

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 18, 1997, at 9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 343; SB 347; SB 348;
2/13/97

Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:03; Comments: N/A.}

HEARING ON SB 347

Sponsor: SENATOR WILLIAM GLASER, SD 8, HUNTLEY

Proponents: None

Opponents: Jim Brown, Bureau Chief, Building Codes
Fritz Zettel, Helena Fire Department

Opening Statement by Sponsor:

SENATOR WILLIAM GLASER, SD 8, HUNTLEY. I am here to present SB 347 and two groups of people: the fire brigade, whom I have a great respect for and the people who are abandoned in the

elevators. In the codes for elevators and in the wisdom of the committee who put the standards together, it was decided that if anyone were in the elevator during a fire they would be abandoned and left to roast. The fire brigades in my district have tried to get the elevators to work in a certain fashion so that people were not trapped in this manner.

This bill requires that plans for construction or alteration of certain buildings include life safety information related to passenger elevators; it allows fire inspectors to inspect passenger elevators and report fire safety violations; it requires state or local fire safety officials to certify prior to the completion of a passenger elevator inspection by the Department of Commerce that the passenger elevator does not constitute a fire hazard and will not be declared a public nuisance.

My intention with this bill is that a fire marshall would have the ability to say in what manner the elevator should work in the event of a fire. One colleague stated that the shunt trip portion of the elevator should be operated according to the authority who has jurisdiction.

Proponents' Testimony: None

Opponents' Testimony:

Jim Brown, Bureau Chief, Building Codes Bureau. We are an opponent to this bill as drafted. The Elevator Code is no small item. It has been used in its updated versions since the early 1980's. The authors of the Code are the American Society of Mechanical Engineers and ANSI, American National Standards Institute. ANSI covers elevators, escalators, lifts, dumbwaiters, almost anything that mechanically or hydraulically lifts people, etc. The elevator inspection program is probably the best program we have. I have worked here twelve years and I have never, not once, received one complaint from a local fire chief or the state fire marshall regarding our elevator inspections. I was shocked when I saw the proposal. The proposal as written essentially says that we cannot conduct an inspection or issue an annual elevator operational certificate unless the local fire chief or state fire marshall would provide us with a written notification that the elevator in question poses no life safety hazard or potential for public injury. It is our assumption that a local fire chief does not have the expertise to enforce this code. This seems to be a duplication of effort.

The issue that **SEN. GLASER** raised is a reasonably controversial one. In about 1986, this Elevator Code included a section on sprinkling in the elevator shaft and the machine room, with means to be provided to disconnect all power to the elevators prior to that sprinkler system coming on. It is true that there may be a situation when this may happen, but this is a national code and

we don't have the expertise to figure out a solution to this problem. I have here a Handbook Comments on Rule 102.2 which is out of the safety code for elevators and escalators. This is an issue that has been debated nationally.

The other issue that **SEN. GLASER** raised was that the Code conflicts with NFPA 101 (also referred to as the Life Safety Code). The Life Safety Code has not been adopted by Montana. We use the Elevator Code and the Uniform Building Code instead. I have a page out of the Life Safety Code (**EXHIBIT 1**).

I have two letters. One is from Paul Gerber, Fire Marshall from Billings (**EXHIBIT 2**). The other is from Bruce Suenram, State Fire Marshall (**EXHIBIT 3**). Other letters included are: (**EXHIBITS 3A & 3B**). If there is any problem, we can handle it through legislative rules. Simply write us a letter and ask us to consider an amendment to those rules. We do it all the time.

Fritz Zettel, Fire Marshall, Helena. The Helena Fire Department rises in opposition to SB 347. It places an undue burden on the fire department by mandating us to go out and do these inspections.

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked if someone had come up with a simple device that would keep the elevator workable till the people were discharged from it. **SEN. GLASER** answered that the two fire departments he had worked with had highly sophisticated alarms and he felt that something could be done.

SEN. EMERSON then asked if the Department of Building Codes could work with these people. **Mr. Brown** answered that they would be available and stated that they would be happy to work with them.

Closing by Sponsor:

SEN. GLASER closed. I feel that there are exceptions to the rule and this is one of those times. The firemen know what they can and cannot do. Again, I support the fire brigade and the possible fire victims caught in elevators.

