike: "Four"
Insert: "Three"

2. Page 6, line 15.
Following: "and"
Strike: "one member"
Insert: "two members"
Strike: "a representative"
Insert: "representatives"

3. Page 6, line 16.
Strike: "is"
Insert: "are"

4. Page 7, lines 12 and 13.
Following: "Three" on line 12
Strike: "real" through "appraiser" on line 13

5. Page 11, lines 20 through 25.
Following: "have" on line 20
Strike: "2 years'" through "claimed" on line 25
Insert: "experience in real estate appraisal as prescribed by the
board. The board shall adopt rules pertaining to real
estate appraisal experience that substantially comply with
and are not more stringent than those required for
compliance with Title XI of the Financial Institutions
Reform, Recovery, and Enforcement Act of 1989"

6. Page 16, line 22.
Strike: "refuse to renew,"
Insert: "may"
Following: "revoke,"
Strike: "or"
Following: "suspend"
Insert: ", or refuse to renew"

7. Page 23, line 12.
Following: "least"
Strike: "150"
Insert: "165"

Amendments to Senate Bill No. 148
First Reading Copy

Requested by Senator Svrcek
For the Committee on Business and Industry

Prepared by Bart Campbell
January 29, 1991

1. Page 2, line 5.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

2. Page 3, line 11.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

Amendments to Senate Bill No. 148
First Reading Copy

Requested by Senator Svrcek
For the Committee on Business and Industry

Prepared by Bart Campbell
January 29, 1991

1. Page 2, line 5.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

2. Page 3, line 11.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

em for sale, and sometimes
is. We go out and warn them
them to become licensed.
license, they just move to
have any authority to order
any action, we butt heads

: There were several
en from the committee

pointed out that this bill
ho is selling his own car.
se to Rep. Simon's statement
taxpayer in Lewis and Clark
necessarily a taxpayer he is a
the business of selling
license and there is no
allowed to take unfair

SE BILL 130

ent by Sponsor: This is an
reading disclosure
length of time a dealer is
ter records; and amending
s Federal Truth and Mileage
ct in April, 1989. Montana
only vehicles that are five
records kept by the dealers.
retention in our state
s Montana into compliance

nd What Group They Represent:
Division

at the Fuel and Mileage Act
age of the vehicle. It also
ge their titles to require
er to sign the section on
ing printed as well as
have to have them sign the
neys will no longer be used
gs.

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



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

MOTORCYCLE

INDUSTRY

COUNCIL, INC.

BILL NO. 58163

1255 Jefferson Davis Hwy., Suite 600, Arlington, VA 22202 • (703) 521-0444 • FAX (703) 521-1023

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 1/27/89
GOVERNMENT
RELATIONS OFFICE
BILL NO. HB 150

TALKING POINTS ON HB 150

The Motorcycle Industry Council (MIC) is a non-profit trade association representing nearly 100 manufacturers and distributors of motorcycles, motorcycle parts and accessories, as well as members of allied trades, the majority of whom do business in the State of Montana.

The MIC opposes passage of HB 150.

The bill does not promote, and in fact will be detrimental to, the public interest, as HB 150, if enacted, will inevitably result in higher prices which consumers must pay for motorcycles and other recreational vehicles, parts and accessories.

HB 150 will substantially raise the cost of doing business by a motor vehicle manufacturer or distributor, who becomes, under the bill, a financial guarantor for the motor vehicle dealer. For example:

This bill would require the manufacturer to repurchase vehicles at 100% of the purchase price and repair parts at 85% of the purchase price. Moreover, the manufacturer would have this obligation regardless of the reason for termination; whether termination was for good cause, or whether it was the dealer, or the manufacturer, who sought termination.

Consider this not unusual scenario. A dealer has been in business for many years. Through poor management, the dealer has, over the years, ordered too many parts and now has a parts

department in complete disarray, bloated with useless parts, fully depreciated. Now, the dealer desires to retire. Under this bill, that dealer can elect to terminate and force the manufacturer to repurchase all of his repair parts, regardless of fair market value, at 85% of the current price charged for such items.

This bill also will tend to eliminate the independent after-market suppliers of parts and accessories. Dealers will buy such products only from their franchisors, not from the independent suppliers, as the dealers can demand return at 85% of the purchase price from their franchisors, while the independent supplier would be under no such obligation.

It is apparent that HB 150 is an attempt by the dealers to shift the cost and risk of doing business in the free enterprise system to their manufacturers and distributors. This is grossly unfair, not only to the manufacturer or the distributor, but also to the consumer, who will pay for his anomalous situation with higher prices for the motor vehicle products.

There is no justification for HB 150. The dealers in Montana became dealers voluntarily. In becoming dealers, they did not pay any franchise fee to the manufacturer or distributor for the privilege of becoming a dealer. Accordingly, there is no reason why the motor vehicle dealer should be able to force its supplier (i.e., the motor vehicle dealer manufacturer or distributor), to guarantee the success of its business when all other businessmen assume that risk in the free enterprise system.

Ex. 6

1/27/89

The MIC respectfully urges you to consider this bill carefully, duly noting that it benefits merely a handful of dealers in Montana, while adversely effecting all of the state's consumers.

A2MTMDR.KVK

OWNER

OWNER: [illegible]
 SHC: [illegible]
 YC: [illegible] HB 130

Σ ΗΕΛΕΝΗ

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:

EX #7
1/27/89

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 P. PTS.

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.

Page II

poor copy

DATE _____

1/27/89

COMMITTEE ON

DATE 1/1
Business of last meeting

VISITORS' REGISTER

[illegible]

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.