{Tape: 1; Side: A; Approx. Time Count: 9:29 AM; Comments: N/A.}

HEARING ON SB 348

Sponsor: SENATOR WILLIAM GLASER, SD 8, HUNTLEY

Proponents: Tom Harrison, MT Society Certified Public Accountants

Opponents: Andy Poole, Department of Commerce
Jeff Miller, Department of Revenue

**Pam Langley, MT AgriBusiness Assoc. and MT Grain
Elevators Assoc.**

Opening Statement by Sponsor:

SENATOR WILLIAM GLASER, SD 8, HUNTLEY. SB 348 is a one-stop licensing for business and professional licenses. In 1985, I saw this type of bill. In 1987, 1989, etc. I saw this type of bill. I am trying to get rid of the problem that the public looks at government and sees the enemy. It seems that everyone loves their legislator but everyone hates the legislative body. We need to change the way we do things in order to gain the confidence of the people. We have studied it for two years and here we are.

Proponents' Testimony:

Tom Harrison, MT Society of Certified Public Accountants. It is true that this bill is out of the range of issues that we are concerned about. We are concerned about efficiency in government. We feel that this bill goes toward these goals and we endorse it and ask you to do the same.

Opponents' Testimony:

Andy Poole, Deputy Director, Department of Commerce. We reluctantly stand in opposition to this bill because the concept is good. The reason for my opposition is that there is another bill before this body right now. It is HB 391. This is **REP. SAM ROSE'S** bill. It did pass 2nd reading in the House by 84-14. This bill is a result of two years of study that has occurred because of a bill passed during the last session which was SB 311 which was **SEN. WELDON'S** bill. That particular bill called for the Department of Commerce to develop a plan for a one-stop business licensing. It also created a Board of Review which consisted of **SEN. WELDON, REP. ROSE**, the directors of all the state licensing agencies, the Dept. of Justice, the Secretary of State and the budget director. A number of people have looked at this issue over the last two years and we appropriated General Fund monies in the amount of \$50,000 to hire consultants who studied licensing in the State of Montana. They looked at different states and overseas. They came back and said that Washington State had the best example of a one-stop licensing program. They have been in this business for 15 years and are just now getting to the one-stop licensing for business and professional licenses. The reason for this is it is usually for one license only. Professionals usually go for one license. The recommendation that was included in HB 391, was that over the next two years we initiate a pilot licensing one-stop program. This would include licenses which would be required by all grocery stores in the state. I would like to pass out the "Montana Business Licensing Handbook" (**EXHIBIT 4**). It shows all the licenses that are in Montana currently. On page 3, there are

a number of licenses required by grocers. For this reason, the pilot program was aimed at this business.

I would like to hand out the result of the plan (**EXHIBIT 5**). I feel that we are moving forward in the one-stop licensing idea. For this reason, we again are in opposition to SB 348. Also, I would like to hand out a chart (**EXHIBIT 6**) that shows license renewal seasons. This chart is included in HB 391. This is an important concept that has been charted for renewal throughout the year.

Jeff Miller, MT Department of Revenue. I also rise in reluctant opposition to this bill. I support the concept and have been actively working on the exact issues that have been presented in SB 348. We have been working on HB 391. The concept is the same; the mechanics are different. But we are looking toward the same goal. We believe that HB 391 is more viable and a more responsible approach to getting this done.

Pam Langley, MT AgriBusiness Assoc. I rise in opposition to this bill because it could potentially cut back what we already enjoy. The goals of SB 348 for the most part we already have within the Dept. of Agriculture. We do have one-stop licensing. It is consolidated within one department. Our members have been very pleased with what we now have. We do support HB 391 with some hesitancy of getting pulled into some of those processes. We also see the possibility of a master licensing fee which would provide less money for the Dept. of Ag to execute the program. There are some 19 different licenses within the Dept. of Agriculture. We do not view the government as our enemy within terms of the licensing process.

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked if the sponsor has looked at HB 391?

SEN. GLASER replied that he had looked at it and did not feel that the two bills could be blended.

{Tape: 1; Side: B; Approx. Time Count: 9:49 AM; Comments: N/A}

SEN. STEVE BENEDICT asked if there was a fiscal note and if there would be some kind of savings? **SEN. GLASER** said that there might be one coming but had not seen it yet. He did not feel that there would be a great savings to businesses with a one-stop licensing program. Nor did he feel it would create fewer governmental employees.

SEN. CASEY EMERSON asked if the effective date on this bill was January 1, 1999? **Mr. Poole** responded that the effective date on HB 391 is October 1, 1997 and the effective date on this bill is October 1, 1997 except that the implementation of the data base is January 1, 1999. This is part of our problem with this bill.

Closing by Sponsor:

SEN. GLASER closed. This is a bill that has its feet in frustration. I am just trying to do something for the people of Montana and improve our image in the public. My bill would have been a flood. HB 391 is just a trickle bill.

{Tape: 1; Side: B; Approx. Time Count: 10:10 AM; Comments: A 13 MINUTE BREAK WAS TAKEN..}

HEARING ON SB 343

Sponsor: SENATOR FRED THOMAS, SD 31, STEVENSVILLE

Proponents: E. G. Leipheimer IV, Discovery Buick
Joe Billion, J. C. Billion, Inc., Bozeman
Mike Grimes, Grimes Motors, Helena
David Owen, MT Chamber of Commerce
Brenda Nordlund, MT Department of Justice
Charles Brooks, Billings Chamber of Commerce
Dave Brown, MT Independent Automobile Assoc.
Bud Williams, MT Assoc. of Manufactured Homes & RV
Dealers
Bob Gilbert MT Tow Truck Assoc.

Opponents: Mona Jamison, American Automobile Manufacturing
Assoc.
Steve Blankenship, Ford Motor Co.
Calvin Eleby, American Automobile Manufacturing
Assoc.

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, STEVENSVILLE. I would like to present SB 343. This bill is introduced to continue the evolution of the franchise law as the business environment changes. This bill finds its roots in two bills introduced in the 1977 Legislature. It was first heard in a Senate committee 20 years ago. The environment was very different then than today. The manufacturers' corporate philosophy was that of expansion. Placing franchises anywhere that they could. The original bill was designed to recognize that fact at that time. The language precluded the manufacturers from opening dealerships in towns and cities where existing dealerships carried the same vehicle brands unless the manufacturers could provide the economics necessity and prove that necessity of additional brand makes in the same area or town. Six years ago, the Legislature amended the statutes to reflect another change in this industry. Better cars were being made with longer warranties. The provisions of the dealer laws at that time were modified to give dealers a fair return on reimbursement for warranty, labor and parts from the manufacturers. We can ask why the Legislature is seeing the need to consider this piece of legislation today. Simply, the economics of industry favors the manufacturers.

In a Montana Supreme Court case in 1988, the Court noted these statutes operated to regulate the relationship between the motor vehicle franchisor and its franchisees. This specific reference to legislative intent, the Court stated this: "Furthermore a review of the pertinent legislative history evinces or rather states the legislature's intent in designing the Montana automobile dealership law was to protect motor vehicle franchisees and dealers from injuries to which they were susceptible by virtue of economic inequality between themselves and their franchisors."

How much is the difference in economic inequality between these parties in Montana for example? If we take 1996 sales, Montana dealers did just fine. They sold about \$1.4 billion in auto sales. The big three sold about \$350 billion. About .4 of 1% or less of the market is in Montana. There is an inequality of the economy there.

Now we come before you today to amend the Montana auto dealership law. Again, to reflect the changes going on in industry. Today, the factories see the marketplace as one that must contract one bringing it in. All three of the U.S. companies now have stated corporate goals to downsize the number of dealerships across our country (**EXHIBIT 7**). As you can see from this handout, the policies are very public and very real. Chevrolet announced its plans to reduce the number of U.S. dealerships from 4,400 to 4,000, while mandating the reconfiguration of the product mix within the dealerships. These changes are a finality of which Montana's auto dealers are aware; however, the situation is not only in Montana, but in many other states as well. SB 343 addresses today's changing environment, and the changes must recognize the investment made by Montana's dealers to serve their customers in the rural nature of our state and the great differences in the distances between Montana cities and towns. These are the changes we are proposing: (1) Successor Rights. Dealers need to be assured their efforts to build a viable business in order to pass that business on to their children is not unfairly restricted by the actions of the manufacturers; (2) Transfer of Ownership. The Franchise Law must provide reasonable standards for the approvals and disapprovals for the transfer of ownership and the factories are given a statutory first right of refusal option; (3) Availability of Products. Dealers must be assured if they are making significant investments into facilities, equipment and training, they can expect a reasonable supply of vehicles from the manufacturers; (4) Dualing. Dealers with multiple-line makes need protection from arbitrary actions by manufacturers who should not be able to force dealers to eliminate existing line makeups from an existing dealership; (5) Unreasonable Manufacturer Demands. The Franchise Law should protect dealers from unreasonable capital and facility requirements demanded by the manufacturers. (6) Termination process should be free of arbitrary and capricious actions by the manufacturers and the dealers' investment must be treated fairly and reasonably by the manufacturers.