RV CENTER**CENTER**

2045 Mullan Road • Missoula, Montana 59802 • (406) 721-4010

Feb 1, 1991

Senator J.D. Lynch
Senate Business Committee
Capitol Station
Helena, MT 59620

SENATE BUSINESS & INDUSTRY
EXHIBIT No 5
DATE 2/1/91
BILL No SB163

Dear Mr. Chairman & Members of the Committee;

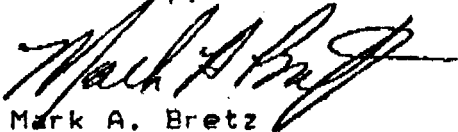
I am sorry I am unable to be at the hearing on SB 163. With this letter I wish to voice my opposition to this bill. The reason for this bill was that in the last session of the legislature Recreational Vehicles along with boats, motorcycles, and snowmobiles were amended into a law that existed for auto and agricultural dealers. The recreational vehicle manufacturers are the people that have supported SB163. I find it interesting that only one group of manufacturers has the great concern about the existing legislation that the RV manufacturers do.

I would admit that at first glance the existing situation seems unfair. But remember this, before the existing law took effect there was no protection for the dealer and it was common for great atrocities to exist. Many of these stories were told to the legislature last session. The manufacturers do not have stories of actual problems only stories of what "could happen".

The decision for the dealer to use the buyback provisions of the existing law are something that any legitimate dealer would only use as an extreme last resort type measure. The thought that a dealer would require a manufacturer to buy some models back but not other models is not going to happen. The dealer that uses this law will not be sought after by other manufacturers thus limiting his ability to obtain desirable product.

In conclusion I am asking for a do not pass recommendation on SB163.

Sincerely,



Mark A. Bretz

MONA JAMISON
ATTORNEY AT LAW

POWER BLOCK BUILDING, SUITE 4F
POST OFFICE BOX 1698
HELENA, MONTANA 59624

PHONE (406) 442-5581
FAX (406) 449-3668

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/1/91

BILL NO. SB 163

PLEASE SUPPORT SB 163

An act providing that a retailer who cancels his recreational vehicle dealership contract is not entitled to have his recreational vehicle repurchased by the manufacturer.

What is an RV

An RV is a vehicle designed for temporary living quarters for recreational camping, travel, or seasonal use. Motor homes, folding camping trailers, travel trailers, van conversions, truck campers, and park trailers are all RVs.

National Status of Repurchase of RV Inventory Laws

Thirty-two states have no repurchase of inventory requirements whatsoever. Eight states require repurchase of RV inventory only if the manufacturer terminates the contract. Only three states require repurchase if either the manufacturer or dealer terminates.

Background

The law currently requires a manufacturer of recreational vehicles to repurchase a retailer's RV inventory when either the manufacturer or the retailer cancels his dealership contract with the manufacturer.

SB 163 amends section 30-11-702 to require a manufacturer to repurchase a retailer's RV inventory only when the manufacturer cancels the dealership contract. SB 163 eliminates the requirement for a manufacturer to repurchase RV inventory if the retailer cancels the dealership.

Adverse Impact of Section 30-11-702, as it Relates to RVs

1. The law encourages poor business judgment and decision making by RV dealers when they know the manufacturer must repurchase their inventory for any reason whatsoever.
2. The repurchase law has been mentioned as a reason by one RV manufacturer for not being interested in purchasing the Gallatin Park Industrial Park (a non-operational mobile home manufacturing plant) as a site for

manufacture RVs.

3. Montana's RV repurchase law is the reason why some RV manufacturers will not do business in Montana and have stopped shipment of RVs to Montana.
4. Montana's RV repurchase law has made the statement that the sale of RVs is not welcome in Montana. The law has created an unfriendly business environment for RV manufacturers.
5. Section 30-11-702 does not recognize the vast differences between RV manufacturer and dealer relationships and that of other vehicle manufacturers and dealers (such as cars and motorcycles);
6. Section 30-11-702 has created a severe adverse economic impact on RV manufacturers by requiring them to give their dealers "golden parachutes" to shield them from economic risks inherent in all retail businesses.

The RV Manufacturer/Dealer Relationship

Since there are over 300 manufacturers of RVs competing for dealers to retail their RVs, many RV manufacturers are unable to acquire dealers for their products. As a result, unlike other vehicle dealers, RV dealers:

1. "shop around" among the many RV manufacturers for the most favorable terms;
2. are not required to make a significant capital investment to carry an RV manufacturer's product line;
3. are not tied to one specific RV manufacturer;
4. usually carry the product line of more than one competing RV manufacturer and display the different product lines side by side;
5. have simpler and less cumbersome agreements with their manufacturers than other vehicle manufacturers; and
6. are constantly searching for the "ideal" combination of products and manufacturer terms which will provide optimum sales and profits.

Please support SB 163.

Thank you.

RECEIVED APR 12 1989

Bigfoot Industries Ltd.

April 5, 1989

RECREATION VEHICLE
INDUSTRY ASSOCIATION
P.O. BOX 2999
RESTON, VIRGINIA
22090

Attention: DIANNE FARRELL
Vice President Government Affairs

Dear Dianne:

Thank you for your letter on the new Montana law which requires recreation vehicle manufacturers to repurchase vehicles up to 36 months old when a Dealer cancels manufacturer.

Due to this letter, we have stopped all shipments of trailers and fifth wheels to this state.

I thank you again for your letter, and if you require any information, please do not hesitate to contact me.

Yours very truly,

BIGFOOT INDUSTRIES LTD.