There is a small amendment on page 8, line 22. We want to strike the words "vehicles covered by".

{Tape: 1; Side: A; Approx. Time Count: 10:18 AM; Comments: N/A.}

Proponents' Testimony:

E. G. Leipheimer IV, Discovery Buick, Butte. I will present my testimony and hand in a written copy (EXHIBIT 7B).

Joe Billion, J.C. Billion, Inc., Bozeman. I would like the Committee to understand a couple of things. The stated corporate goals of reducing the number of small dealers is actually all of Montana. All dealers in Montana are small. It is disconcerting when you look at what our future has in store for us. General Motors' stated goal is to cut the number of dealerships 20% from the current number. Ford wants to cut the U.S. dealer total and Chrysler has announced they want 600 fewer dealers. Those are Montana dealers, the ones that are families in our communities that are servicing our customers. In fact, when this franchise task force committee was formed, it was the result of a letter from General Motors (EXHIBIT 8). It is called their "Year 2000 Plan". There are 36 Chevrolet dealers in Montana. 20 out of 36 dealers received this letter. I believe the majority of dealers in Montana got these non-viability letters. If you are a small dealer and received a letter like this, how do you sell your store? It takes the investment and the time that these people have put into their business and washes it down the drain.

I have been the Chairman of the Task Force and we spent over one year meeting with the dealers, with the attorneys and we gathered information from all other states that have passed legislation concerning these issues. The bill you have in front of you is the culmination of that year's work. Toward the end, we sat down with the manufacturers and tried to get their feelings on these issues. We did make progress with them. There are still some disagreements. This bill is a protection of the dealers and of local service. It also protects jobs here in Montana. We ask that you support this bill.

Mike Grimes, Grimes Motors, Helena. I would like to present my testimony and will hand in a written copy (EXHIBIT 9). I would also like to present a letter that has become known as the "Zarrilla letter" (EXHIBIT 10).

David Owen, MT Chamber of Commerce. I find myself in a cross fire here. My goal is to say nothing so no one will ask me any questions. I need to go to another committee meeting. But I would like to stand up on one principle here. We have national groups in the Chamber as well as state groups. I would like to appeal to the committee in their mission and urge you to cautiously be supportive of this bill. Listen well to the criticism of the bill. What I hear, though, is we admire the power of the contract, but we understand when parties don't have

equal standing in negotiating contracts. There are some overarching principles in this democracy when it relates to the ability to contract. And these are spelled out in the 1st Amendment. I know it is not your job to pick winners and losers, but you do have a responsibility to make sure there is a free and equal ability of people to have equal standing in negotiations. We do have laws already that address this issue. So we urge you to look at this carefully but with a supportive attitude.

Brenda Nordlund, Department of Justice. I will speak to aspects of this bill that haven't been spoken to but the Department appreciates the auto dealers working with us to make some changes in the dealer laws and enhance our ability to regulate dealers. These changes are not controversial for the most part. These changes include expanding the amount of information we can seek from dealers in the first instance in the application such as drivers licenses, vehicle registration, date of birth, social security number, names of all interested parties in the dealership and whether or not anyone has been convicted of a felony. Additionally, the bill includes on page 2, line 18 and 19 the fact that dealers will now have to certify that they will acquire and maintain the statutory required vehicle liability insurance for vehicles used by the public. It is a simple thing that is not stated in our law here before and this is a consumer protection addition. On page 4, line 2-14, we talk about the bonding that is required for dealers. There is some confusion in the current law as to whether or not the dealer can use more than one bond if they have different types of dealer licenses. This law on page 4, lines 26 and page 4, lines 2 and 4 talk about the fact that the bond would be increased to \$50,000 and that one bond would be sufficient for a dealer irrespective of the number of licenses held at a particular location.

I would also like to refer to page 8, lines 18-22 which clarify conditions when a dealer may lend 20-day permits to other licensed dealers. This finally puts the Department in the loop so we are apprised of when 20-day stickers or permits go from dealer to dealer and we can track and inventory them. All we are asking here is that the dealer notify us of the serial numbers and when the transfer occurs. I want to bring to the committee's attention specifically that they are changing in this bill the responsibility for resolving dealer succession disputes. Currently all factory dealer disputes are resolved by the Department of Justice. Under current law, the Dept. of Commerce for some reason has been assigned the responsibility of succession relating to family members. This bill will put all of the transfer and termination of succession responsibility and adjudication under the Dept. of Justice.

Finally, I would like to speak briefly about the relationship between the dealers and manufacturers here today. I can appreciate the comments made by **Dave Owen**. It is not easy to stand up here and take one side or the other. From the Dept. of Justice's perspective, we are interested in avoiding further

regionalization of car dealerships in Montana and in the Northwest. We believe that we need to maintain our rural communities. And a vital part of these rural communities is a car dealer. The geographic expanse of this state make it difficult if we would get down to the point where we just have a small number of dealers. We do support the efforts of the dealers to level the playing field.

{Tape: 1; Side: B; Approx. Time Count: 10:35 AM; Comments: N/A.}

Charles Brooks, Billings Chamber of Commerce. I come before you as a former hardware implement dealership. A few years ago we were faced with basically this same problem. The manufacturers made an open statement that they too wanted to shrink the number of farm implement dealerships in our state. We see this as a "main street" issue. We feel that Montana should be treated differently as we look at the fairness issue as far as our geographic situation and our small population is concerned. There is a second point I want to stress and that is the succession issue. If a person spends years building up a market share in order for someone in his family to take over, we feel this is unfair that the large manufacturers were going to be very restrictive and arbitrary. We highly support this bill.

Dave Brown, MT Independent Automobile Dealers Assoc. We wish to be on record as being in support of this bill. I would like to call your attention to page 2, lines 18 and 19. The certification of a motor vehicle liability insurance is now required, but it is our experience that many places allow people to try out cars and they do not have this liability insurance on these cars. We are strongly in favor of this part of the bill. We are also strongly in favor of page 4, lines 2, 3 and 4. Many dealers sell used cars, RV's and trailers, etc. and under this bill one bond only would be required. This would be good. On page 8 on 20-day permits, there are times that you run out of these stickers and under this bill a dealer could do that and let the Dept. of Justice know within three days.

My one problem with this bill is on page 3, lines 26-28 where the dealer bond is increased to \$50,000 from the existing \$25,000. We would ask you to amend this bill back to the \$25,000 bond. If this bond is raised, the cost would just about double the existing cost from approximately \$150 to \$300. For small, reputable dealers who have been around for a long time, and only sell 10-20 cars a month, and if the bond goes to \$50,000, the bonding companies are going to come looking at assets and many dealers won't have the assets to cover that \$50,000 bond.

Bud Williams, Manufactured Housing and RV Dealers Assoc. We rise in support of the bill. We are particularly in support of these successor rights, transfer of ownership and termination actions.

Bob Gilbert, MT Automobile Dismantlers and Recyclers Assoc. and the MT Tow Truck Assoc. We do have a concern here at this time

and that is on page 3 where the bond is being raised from \$25,000 to \$50,000. This creates a problem for a dealer who may not sell many cars over \$7,000 to \$8,000. Already you have tripled the bond because this bond is per occurrence. There must be a way to establish a two-tier bond system so small dealers don't get hammered.

{Tape: 1; Side: B; Approx. Time Count: 10:46 AM; Comments: N/A.}

Opponents' Testimony:

Mona Jamison, Auto Manufacturers of America--GM, Chrysler, Ford. Since this industry is a core to the prosperity of this nation, I am happy to stand up and say I represent the car manufacturers.

I would like to address a few of the myths that you have heard today. We oppose this bill and for a variety of reasons. It is anti business; it is anti free market enterprise; it is anti contract and I think there are some constitutional issues raised concerning contracts.

There have been statements made that the dealers and manufacturers have met and there are lots of provisions in this bill that are not under contention. Many of the provisions have been made with a consensus agreement and we can live with those. There have been a few provisions in this bill where there has not been one inch of compromise. And we have amendments that we would like the committee to consider (EXHIBIT 11).

{Tape: 2; Side: A; Approx. Time Count: 10:49 AM; Comments: N/A.}

Without the manufacturers, you would not have the dealers, You would not have the product that they proudly sell. This is a partnership between the manufacturers and the dealers. There are 150 "new car" dealerships in Montana. These cars are responsible for approximately 8000 jobs. Approximately 3500 of those jobs are related directly to the new cars and the remaining 4500 have to do with wholesale and repair and service. A \$90 million dollar payroll comes to the State of Montana. When you do well, we do well.