Stan McDivitt

for STAN McDIVITT
Marketing Manager

SM/lw



RECEIVED JUL 17 1989

DF
SM

cc: DJH

P.O. BOX 246 / MILLERSBURG, INDIANA 46543 / PHONE (219) 642-3622

July 13, 1989

Ms. Dianne Farrell
Vice President Government Affairs
Recreational Vehicle Industry Association
P.O. Box 2999
Reston, Virginia 22090

Dear Ms. Farrell:

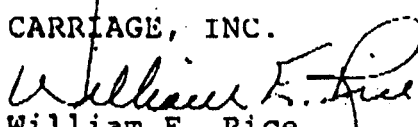
On March 20, 1989 you issued a memo to RVIA members about a new restrictive Montana law. Although we were not presently doing business in Montana, we were actively seeking dealers in that state until we received your memo. As a result of your memo, we will not do business in Montana as long as this law is on the books.

Yesterday, I received a FAX communication from Montana National Finance offering production facilities in Bozeman. I wonder if other RV manufacturers received the same communication. I responded to her and I have enclosed a copy of all that correspondence. Maybe if enough financial institutions in Montana are made aware of this law, it can be repealed. I worry for any RV manufacturer selling in that state who did not heed your alert.

Thanks for keeping us informed.

Sincerely,

CARRIAGE, INC.


William E. Rice
Controller

WER/br

Enclosures



P.O. BOX 246 / MILLERSBURG, INDIANA 46543 / PHONE (219) 642-3622

July 12, 1989

Ms. Jan Cole
Montana National Finance
309 W. Mondenhall
Bozeman, Montana 59715

Dear Ms. Cole:

Contrary to information enclosed in your unsolicited FAX message today, Carriage, Inc. does not think Montana would be a good location for an RV manufacturing facility. In fact, due to an unfair Montana law which was effective March 7, 1989, we will not sell any units in Montana. We believe Montana has made a statement that RV's are not welcome there.

Sincerely,

CARRIAGE, INC.

William E. Rice
Controller

WER/br

Enclosures

FAX TRANSMISSION



COACH CORPORATION

325 EAST FIRST ST. / P.O. BOX 89 / JUNCTION CITY, OREGON 97448
(503) 998-1068

Post-It™ brand fax transmittal memo 7671

of pages > /

To	Mona Johnson	From	Dianna Farrell
Co.	Montana Lobbyist	Co.	RVIA
Dept.		Phone #	(703) 620-6003
Fax #	(406) 449-3668	Fax #	(703) 620-5071

January 28, 1991

Senator J.D. Lynch, Chairman and Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, MT 59620

Dear Senator Lynch and Committee Members:

I am writing in protest to Montana's law requiring RV manufacturers to repurchase RV's up to 36 months old upon cancellation of a manufacturer/dealer agreement by either party.

There are several things to consider when a manufacturer looks at signing a dealer in a particular state. One is the states repurchase laws. Most states that have repurchase laws require a manufacturer to repurchase vehicles up to 12 months old if the manufacturer initiates a cancellation of the manufacturer/dealer agreement. This "rule of thumb" has been accepted by the RV industry including the companies financing the stock on dealers lots.

States with a law that requires a manufacturer to repurchase vehicles older than 12 months, regardless of whom initiates the cancellation, would make manufacturers and financial companies shy away from signing dealers in those states. Thus the state would face a loss in revenue as manufacturers would sign dealers in neighboring states to cover that particular geographical area perhaps causing dealers to go out of business and certainly causing consumers to go out of state for a fair brand selection.

I feel that the state of Montana, the dealers in Montana, the manufacturers selling to Montana and Montana consumers would all benefit from a change in this law.

Sincerely,

K. L. Toolson
President



TETON HOMES

'Setting the Industry Standard Since 1967'

January 29, 1991

Senator J.D. Lynch, Chairman and Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, MT 59620

Dear Senator Lynch and Committee Members,

I am writing to inform you of our concern about the law requiring manufacturers to repurchase RV's from their dealers whenever either party cancels a dealer/manufacturer's agreement.

The business climate is already tough enough without having to deal with laws such as this one which make it extremely hard to do business in your state. We have already parted ways with one dealership for reasons similar to the law that has been passed.

This law will force manufacturers such as ourselves to bypass your state entirely and do business on the outskirts rather than trying to set up dealers within Montana's borders and serve both the dealer and the people of Montana who want to purchase RV's.

The scenarios this could create are downright scary. A dealer not having luck selling your product, or just upset with you could force you to buy back RV's up to three years old. That's absurd.

We have no problem if the manufacturer initiates the termination, but this law should not be in effect if the termination is initiated by the dealer. We stand in total agreement with the Recreation Vehicle Industry Association in this matter and hope you will give these concerns due consideration.

If you have further questions, please don't hesitate to contact me. Thank you for your time.

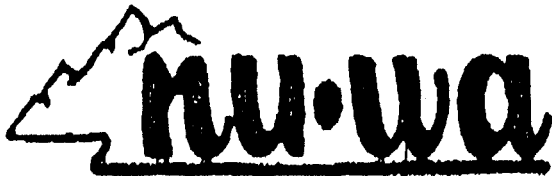
Sincerely,

Joe Ganahl

Joe Ganahl
Marketing Manager
Teton Homes

JAN 25 '91 11:56

P.02

**INDUSTRIES, INC.**P.O. BOX 808 • CHANUTE, KANSAS 66720
PHONE 316-431-2088

January 25, 1991

Senator J.D. Lynch, Chairman
and Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, Montana 59620

Subject: 3-7-89 Montana Law relative to Repurchase of Recreational
Vehicles from RV Dealers following termination.

Sir:

As a leading manufacturer of 5th Wheel Recreational Vehicle Trailers (RV's), I wish to share my individual viewpoint concerning the subject law. First, I must make the statement that this law is not in the best interests of Montana RV Dealers. This law is so unreasonably severe upon RV manufacturers, that many of us have decided not to establish further Montana dealers for our products. My company made this decision as soon as the law took effect.