What does this bill do? It is protectionist legislation and protects monopolies. It does two things primarily. It attempts to govern distribution of a product and sale of a product. Ironically, you have heard much testimony on successor ownership. That portion of the bill is not before you. We have resolved that in our prior meetings and a compromise has been worked out.

Another item deals with an administrative appeal aspect aside from the Dept. of Justice's business in this bill, which I find shocking. Look at page 16 and you will see the part of the bill where no compromise has occurred. This is the focal point of the bill. On lines 1-10, you are primarily dealing with what you heard as the dualing section. Lines 19-25 deal with the

allocation or distribution of product. What the bill attempts to do regarding dualing is restrict the manufacturer's right to approve or disapprove whether one of its franchisees can dual with another line make. It is like requiring McDonalds to sell Burger King along side their own product. And we are not dealing with a 79¢ product. We want and deserve grand focus. We know we cannot and will not terminate any dealer's right today to be marketing these competitive lines.

Another myth you have heard is that we are going to take some sort of action and jump away from some of these dealers who have competing lines. We will not and in fact the amendments that have been distributed to you that we have worked on make it very, very clear that **any existing dealer at whatever effective date is in this bill, would be protected and in the future, the dealer would have to ask permission.**

If you would go to the allocation sections, line 19, you will see these sections require vehicles on demand. There are 49 other states, and because of their population, those dealers require many more cars in each of those lines. We cannot promise this. With all the laws in the world, "on demand" cannot be done. It is also inconsistent with the national distribution policies of every car manufacturer in America. We are not in the business of denying dealers cars that they can sell. But to have a law in Montana that requires a manufacturer to provide a car on demand is just unrealistic. If a car is not available, it is not available--demand or no.

In reading lines 22-25, I still do not know what that means. It looks like it covers the world, or it can mean it covers nothing because of its lack of specificity.

We have amendments that prevent the manufacturer from implementing a plan of allocation that is not fair, reasonable or equitable. We were told by the dealers that this is all they want out of this bill. Our amendments address their goals. These amendments contain that language "fair, reasonable and equitable". The grandfathering language allows dualing that exists at every franchise up to a certain date but requires approval in the future. And as you see, there is nothing in the bill on successors.

You have heard about GM 2000 and have seen that letter. The language in that says they will monitor market conditions and future viability is questionable. It doesn't mean you can't sell; it doesn't mean you can't succeed; it doesn't mean you can be terminated. It means that they are watching just as government watches an ever expanding economy. Does this mean that government can tell the manufacturers that they cannot downsize through attrition?

On the Department of Justice sections, it is my feeling that this bill should have been two bills. The whole thing with the bond

and then dealing with us. I also think there is a conflict of interest. The Dept. of Justice is the one who enforces this and there is a provision in this bill that we agreed with the dealers that it should go from the Dept. of Commerce over to the Dept. of Justice for the enforcement. We agreed and it was taken off the plate. Now they are here supporting the bill that governs private relationships and the ability to contract. I find this very unusual. It makes the manufacturer think, are we going to get a fair shake when we get up there.

The last section we are concerned with has to deal with appeals on page 9. Our amendment covers that. On page 10, lines 1-7, this section is saying that when there is an issue between the dealer and the manufacturer on one of these issues, be it termination or whatever, they are proposing the dealership stays fully operational until that determination is made. This proposal extends the dealer operation until ALL appeals are over. There may be criminal activity or egregious business dealings but this would preserve the right to continue to operate all the way through the judicial process and we all know that can take forever.

What are the public policy issues that face you as I bring this to a close. I feel that you have to deal with the issue that is before you. As a state, how far do we go in governing the details of business relationships? How comfortable are we if it is in this area now and somewhere else next year? When will we be at the opposite side of the issue--and not be the beneficiary of the protection? It is ironic, the Constitution, Article II, Section 31 recognizes the ability of persons to contract and has a prohibition against "laws impairing obligation of contracts being passed by the legislature." Basically, this is a unilateral request by an association to change, to fix contract provisions. That is a concern. The next step may be that you are asked to approve the total contract. The ability in America to contract and conduct business is the defining characteristic of a free society and a non-socialistic society. The more we dictate the terms of these contract relationships, the closer we get to total government control. They have the opportunity to go to their attorney. If a person or dealer is harmed by a contract or by something a manufacturer does, there is redress in the statute and in other laws. I urge you to think about the decision to regulate every facet of the business relationship because it undermines market forces and puts the Legislature into the shoes of one of the negotiating parties.

Steve Blankenship, Ford Motor Co. The dualing issue is a concern. We would ask you level the playing field in terms of dualing. We give our dealers exclusive jurisdiction in the community. That means that they are the only place that sells Ford products. They in turn provide us with the kind of sales we need to keep our company going. What we are asking in this dualing amendment is that the decision to dual would be a joint decision. In terms of the allocations, you need to look at the

Montana amendment and multiply it by 50. I am sure dealers in every state would like to have this allocation language that says they can get whatever they order. The Ford Motor Co. has a peculiar problem. The good news is our new trucks are selling very well; the bad news is we are at the limit of production and we can't supply dealers with all the trucks they want. We have tried to provide a fair and equitable situation so that all dealers have trucks but no dealer has as many trucks as they would like. Thank you.

Calvin Eleby, American Automobile Manufacturing Assoc., Detroit, MI. We stand in opposition to this bill.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked that since **Mr. Blankenship** was concerned with the allocation process and that there are no safeguards to things out of his control, wouldn't lines 26 and 27 on page 16 take care of these concerns. **Mr. Blankenship** answered that the orders that were accepted would have to be handled first and it could be argued that they could not go to an allocation system until the orders were first filled. **SEN. BENEDICT** asked how downsizing can be handled with no one getting hurt. **Mr. Blankenship** responded that Ford Motor Co. is looking at a realignment of Lincoln, Lincoln/Mercury dealerships. The possibility that some of the exclusive Lincoln or exclusive Mercury dealerships may be merged and redone. On the question of hurting people, if a dealership would have to be closed down, Ford Motor Co. would just buy it back. Most of our dealerships are closed because the people just walk away from them. If they are not making money it is hard to stay open. **SEN. BENEDICT** asked if he would guarantee that the only time you would downsize the number of dealerships in Montana would be through attrition. **Mr. Blankenship** said that no he could not guarantee that. Each case is handled in its own right.

SEN. BEA MCCARTHY asked about dualing. **Mr. Billion** responded that he had a fight with the manufacturer when he purchased the Mazda dealership and they requested that he put up a divider in the showroom. He further stated that when you get a contract there is not a lot of compromise. They can change the language to what they want and that is where the lack of negotiating on dualing gets bogged down. If they won't allow it, there will be no negotiating.

SEN. MCCARTHY asked **Mr. Grimes** if he wanted to buy another franchise, could he? **Mr. Grimes** felt that it would be very difficult. The testimony says trust me, but that is not the case all the time. He related a story of how the manufacturer has the upper hand when they want it. He said that they are not on a level playing field.

SEN. DEBBIE SHEA asked **Ms. Jamison** if the amendments affected their stance on dualing? **Ms. Jamison** said that this does not

affect the transfer issue. This only affects the number of line of cars a dealership handles. And there is no prohibition on any dealer buying different dealerships and in fact there is one family at the Miracle Mile Auto Mall that owns two of those beautiful dealerships. The issue is not the ownership of different dealerships, it is under what roof do you have different competing cars.

SEN. SHEA asked the sponsor if he was amenable to the amendments as presented by **Mr. Williams and Mr. Gilbert** concerning the cost of bonding? **SEN. THOMAS** answered that they were willing to do as the committee sees best.

SEN. MCCARTHY asked **Steve Turkiewicz, MT Auto Dealers Assoc.**, to address the amendments of **Ms. Jamison**. He tried to address the amendments, but it was not a good try as it was the first time he had seen the amendments. He then went on to give some examples from his past. He did say that he would take some time and go over the amendments for further comments.

SEN. BENEDICT asked about page 16, section C, lines 22-25. He said that he tended to agree with **Ms. Jamison** on this. If you look at the language which says, "impose unreasonable restrictions on the assertion of legal or equitable rights", you can't impose unreasonable restrictions on the assertion of legal or equitable rights anyway. **Ms. Brenda Nordlund, Dept. of Justice** answered that you can negotiate whatever you like but the Legislature can only do that which does not impair contracts under the Constitutional provision referred to by **Ms. Jamison**. She could not tell how this would be interpreted or whether or not you could impose unreasonable restrictions on the assertion of legal or equitable rights because those are generally defined elsewhere. **Mr. Harrison** also responded to the same question. He said that one thing that is written into the contracts is CSI-- market performance, service performance, those things are written in and they are expected of the dealers and they are entirely subjective. He didn't deal with PR people like those who are here today. He deals with the lawyers and fights in the trenches on these things and he feels that they are not nice people. We are talking about real fights. We are in the 9th Circuit now on two cases of dealer terminations in Butte by Ford and Chrysler and these people don't pay attention to these laws no matter what they say here. But getting to the point, CSI says you have to be within the upper 2/3% in the area of concern. He tells them do they mean that 1/3 of the people cannot possibly be in the upper 2/3's, that there is cause to terminate at every opportunity at least 1/3 of the dealers. And the answer to that is yes. He thinks that this is an example of unreasonable restriction.