There is no reasonable justification for an RV manufacturer to be forced to repurchase new vehicles for over one year from date of purchase for any reason. Montana's present law requires a manufacturer to repurchase vehicles up to three years old following termination notice by either party for any or no reason. This requirement alone puts unreasonable contingent liability upon the manufacturer. It does so to the extent that the risk is not worth the possible gain of selling product in the state of Montana. If Nu Wa as a well capitalized company comes to this conclusion, then obviously poorly capitalized RV manufacturers will withhold their products from Montana. The cost to the manufacturer for repurchasing and reselling several highly depreciated one to three year old RV's is very expensive, and yet the law allows the RV dealer to activate such a repurchase requirement for any or no reason.

With this in mind the wise RV manufacturer will withhold his product from the state of Montana. This is in fact what is happening as manufacturers become more knowledgeable about this law. This means that Montana RV dealers are deprived of some of the most popular RV name brands. The customer who is brand name loyal is not deprived, however and he simply buys his desired trailer in Spokane, Washington, Casper, Wyoming, or Mesa, Arizona during his winter stay in the sun. Although the customer has some inconvenience, he obtains the trailer he wants. The RV customer's lifestyle and brand loyalty cause the RV manufacturer to not lose much business. Then who does lose?

The very one being supposedly protected loses: the RV dealer. He loses business to competitive dealers in other states. The state of Montana loses the revenue taxes, which would have been generated by Montana business. This issue is greater than is first suspected and is one of the reasons the present Montana is unrealistic. It forces the RV manufacturer out of Montana, because the risk is not worth the possible gain.

Consider these three detrimental effects of Montana's Present Law.

1. It limits brand choices to consumers in Montana.
2. It reduces revenues to Montana businesses as customers will be forced to purchase some RV's outside the state.
3. It will cause failures of struggling Montana RV dealers for lack of support by major RV manufacturers. No manufacturer will risk doing business with a dealer who is the least marginal financially.

Please accept my statements as genuine and sincere. The present law is not acceptable, because unfair burden is placed upon the RV manufacturer. Montana needs to enact legislation more similar to other states, which have recently realized that our industry is greatly different than the automotive or motorcycle industry. Hopefully your committee can recognize and correct deficiencies in the present law.

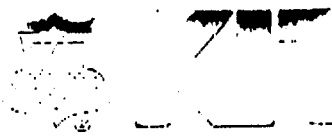
Thank you for listening.

Michael S Mitchell

Michael S. Mitchell
President
Nu Wa Industries, Inc.

MSM:mkm

cc: Dianne Farrell - RVIA



MANUFACTURING COMPANY

EXECUTIVE OFFICES

530 East Wardlow Road, P.O. Box 848, Long Beach, California 90801-0848

January 28, 1991

Telephone (213) 595-7451
FAX (213) 426-8483

Honorable Senator J.D. Lynch,
Chairman and Committee Members
Senate Business & Industry Committee
State of Montana
Capitol Station
Helena, Montana 59620

Dear Senator Lynch and Committee Members:

Montana Law 30-11-702
Recreational Vehicle Act Requiring
Repurchase of Inventory of Cancelled Dealerships

The subject Montana law will be very detrimental to the entire recreational vehicle industry. Especially, the section that states, ". . . If a dealer terminates or does not renew his agreement with the manufacturer, the manufacturer must buy back the dealer's inventory. . ." This is a bad law for the following reasons:

1. Dealers require the assistance of lending institutions to help finance the merchandise they buy. The financial institution buys the product from the manufacturer and the dealer must make payment, on a prearranged basis, to his lender until the RV is paid off or sold at retail. The financial institution makes an agreement for repurchase of the dealer's merchandise with the manufacturer in the event a dealer fails. In short, banks will not deal with small, undercapitalized dealers and/or manufacturers because of the risk of buy-backs. Therefore, this law creates a situation where only the largest dealers and manufacturers can survive. The result of this law is restriction of fair trade.
2. Dealers generally carry several competitive products for retail sale. They are free to take on new product lines and drop old lines, and frequently do, sometimes arbitrarily. It is especially unfair to ask the manufacturer to buy back units up to three years old, as it seriously burdens the manufacturer and, in the case of a small company, could cause them to go out of business.
3. A manufacturer buy-back law in which a dealer cancels, may stop many manufacturers from even selling to dealers in Montana. There are no RV manufacturers in the State of Montana. If manufacturers from out of state stop selling product to retail dealers in Montana, they will be forced out of business.

Your cooperation and consideration for repealing this legislation is in order and will be very much appreciated. Thank you.

Sincerely,

KIT MANUFACTURING COMPANY

Matthew S. Pullzzi
Vice President

"America's Value Leader Since 1945"



January 31, 1991

Senator J.D. Lynch
Chairman and Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, MT 59620

Dear Senator J.D. Lynch and Committee Members,

We are very much opposed to the Montana Law that requires manufacturers to re-purchase recreational vehicles up to 36 months old, even if the dealer resigns for his own reasons.

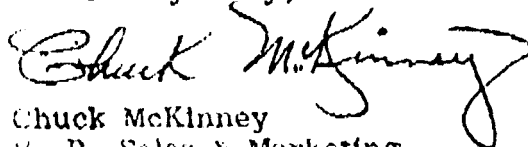
A more equitable law would require a manufacturer to re-purchase only if the manufacturer terminated the dealer without just cause. Also, the units should be limited to 2 years old.

If a dealer should decide to resign his dealership, no re-purchase should be required.

The present situation creates a very unfair business situation, and will limit the number of dealerships assigned in Montana. In addition, an uncomfortable and uneasy relationship will exist between manufacturer and dealers.

Please re-consider this legislation, and modify it to be more equitable.

Yours very truly,


Chuck McKinney
V. P. Sales & Marketing

CM/pc



CORPORATE OFFICE
401 E. Market St.
Morgantown, IN 46550
219/773-2411 - Fax 219/773-4790

Unit 2/Travel Trailer
401 E. Delaware St.
Morgantown, IN 46550
219/773-2411 - Fax 219/773-4352

Unit 1/Park Model
700 Tower Street
Ellettsville, IN 46524
219/846-2511 - Fax 219/858-9681

Unit 4/Class A
29449 US 33, P.O. Box 1607
Ellettsville, IN 46515
219/295-2422 - Fax 219/293-0597

Unit 5/1st Generation
29391 US 33
Ellettsville, IN 46515
219/295-2422

Unit 6/Cleveland Industries
16833 Kramers Ave.
Klamath Falls, CA 97601
706/860-1871 - Fax 714/780-4601

Unit 7/Class C
29391 US 33, P.O. Box 1607
Ellettsville, IN 46515
219/295-2422 - Fax 219/293-0597

Unit 8/Parts and Service
29449 US 33, P.O. Box 1607
Ellettsville, IN 46515
219/295-6566 - 1-800/312-2890

Unit 10/Cleveland Motorized
58190 CR 3 South
Ellettsville, IN 46517
219/222-0565 - Fax 219/293-4445

Unit 11/Phone Sales
2400 East Market
Morgantown, IN 46550
219/773-2471 - Fax 219/773-3870
Parts and Service 1-800/421-4557

Unit 14/Manufacturing Services
29391 US 33 West
Ellettsville, IN 46515
219/295-2422 - Fax 219/293-4590

Unit 6/Real Life
67 Cassopolis Road
Cassopolis, MI 49031
616/677-5151 - Fax 616/699-7679

REGIONAL SALES OFFICES
Region 1/Mallard RV Division
Chaworth Rd., Sweet Ave.
Americus, GA 31709
912/928-4116 - Fax 912/928-4119

Region 2/Mallard RV Division
800 Murry Hill Drive
Lancaster, PA 17601
717/466-7774 - Fax 717/560-2312

Region 3/Mallard RV Division
977 South Main, Suite 209
Caldwellsburg, TX 76801
817/498-8397 - Fax 817/488-4948

Region 4/Mallard RV Division
44 South South St., Suite 100
West Bend, WI 53090
414/533-2200 - Fax 414/533-4100

January 29, 1991

Senator J. D. Lynch
Chairman and Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, MT 59620

Dear Senator Lynch and Committee Members:

As the fourth largest manufacturer of recreational vehicles in the nation, Mallard Coach Company, Inc., was greatly concerned with the passage in 1989 of the new Montana law which requires recreational vehicle manufacturers to repurchase vehicles up to 36 months old when a dealer cancels a manufacturer. At the time, we had a small base of dealers in the state and were actively seeking new dealers for our product.

With the passage of the very restrictive law and the hostile business climate it establishes for recreational vehicle manufacturers, we ceased seeking new dealers in the state and have substantially reduced the volume we shipped to our existing dealers. We will continue in this mode until there is some relief from the existing law.

We strongly support the Recreation Vehicle Industry Association's efforts to amend the current restrictive law to say that if the dealer initiates the termination no buy back is required. This change would benefit the state of Montana and the recreational vehicle dealers in the state.

Yours truly,

J. Patrick Kerich
Chief Executive Officer

JPK/tk

Enclosure

**WESTERN RECREATIONAL VEHICLES, INC.**

3401 West Washington Avenue
P.O. Box 9547 Yakima Washington 98909-0547 (509) 457-4133

January 30, 1991

Senator J. D. Lynch, Chairman and Committee members
Senate Business and Industry Committee
Capitol Station
Helena, Montana 59620

Dear Senator Lynch and Committee members:

I am pleased to hear that your committee is reviewing the RV buy-back law which became effective in Montana in March of 1989. My RV manufacturing friends have asked me what I was going to do since I have sold into your state for many years. My response - I've stopped seeking additional dealers.

As a small RV manufacturer I am realist enough to know that a dealer does not have to have my products. When push-comes-to-shove, be it the dealer's own caused problems or those caused by external factors, and the dealer needs money right away, he now has an immediate source of funds - me. The law requires my company to take an extremely large and unreal risk. The law actually requires me to "guarantee" the financial success of the dealer without having any say in the operation of the dealership.

Therefore, we will serve Montana with only "grandfathered" dealers. We have pulled out all new dealer sales efforts in Montana - at least until the current law is changed.

I am not against a repurchase if my company is the one cancelling the dealer. This is only fair. This must be a mutual business arrangement. The law makes it completely one-sided.

Sincerely,

W. S. Doyle, Jr.
President



Fleetwood Enterprises, Inc.
3125 Myers Street, R.O. Box 7638
Riverside, California 92523
(714) 351-3500 FAX: (714) 351-3776

January 31, 1991

Senator J. D. Lynch
Chairman and
Committee Members
Senate Business and Industry Committee
Capitol Station
Helena, MT 59620

FLEETWOOD

In re: Repurchase of Inventories from Canceled Dealerships;
Section 30-11-702 Montana Code Annotated

Dear Senator Lynch and Committee Members:

The purpose of this letter is to urge your support of a proposed amendment to the above law to limit the law to manufacturer-initiated dealer terminations. For your information, Fleetwood Enterprises, Inc. is the largest producer of both motor homes and travel trailers in the United States and has had a long and mutually beneficial relationship with a number of Montana RV dealers. We believe our RVs provide a good value to our dealers and their customers and we hope that our business relationships with Montana dealers will continue for a long period of time.

We are not opposed to the concept of repurchasing units from canceled dealers. In general, it does not make good business sense to have the same products offered, even for a reasonably short period of time, by competing dealers in the same community. When our plants terminate a dealer, they make every effort to find a new home in the nearby area for new merchandise which remains in reasonably good condition.

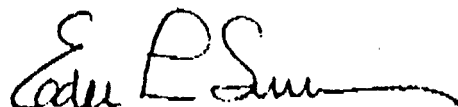
The current Montana law on the subject, however, is substantially unfair to manufacturers. It gives a dealer who wants to terminate the business relationship for any reason a substantial club over the manufacturer by permitting that dealer to force the manufacturer to repurchase products he has had for sale for as long as 36 months. Units that old, where models have probably changed twice, will be difficult and costly for the manufacturer to resell. This creates an extremely hostile business climate for continued Montana RV business relationships and is fundamentally unfair to us as an RV manufacturer. We should not be forced to buy back old merchandise at a substantial business cost, at the whim of a dealer who decides to get out of the business or concludes that he does not like a particular product line.

Page 2.

Senator J. D. Lynch
and Committee Members

We know that you and the Committee will give this matter serious attention. We urge that you agree to this amendment so that we can receive the fair treatment that we believe necessary as a fair business organization.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Elden L. Smith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elden L. Smith
Senior Vice President - RV Group

/vjs

Model
RVD A
MODEL RV DEALER LEGISLATION

Handwritten changes are
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. *3*

DATE *2/1/91*

BILL NO. *SB163*

SECTION 1. SHORT TITLE

This chapter may be cited as the "Fair RV Dealership Law."

SECTION 2. DEFINITIONS

(A) "Community of Interest" means a continuing financial interest between the Grantor and the grantee in either the operation of the dealership business for the marketing of such goods or services.

(B) "RV Dealer" means a person who is a grantee of an RV Dealership situated in this state.

(C) "RV Dealership" means a contract or agreement, either expressed or implied whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute RV's or RV services, or use a trade name, trademark, service mark, logo type, advertising or other commercial symbol in which there is a community of interest in the business of offering, selling or distributing RV's or RV services at wholesale, retail, by lease, agreement or otherwise.

(D) For purposes of determining whether there is "Good Cause" for a proposed action, the trier of fact shall consider

- a. The volume of the affected dealer's business in the relevant market area;
- b. The nature and extent of the dealer's investment in its business;
- c. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
- d. The effect of the proposed action on the community;
- e. The extent and quality of the dealer's service under RV warranties; and
- f. The dealer's performance under the terms of its RV dealer agreement.

(E) "Grantor" means a person who grants an RV dealership.

(F) "Person" means a natural person, partnership, joint venture, corporation or other entity.

(G) "RV" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or towed by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, motor home, and park trailer.

SECTION 3. PURPOSES; RULES OF CONSTRUCTION; VARIATION BY CONTRACT

(A) This chapter shall be liberally construed and applied to promote its underlying remedial purposes and policies.

(B) The underlying purposes and policies of this chapter are:

- (1) To promote the compelling interest of the public in fair business relations between RV dealers and Grantors, and in the continuation of RV dealerships on a fair basis;
- (2) To protect RV dealers against unfair treatment by Grantors, who inherently have superior economic power and superior bargaining power in the negotiations of RV dealerships;
- (3) To provide RV dealers with rights and remedies in addition to those existing by contract or common law;
- (4) To govern all RV dealerships, including any renewals or amendments, to the full extent consistent with the constitutions of this state and the United States.

(C) The effect of this chapter may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

SECTION 4. DESIGNATED TERRITORIES

The Grantor shall designate in writing the area of sales responsibility assigned to an RV Dealer and shall not change such area nor establish another RV Dealer in the same area unless the Grantor can show Good Cause for the addition of the new RV Dealer including reasonable evidence that the market will support the establishment of a new dealership.

SECTION 5. SALES OF RV's

Sales of RV's by Grantors or distributors shall be in accordance with published prices, charges and terms of sale in effect at any given time.

SECTION 6. CANCELLATION AND ALTERATION OF DEALERSHIPS

No Grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances (including the area of

responsibility) of an RV dealership agreement without good cause. The burden of proving good cause is on the Grantor.

SECTION 7. NOTICE OF TERMINATION OR CHANGE OF DEALERSHIP

Except as provided ³⁰ in this section, a Grantor shall provide an RV dealer at least ~~120~~ days prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the RV dealer has 90 days in which to rectify any claimed deficiency. If the deficiency is rectified within 90 days, the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy.

SECTION 8. REPURCHASE OF INVENTORIES AND OTHER ITEMS

If an RV dealership is terminated, cancelled or not renewed by the Grantor, the Grantor, at the option of the RV Dealer, shall repurchase (a) all inventories of RV's, parts and accessories sold by the Grantor to the RV Dealer for resale and (b) any special tools or signs sold under the RV dealership agreement, both at the original invoice price plus freight, destination, delivery and distribution charges and sales taxes incurred by the RV Dealer within 15 days of receipt of the returned items. This section applies only to merchandise with a name, trademark, label or other mark on it which identifies the Grantor.

SECTION 9. COERCION OF DEALERS

It is unlawful for any Grantor, directly or through any officer, agent or employee -

(A) To coerce, or attempt to coerce, any dealer to accept delivery of any parts or accessories or any other commodities, which have not been ordered by such dealer;

(B) To coerce, or attempt to coerce, any dealer to enter into an agreement with such Grantor or do any other act unfair to such dealer, by threatening to cancel any RV Dealership agreement existing between such Grantor and such dealer.

SECTION 10. TRANSFER OF DEALERSHIP

It is unlawful for any Grantor to prevent or refuse to approve the sale or transfer of the ownership of an RV dealership (by the sale of the business assets, stock transfer, or otherwise), or a change in executive management or principal operator of the dealership if the new owner, principal operator or management is

creditworthy, has not been convicted of a felony, is properly licensed; the sale or transfer will not result in a relocation of the business; and the sale or transfer is otherwise reasonable under the circumstances. The burden of proving that any sale or transfer is not reasonable is on the Grantor.

20 ~~No sale or transfer of the RV dealership shall be made without at least 90 days prior written notice to the Grantor as to the identity, financial ability and qualifications of the proposed transferee.~~

* SECTION 11. SUCCESSION UPON DEATH

It is unlawful for any Grantor to fail to provide an RV Dealer an opportunity at the time of signing an RV dealership agreement, or at reasonable times thereafter, to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of the deceased or incapacitated dealer unless the Grantor has provided to the member of the family so designated written notice of its objections. Grounds for objection shall be lack of credit worthiness, conviction of a felony, lack of required licenses or other conditions which make such succession unreasonable under the circumstances, but the Grantor shall bear the burden of proving the unreasonableness of such succession. However, no member of the family may succeed to an RV Dealership unless the succession to the RV Dealership will not involve, without the Grantor's consent, a relocation of the business.

SECTION 12. WARRANTY OBLIGATIONS

(A) Each Grantor shall specify in writing to each of its RV dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products; shall compensate the dealer for warranty service required of the dealer by the manufacturer; and shall provide the dealer the schedule of compensation to be paid such dealers for parts, work and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by the dealer, and the prevailing labor rate being charged by the dealer, in the community in which the dealer is doing business, and in no event shall such compensation of a dealer for warranty service be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs as long as

such rates are reasonable. Warranty audits of dealer records may be conducted by the Grantor on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within thirty days of dealer submission or rejected in writing for stated reasons.

(B) It is a violation of this chapter for any Grantor to:

- (1) Fail to perform any of its warranty obligations ~~including repairs~~ with respect to an RV; ~~& its parts~~
- (2) Fail to assume all responsibility for any liability resulting from structural or production defects;
- (3) Fail to include in written notices of factory recalls to vehicle owners and dealers and the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects;
- (4) Fail to compensate any of the RV Dealers licensed in this state for repairs effected by such dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor or distributor branch;
- (5) Fail to compensate its RV Dealers licensed in this state for warranty parts, work and service in accordance with the schedule of compensation provided the dealer pursuant to subdivision A of this section, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the Grantor is legally responsible or which the Grantor imposes upon the dealer;
- (6) Misrepresent in any way to purchasers of RV's that warranties with respect to the manufacture, performance or design of the vehicle are made by the dealer, either as warrantor or co-warrantor; or
- (7) Require the dealer to make warranties to customers in any manner related to the manufacture of the RV.

(C) Notwithstanding the terms of any agreement, it shall be a violation of this chapter for any Grantor to fail to indemnify and hold harmless its RV Dealers against any losses or damages arising out of complaints, claims or suits relating to the manufacture, assembly, or design of RV's, parts or accessories, or

other functions by the Grantor beyond the control of the dealer, including, without limitation, the selection by the Grantor of parts or components for the RV or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the Grantor. The dealer shall give notice to the Grantor of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every RV dealer agreement issued to, amended, or renewed for RV in this State on or after _____, shall be deemed to incorporate provisions consistent with the requirements of this subsection.

X (D) On any new RV, any uncorrected, significant damage or any corrected damage must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires and bumpers is excluded from disclosure when properly replaced by identical manufacturer's or distributor's original equipment or parts.

Whenever a new RV is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever an RV is otherwise damaged prior to delivery to the new RV Dealer motor vehicle dealer, the new RV dealer shall:

- Receipt + 10%
Use orig wording
- (1) Notify the manufacturer or distributor of such damage within three business days from the date of delivery of such new RV to the new RV Dealership or within such additional time as specified in the RV Dealership agreement; and
 - (2) Either (a) request from the manufacturer or distributor authorization to replace the components, parts and accessories damaged or otherwise correct the damage, or, reject the vehicle within three business days.

If the manufacturer or distributor refuses or fails to authorize repair of such damage within ten days after receipt of notification, or if the dealer rejects the RV because of damage, ownership of the new RV shall revert to the manufacturer or distributor, and the new RV dealer shall have no obligation, financial or otherwise, with respect to such RV.

X Should either the manufacturer, distributor or the dealer elect to correct the damage, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgement by the buyer is required. Predelivery mechanical work shall not require a disclosure.

SECTION 13. APPLICATION TO ARBITRATION AGREEMENTS

This chapter shall not apply to provisions for the binding arbitration of disputes contained in a dealership agreement concerning the items covered in Section 4, if the criteria for determining whether good cause existed for a termination, cancellation, nonrenewal or substantial change of competitive circumstances, and the relief provided is no less than that provided for in this chapter.

SECTION 14. ACTION FOR DAMAGES AND INJUNCTIVE RELIEF

If any Grantor violates this chapter, an RV dealer may bring an action against such Grantor in any court of competent jurisdiction for damages sustained by him as a consequence of the Grantor's violation, together with the actual costs of the action, including reasonable actual attorneys' fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances and refusal to permit transfer of ownership in accordance with Sections 4 and 5.

SECTION 15. TEMPORARY INJUNCTIONS

In any action brought by an RV dealer against a Grantor under this chapter, any violation of this chapter by the Grantor is deemed an irreparable injury to the RV dealer for determining if a temporary injunction should be issued.

61-1-126

MOTOR VEHICLES

EXHIBIT NO. 3A 372
DATE 2/1/91
BILL NO. SB163**Cross-References**

Restrictions as to tire equipment, 61-9-406.

61-1-126. Solid tire. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(b).

61-1-127. Metal tire. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(c).

61-1-128. Axle. "Axle" means a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(8).

Cross-References

Measuring distance between axles, 61-10-106.

61-1-129. Camper. The term "camper" as used in 61-3-524 and 61-3-525 includes but is not limited to truck camper, chassis-mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached.

History: En. Sec. 1, Ch. 414, L. 1973; amd. Sec. 1, Ch. 112, L. 1977; R.C.M. 1947, 53-644.

61-1-130. Motor home. "Motor home" as used in 61-3-521 and 61-3-522 means a self-propelled motor vehicle originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 5, Ch. 712, L. 1979.

61-1-131. Travel trailer. "Travel trailer" as used in 61-3-521 and 61-3-523 means a trailer 45 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

History: En. Sec. 6, Ch. 712, L. 1979; amd. Sec. 1, Ch. 488, L. 1983.

61-1-132. Recreational vehicle. The term "recreational vehicle" as used in 61-4-101 through 61-4-105 and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 1, Ch. 443, L. 1981; amd. Sec. 1, Ch. 57, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning inserted
"and 61-10-141".

Cross-References

Retail installment sales — "recreational vehicle" defined, 31-1-202.



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MONTANA MANUFACTURED HOUSING & RECREATIONAL VEHICLE ASSOCIATION

SENATE BUSINESS & INDUSTRY

EXHIBIT No. 4

DATE 2/1/91

BILL No. SB163

Senate Business Committee

February 1, 1991

Testimony SB 163

by Dianne Louttit, President

Montana Manufactured Housing & RV Association

Chairman Lynch, Members of the Committee: for the record, I am Dianne Louttit of Great Falls. Today I am pleased to appear before you as President of the Montana Manufactured Housing and RV Association. This morning I wish to express our opposition to SB 163.

Some of you may recall that in 1989 the Montana Manufactured Housing and RV Association supported HB 150, which in effect provided motorcycle dealers, snowmobile dealers and RV dealers with the same dealer protection standards applied to retailers of farm implements, construction equipment and automobiles. In just two years our needs, as RV dealers, for dealership protection has not changed.

In considering this bill, I ask you to remember that RV Franchise Agreements are drafted by interest representing RV manufactures and are typically one-sided. The buy-back language which SB 163 proposes to amend is in reality needed to promote fair business relations between dealers and manufacturers. By changing the present buy-back provision, we are concerned that RV dealers will not have the protection standards needed to ward off unfair treatment by Manufacturers who have superior economic power and superior bargaining power.

The present dealership protection law and the action taken by the 1989 Legislature provides us with the protection afforded to farm implement dealers, snowmobile dealers and automobile dealers. We ask you for a continuation of that protection. Thank you for the chance to submit these comments.

ROLL CALL

Business & Industry COMMITTEE

DATE 2/1/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/1/91 Bill No. SB188 Time 10:00

NAME	YES	NO
Senator Bruski	✓	
Senator Franklin	✓	
Senator Gage	✓	
Senator Hager	✓	
Senator Noble	✓	
Senator Thayer	✓	
Senator Williams	✓	
Senator Kennedy	✓	
Senator Lynch	✓	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: SB188 Do Pass

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/1/91 Bill No. SB 8 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: Do Pass SB 8

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 1, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 188 (first reading copy -- white), respectfully report that Senate Bill No. 188 do pass.

Signed: 

John "J.D." Lynch, Chairman

 2-1-91
And. Coord.

SP. 2-1 2:30
Sec. of Senate

231236SC.Sj1

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 1, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 8 (first reading copy -- white), respectfully report that Senate Bill No. 8 be amended and as so amended do pass:

1. Page 6, line 14.

Following: "(3)"

Strike: "Four"

Insert: "Three"

2. Page 6, line 15.

Following: "and"

Strike: "one member"

Insert: "two members"

Strike: "a representative"

Insert: "representatives"

3. Page 6, line 16.

Strike: "is"

Insert: "are"

4. Page 7, lines 12 and 13.

Following: "Three" on line 12

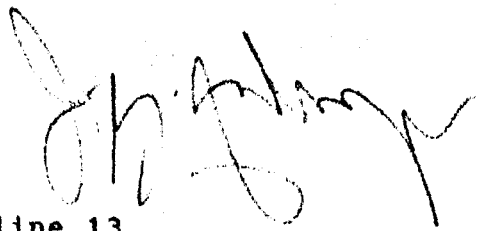
Strike: "real" through "appraiser" on line 13

5. Page 11, lines 20 through 25.

Following: "have" on line 20

Strike: "2 years'" through "claimed" on line 25

Insert: "experience in real estate appraisal as prescribed by the board. The board shall adopt rules pertaining to real estate appraisal experience that substantially comply with and are not more stringent than those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989"

A handwritten signature in dark ink, appearing to be 'J. H. [unclear]', is written over the right side of the text for item 4.

6. Page 16, line 22.
Strike: "refuse to renew,"
Insert: "may"
Following: "revoke,"
Strike: "or"
Following: "suspend"
Insert: ", or refuse to renew"

7. Page 23, line 12.
Following: "least"
Strike: "150"
Insert: "165"

Signed: _____


John "J.D." Lynch, Chairman

 2-1-91
And. Coord.

SP 2-1 2:30
Sec. of Senate