SEN. CASEY EMERSON stated that he was pleased to hear about contracts and contract rights under the Constitution. He thinks that this needs to be hit quite often so that all remember this.

SEN. JOHN HERTEL asked if the opponents were testifying that the successorship in dealerships were taken care of in the bill? **Mr. Billion** stated that in the new contract that General Motors sent out six months ago, some dealers had their sons listed as heirs but GM took the sons off and said that they would not approve the sons. They want to have the ability to approve who runs the dealership, but this bill tries to say that if we have a son or relative, we want them to be able to run the dealership. But they have unilaterally said they are not going to just approve your son and they will talk about it later on. But he wants, in this bill, to say that he can give the dealership to the son if he wants with or without their approval.

{Tape: 2; Side: B; Approx. Time Count: 11:36 AM; Comments: N/A.}

SEN. WILLIAM CRISMORE asked **Ms. Jamison** to explain the successorship. **Ms. Jamison** asked the committee to go to page 9 of the bill and begin with the language 61-4-133 on line 15; there is a change from 60 to 90 days. That is why she did not testify on this. They worked on this area in a manner of compromise. This is no longer before you as an issue. Your question to **Mr. Billion** was, "Is this settled in the bill?" And the response wasn't on the bill, it was on some incidences. As to the question, there is compromise there. They have not stood up on that section. Would you look at Section 7 right below it. Line 27 and 28, that is again compromise. On page 10, it is the adjudication which is the appeals process. The length of the process has nothing to do with who may succeed or who may not succeed. We are not contesting those statutes. The bill speaks to that on its face.

SEN. HERTEL stated that dealers in his area had received letters as stated above and felt threatened. He would like to know what the intention of the letter is. What determines good sales? **Mr. Blankenship** stated that the letter was from General Motors, but good sales generally reflect on the market penetration that the manufacturer expects to get from a dealer. If the market penetration is good, as compared to other dealers of similar size and situation in the district, then those are good sales.

SEN. HERTEL asked **Ms. Jamison** that if the dealers have the contracts and are able to make judgments on whether to sign or not and if they decide they don't like the contract, what recourse do they have? **Ms. Jamison** said that she feels the dealers are anxious to sign those contracts because maybe someone else would move in and want to take one of those dealerships. But before you get to actual execution of the contract, you have just heard their position that there is unfair bargaining power. We tell them, contact your attorney, they may be hardnosed or they may be nice people like I am.

Closing by Sponsor:

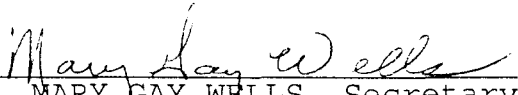
SEN. THOMAS closed. If you are going to lose, you must confuse. We talked about success for business. I think to draw that to a conclusion, and to eliminate the confusion, this is a negotiated element. It is being changed in the bill, but it is okay. It may not be one of the parts that the manufacturers agree with but it is still a proposed change in law. It is supported by the party. On page 16, there is a phrase, "after accepting the order" then that goes forward. Companies must accept the order for that to kick in. If they don't accept the order, then obviously they don't have that situation. The appeal process was addressed. If they come in and close your dealership, you can appeal. Yes, it could be appealed to all levels of our system, but if you aren't fed vehicles to sell what are you going to have left if you win? You might as well throw in the towel. In 1975, there were 295 dealerships in Montana. Today there are 135, less than half. We talk about regulation and contract language, etc. protectionism of a monopoly. You know what a monopoly is. We regulate such as Montana Power Co. You know what a semi-competitive market is. And in that middle close to monopoly is an oligarchy. An oligarchy is where there are a few that control the market, and if this isn't an oligarchy controlling the market in Montana I don't know what is. This is why this bill is in front of you is because there aren't markets to go to. We are asking you to bring some reason into the picture.

ADJOURNMENT

Adjournment: 11:44 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW