

Senate BILL NO. 386
Murray Deane Turner

1 INTRODUCTION BY *Murray Deane Turner*
2 *Gregory Boyan* *Leslie Olson* *Matthew E. Smith*
3 *Mr. Ballou* *Aber* *Deville* *Tom Rasmussen*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
5 RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
6 VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
7 PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
8 MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
9 ADMINISTRATION BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR
10 THE REGULATION AND REVIEW OF TRANSACTIONS BETWEEN NEW MOTOR
11 VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS,
12 DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR THE LIMITATION OF
13 NEW MOTOR VEHICLE DEALER'S PRODUCTS LIABILITY; PROVIDING FOR
14 NOTICE, HEARING, AND APPEAL IN DISPUTES BETWEEN NEW MOTOR
15 VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS,
16 DISTRIBUTORS, AND IMPORTERS; PROHIBITING COERCION OF THE
17 MOTOR VEHICLE DEALERS; AND PROVIDING FOR CIVIL AND CRIMINAL
18 PENALTIES."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21 Section 1. Definitions. As used in this act, the
22 following definitions apply:
23 (1) "Community" means the relevant market area of a
24 franchise. For the purposes of this act, the relevant market
25 area of a franchise is the county or counties in which the

1 franchise is located.
2 (2) "Distributor" or "wholesaler" means a person who
3 sells or distributes new motor vehicles to new motor vehicle
4 dealers in this state or who maintains distributor
5 representatives in this state.
6 (3) "Distributor branch" means a branch office
7 maintained or availed of by a distributor or wholesaler for
8 the sale of new motor vehicles to new motor vehicle dealers
9 in this state for directing or supervising its
10 representatives in this state.
11 (4) "Factory branch" means a branch office maintained
12 or availed of by a manufacturer for the sale of new motor
13 vehicles to distributors or for the sale of new motor
14 vehicles to new motor vehicle dealers in this state or for
15 directing or supervising its representatives in this state.
16 (5) "Franchise" means a contract between or among two
17 or more persons when all of the following conditions are
18 included:
19 (a) a commercial relationship of definite duration or
20 continuing indefinite duration is involved;
21 (b) the franchisee is granted the right to offer,
22 sell, and service in this state new motor vehicles
23 manufactured or distributed by the franchisor;
24 (c) the franchisee, as a separate business,
25 constitutes a component of franchisor's distribution system;

1 and

2 (d) the operation of the franchisee's business is
3 substantially reliant on the franchisor for the continued
4 supply of new motor vehicles, parts, and accessories.

5 (6) "Franchisee" means a person who receives new motor
6 vehicles from the franchisor under a franchise and who
7 offers, sells, and services such new motor vehicles to and
8 for the general public.

9 (7) "Franchisor" means a person who manufactures,
10 imports, or distributes new motor vehicles and who may
11 enter into a franchise.

12 (8) "Importer" means a person who transports or
13 arranges for the transportation of a foreign manufactured
14 new motor vehicle into the United States for sale in this
15 state.

16 (9) "Manufacturer" means a person who manufactures or
17 assembles new motor vehicles or who manufactures or installs
18 on previously assembled truck chassis special bodies or
19 equipment, which when installed form an integral part of the
20 new motor vehicle and which constitutes a major
21 manufacturing alteration, but does not include a person who
22 installs a camper on a pickup truck.

23 (10) "Motor vehicle" means a self-propelled vehicle
24 including without limitation an automobile, motor bus,
25 motorcycle, truck, and a truck-tractor.

1 (11) "New motor vehicle dealer" means a person who
2 buys, sells, exchanges, or offers or attempts to negotiate a
3 sale or exchange or any interest in or who is engaged in the
4 business of selling new motor vehicles or used motor
5 vehicles taken in trade on new motor vehicles.

6 (12) "Department" means the department of justice.

7 Section 2. Persons subject to licensing. (1) No
8 manufacturer, distributor, factory branch, or distributor
9 branch may engage in business in Montana except in
10 accordance with the requirements of this act. The provisions
11 of this act do not apply to a public officer engaged in the
12 discharge of his official duties or to a trustee, receiver,
13 or other officer acting under the jurisdiction of a court;
14 to financial institutions disposing of repossessed vehicles;
15 or to a person disposing of his personal vehicle. The
16 provisions of this act regulating and licensing
17 manufacturers, distributors, factory branches, distributor
18 branches, and franchisors apply only to those manufacturers,
19 distributors, factory branches, distributor branches, and
20 franchisors of motor vehicles as defined by this act.

21 (2) A manufacturer, distributor, factory branch,
22 distributor branch, importer, or franchisor transacting
23 business within Montana by offering, selling, trading,
24 consigning, or otherwise transferring a new motor vehicle to
25 a new motor vehicle dealer must be licensed by the state of

1 Montana. The department shall issue licenses to qualified
2 applicants upon receipt of a license fee in the amount of
3 \$15 accompanied by the information required in this section.

4 The following information shall be submitted by an applicant
5 upon forms supplied by the department:

6 (a) the name and address of the applicant;
7 (b) the make and model of each new motor vehicle to be
8 franchised;

9 (c) the name and address of each of the applicant's
10 franchisees within the state; and

11 (d) the name and address of each factory branch,
12 distributor branch, agent or representative within the
13 state.

14 (3) The license may be renewed each year if the
15 applicant is in compliance with the provisions of this act,
16 remits a renewal fee in the amount of \$15, and notifies the
17 department of any changes in the information previously
18 supplied.

19 (4) No new motor vehicle may be sold in this state
20 unless either the manufacturer on direct dealership of
21 domestic vehicles, the importer of foreign manufactured
22 vehicles on direct dealership, or the distributor on
23 indirect dealerships of either domestic or foreign vehicles
24 is licensed as provided in this act. The obtaining of a
25 license under this act conclusively establishes that a

1 manufacturer, distributor, or importer is subject to the
2 laws of this state regulating manufacturers, importers, and
3 distributors.

4 Section 3. Administration. The department shall
5 supervise and regulate all persons required by this act to
6 be licensed. In the supervision and regulation thereof the
7 department may:

8 (1) make investigations it considers necessary;

9 (2) conduct hearings and compel attendance of
10 witnesses at the hearings pursuant to Title 82, chapter 42;
11 and

12 (3) prescribe rules it determines necessary to carry
13 out the provisions of this act.

14 Section 4. Filing agreement -- product liability. (1)
15 A franchisee must, at the time he applies for a new motor
16 vehicle dealer license under the provisions of 53-118 file
17 with the department a certified copy of his written
18 agreement with a manufacturer and a certificate of
19 appointment as dealer or distributor. The certificate of
20 appointment must be signed by an authorized agent of the
21 manufacturer of domestic vehicles whenever there is a direct
22 manufacturer dealer agreement or by an authorized agent of
23 the distributor whenever the manufacturer is wholesaling
24 through an appointed distributorship. The certificate must
25 be signed by an authorized agent of the importer of

1 foreign-made vehicles whenever there is a direct
 2 importer-dealer agreement or by an authorized agent of the
 3 distributor whenever there is an indirect distributor-dealer
 4 agreement. The distributor's certificate of appointment must
 5 be signed by an authorized agent of the manufacturer of
 6 domestically manufactured vehicles or by an authorized agent
 7 of the manufacturer or importer of foreign made vehicles.

8 (2) A franchisee need not file a written agreement or
 9 certificate of appointment if the manufacturer on direct
 10 dealerships or distributor on indirect dealerships or
 11 importer on direct dealerships uses the identical basic
 12 agreement for all its franchised dealers or distributors in
 13 this state and certifies in the certificate of appointment
 14 that the blanket agreement is on file and the written
 15 agreement with the particular dealer or distributor,
 16 respectively, is identical with the filed blanket agreement
 17 and that he has filed with the department one such agreement
 18 together with a list of franchised dealers or distributors.

19 (3) A manufacturer, distributor, or importer shall
 20 notify the department within 30 days of any revision of or
 21 addition to the basic agreement on file or of any franchise
 22 supplement to the agreement. Annual renewal of a certificate
 23 filed as provided in this section is not required.

24 (4) A manufacturer on direct dealerships, distributor
 25 on indirect dealerships, or importer on direct dealerships

1 who has filed with the department an agreement used by all
 2 its franchisees in this state together with a list of all
 3 such franchisees and who fails to notify the department
 4 within 30 days of any revision, change, or addition thereto
 5 is guilty of a misdemeanor and upon conviction shall be
 6 fined not to exceed \$500.

7 (5) A manufacturer must file with the department a
 8 copy of the delivery and preparation obligations required to
 9 be performed by a dealer prior to the delivery of a new
 10 motor vehicle to a buyer. These delivery and preparation
 11 obligations constitute the dealer's only responsibility for
 12 product liability as between the dealer and the
 13 manufacturer. Any mechanical, body, or parts defects arising
 14 from an express or implied warranty of the manufacturer
 15 constitute the manufacturer's product or warranty liability
 16 only. The manufacturer must compensate an authorized dealer
 17 who performs work to rectify the manufacturer's product or
 18 warranty defect or delivery and preparation obligations at
 19 the dealer's regular established retail rate for similar
 20 work.

21 (6) The dealer must furnish the purchaser of a new
 22 vehicle with a signed copy of the manufacturer's delivery
 23 and preparation requirements indicating that each of those
 24 requirements has been performed.

25 Section 5. Limitations on cancellation and

1 termination. (1) Notwithstanding the terms, provisions, or
2 conditions of any agreement or franchise, no franchisor may
3 cancel, terminate, or refuse to continue a franchise unless
4 the franchisor has cause for termination or noncontinuance.

5 (2) No franchisor may enter into a franchise for the
6 purpose of establishing an additional new motor vehicle
7 dealership in any community in which the same line-make is
8 then represented unless there is good cause for an
9 additional new motor vehicle dealership under a franchise
10 and that it is in the public interest.

11 (3) If a franchisor seeks to terminate or not continue
12 a franchise or seeks to enter into a franchise establishing
13 an additional new motor vehicle dealership of the same
14 line-make, the franchisor shall, within 30 days of the
15 intended action, and the franchisee may, at any time, file a
16 notice with the department of intention to terminate or not
17 continue the franchise or to enter into a franchise for
18 additional representation of the same line-make. No notice
19 of intention to terminate or not continue a franchise may be
20 required from a franchisor until the conclusion of any
21 review proceeding of that intention offered to the
22 franchisee under the franchise. This section does not apply
23 to an intended termination or noncontinuance of a franchise
24 that the franchisee elects voluntarily, pursuant to a plan
25 established by a franchisor, to submit to binding

1 arbitration.

2 (4) Upon receiving a notice of intention under the
3 provisions of subsection (3) of this section, the department
4 shall, within 5 days of receipt of a notice of intention,
5 send by certified mail, with return receipt requested, a
6 copy of the notice to the franchisor and to the franchisee
7 whose franchise the franchisor seeks to establish,
8 terminate, or not continue. If the notice states an intent
9 to establish an additional new motor vehicle dealership, a
10 copy of the notice shall be sent within 5 days of receipt to
11 all franchisees in the community who are then engaged in the
12 business of offering to sell or selling the same line-make.
13 Copies of notices shall be addressed to the principal place
14 of business of each recipient and to the statutory agent of
15 each corporate recipient. The department may also give a
16 copy of the franchisor's notice to any other parties whom
17 the department may consider interested persons, such copy to
18 be in the form and substance and given in the manner the
19 department finds appropriate.

20 (5) A person who receives or is entitled to receive a
21 copy of a notice provided for in subsection (4) of this
22 section may object to the approval of the proposed action by
23 filing a written objection with the department within 15
24 days from the date the notice was received by the person
25 entitled to receive the notice. If no objection is filed

1 within 15 days from the date the notice was received, the
2 proposed action shall be approved.

3 (6) If a timely objection has been filed, the
4 department shall enter an order fixing the time, which shall
5 be within 30 days of the date of the order, and place of a
6 hearing on the objection and shall send by certified mail
7 with return receipt requested a copy of the notice provided
8 for in subsection (4) of this section.

9 (7) The department may upon request continue the date
10 of hearing for a period of 30 days and may upon application,
11 but not ex parte, continue the date of hearing for an
12 additional period of 30 days.

13 (8) Upon hearing, the franchisor has the burden of
14 proof to establish that good cause exists to terminate or
15 not continue the franchise. When there is an objection to
16 the establishment of a new motor vehicle dealership, the
17 burden of proof that good cause does exist shall be with the
18 franchisor.

19 (9) The rules of evidence for such hearing shall be
20 those found in Title 82, chapter 42. The department shall
21 reasonably apportion all costs between the parties.

22 (10) Notwithstanding the terms, provisions, or
23 conditions of an agreement or franchise, the following do
24 not constitute good cause for the termination or
25 noncontinuance of a franchise:

1 (a) a change in ownership of the franchisee's
2 dealership;

3 (b) the fact that the franchisee refused to purchase
4 or accept delivery of a new motor vehicle, part, accessory,
5 or any other commodity or service not ordered by the
6 franchisee.

7 (11) In instances where the change in ownership has the
8 effect of the sale of the franchise, the franchisor may not
9 without good cause withhold its consent to the sale. Good
10 cause relates only to the transferee's financial and
11 managerial capabilities or to the inability of the
12 transferee to comply with a state or federal law relating to
13 new motor vehicle dealerships. The burden of establishing
14 good cause is upon the franchisor.

15 (12) Notwithstanding the terms, provisions, or
16 conditions of an agreement or franchise, in the event of the
17 sale or transfer of ownership of the franchisee's dealership
18 by sale or transfer of the business or by stock transfer to
19 the dealer's spouse, son, or daughter, the franchisor shall
20 give effect to such a change in the franchise unless the
21 transfer of the franchisee's new motor vehicle dealer's
22 license is denied or the new owner is unable to obtain a
23 license under the laws of this state.

24 (13) The department may issue subpoenas, administer
25 oaths, compel the attendance of witnesses, and production of

1 books, papers, documents, and all other evidence. The
 2 department may apply to the district court of the county in
 3 which the hearing is held for a court order enforcing this
 4 section. The hearing shall be conducted pursuant to Title
 5 82, chapter 42.

6 (14) If a franchisor enters into or attempts to enter
 7 into a franchise, whether upon termination or refusal to
 8 continue another franchise or upon the establishment of an
 9 additional new motor vehicle dealership in a community where
 10 the same line-make is then represented without first
 11 complying with the provisions of this act, no license under
 12 53-118 may be issued to that franchisee or proposed
 13 franchisee to engage in the business of selling new motor
 14 vehicles manufactured or distributed by that franchisor.

15 (15) In determining whether good cause has been
 16 established for terminating or not continuing a franchise,
 17 the department shall take into consideration the existing
 18 circumstances, including but not limited to:

- 19 (a) amount of business transacted by the franchisee;
- 20 (b) investment necessarily made and obligations
- 21 incurred by the franchisee in the performance of his part of
- 22 the franchise;
- 23 (c) permanency of the investment;
- 24 (d) whether it is injurious to the public welfare for
- 25 the business of the franchisee to be discontinued;

1 (e) whether the franchisee has adequate new motor
 2 vehicle facilities, equipment, parts, and qualified
 3 management, sales, and service personnel to reasonably
 4 provide consumer care for the new motor vehicles sold at
 5 retail by the franchisee and any other new motor vehicle of
 6 the same line-make;

7 (f) whether the franchisee refuses to honor warranties
 8 of the franchisor to be performed by the franchisee if the
 9 franchisor reimburses the franchisee for such warranty work
 10 performed by the franchisee; and

11 (g) except as provided in subsection (10) of this
 12 section, failure by the franchisee to substantially comply
 13 with those requirements of the franchise that are determined
 14 by the department to be reasonable and material.

15 (16) In determining whether good cause has been
 16 established for entering into an additional franchise for
 17 the same line-make the department shall take into
 18 consideration the existing circumstances, including but not
 19 limited to:

- 20 (a) amount of business transacted by other franchisees
- 21 of the same line-make in that community;
- 22 (b) investment necessarily made and obligations
- 23 incurred by other franchisees of the same line-make in that
- 24 community in the performance of their part of their
- 25 franchises; and

1 (c) whether the franchisees of the same line-make in
2 that community are providing adequate consumer care for the
3 new motor vehicle products of the line-make which shall
4 include the adequacy of new motor vehicle dealer sales and
5 service facilities, equipment, supply of parts, and
6 qualified management, sales, and service personnel.

7 (17) A transcript of the testimony of each witness
8 taken at the hearing shall be made and preserved. Within 30
9 days after the hearing, the department shall make written
10 findings of fact and conclusions and enter a final order.

11 (18) Any party to the hearing before the department may
12 appeal pursuant to Title 82, chapter 42.

13 Section 6. Coercion prohibited. (1) A manufacturer of
14 new motor vehicles, factory branch, distributor, distributor
15 branch, importer, field representative, officer, agent, or
16 any representative thereof may not coerce or attempt to
17 coerce a new motor vehicle dealer to accept delivery of a
18 new motor vehicle, a part, or an accessory therefor, or any
19 other commodity that has not been ordered by the dealer.

20 (2) A manufacturer, factory branch, distributor,
21 distributor branch, importer, field representative, officer,
22 agent or representative thereof may not coerce or attempt to
23 coerce a new motor vehicle dealer to enter into an agreement
24 with such manufacturer, factory branch, distributor,
25 distributor branch, or representative thereof or do any

1 other act unfair to the dealer by:

2 (a) threatening to cancel or not renew a franchise
3 existing between the manufacturer, factory branch,
4 distributor, distributor branch, or representative thereof
5 and the dealer; or

6 (b) threatening to withhold, delay, or disrupt the
7 receipt of new motor vehicles or any motor vehicle parts or
8 supplies ordered by the dealer from the manufacturer,
9 factory branch, distributor, distributor branch, importer,
10 or representative or agent thereof.

11 Section 7. Penalties. (1) A person who violates any
12 provision of this act is guilty of a misdemeanor and upon
13 conviction shall be fined not less than \$500 or more than
14 \$1,000 for each violation. Each day that a violation
15 continues or occurs constitutes a separate violation.

16 (2) If any new motor vehicle dealer incurs pecuniary
17 loss due to a violation of this act by a manufacturer,
18 distributor, importer, or factory branch or representative
19 or agent thereof, the dealer may recover damages therefor in
20 a court of competent jurisdiction in amount equal to three
21 times the pecuniary loss, together with costs including
22 reasonable attorney's fees.

23 Section 8. Cease and desist orders. When the
24 department has reasonable cause to believe, from information
25 furnished to or from an investigation made by it, that any

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1 person is engaged in any business regulated by this act
2 without being licensed as required, it shall immediately
3 issue and serve upon such person, by certified mail, a cease
4 and desist order, requiring him to cease and desist from
5 further engaging in that business. Upon failure of that
6 person to comply with the order, the department shall file
7 an action in the district court of Lewis and Clark County to
8 restrain and enjoin the person from engaging in the
9 business. The court in the action shall proceed as in other
10 actions for injunctions.

-End-

STATE OF MONTANA

REQUEST NO. 374-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 386 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

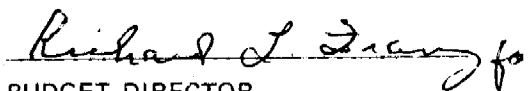
An act to regulate the relationship between new motor vehicle dealers and new motor vehicle manufacturers, and importers; providing for the licensing of new motor vehicle manufacturers, distributors, and importers; providing for administration by the Department of Justice; providing for the regulation and review of transactions between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the limitation of new motor vehicle dealers' products liability; providing for notice, hearing, and appeal in disputes between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; prohibiting coercion of new motor vehicle dealers; and providing for civil and criminal penalties.

ASSUMPTIONS:

1. The number of licenses issued will be less than 100.
2. The Registrar's bureau will not be required to provide forms for the information required in Section 4(6).

FISCAL IMPACT:

Minimal.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-77

Approved by Committee
on Highways & Transportation

SENATE BILL NO. 386

INTRODUCED BY MURRAY, DEVINE, TURNAGE,
STEPHENS, GOODJVER, BOYLAN, ROSKIE, ABER,
MATHERS, HEALY, E. SMITH, McCALLUM, OLSON,
DUNKLE, LOWE, HIMSL, KOLSTAD, DOVER, FLYNN,
PETERSON, LEE, RASSMUSSEN, MEHRENS, THOMAS,
GRAHAM, MANLEY, FASBENDER, WARDEN, BERGREN, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECOND READING

Section 1. Definitions. As used in this act, the
following definitions apply:

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franchise. For the purposes of this act, the relevant market
area of a franchise is the county or counties in which the
franchise FRANCHISEE is located.

(2) "Distributor" or "wholesaler" means a person who
sells or distributes new motor vehicles to new motor vehicle
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or availed of by a manufacturer for the sale of new motor
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2 sell, and service in this state new motor vehicles
3 manufactured or distributed by the franchisor;

4 (c) the franchisee, as a separate business,
5 constitutes a component of franchisor's distribution system;
6 and

7 (d) the operation of the franchisee's business is
8 substantially reliant on the franchisor for the continued
9 supply of new motor vehicles, parts, and accessories.

10 (6) "Franchisee" means a person who receives new motor
11 vehicles from the franchisor under a franchise and who
12 offers, sells, and services such new motor vehicles to and
13 for the general public.

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15 imports, or distributes new motor vehicles and who may
16 enter into a franchise.

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18 arranges for the transportation of a foreign manufactured
19 new motor vehicle into the United States for sale in this
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22 assembles new motor vehicles or who manufactures or installs
23 on previously assembled truck chassis special bodies or
24 equipment, which when installed form an integral part of the
25 new motor vehicle and which constitutes a major

1 manufacturing alteration, but does not include a person who
2 installs a camper on a pickup truck.

3 (10) "Motor vehicle" means a self-propelled vehicle
4 including without limitation an automobile, motor bus,
5 motorcycle, truck, and a truck-tractor.

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7 buys, sells, exchanges, or offers or attempts to negotiate a
8 sale or exchange or any interest in or who is engaged in the
9 business of selling new motor vehicles or used motor
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17 discharge of his official duties or to a trustee, receiver,
18 or other officer acting under the jurisdiction of a court;
19 to financial institutions disposing of repossessed vehicles;
20 or to a person disposing of his personal vehicle. The
21 provisions of this act regulating and licensing
22 manufacturers, distributors, factory branches, distributor
23 branches, and franchisors apply only to those manufacturers,
24 distributors, factory branches, distributor branches, and
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1 (2) A manufacturer, distributor, factory branch,
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 10 upon forms supplied by the department:

- 11 (a) the name and address of the applicant;
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 13 franchised;
 14 (c) the name and address of each of the applicant's
 15 franchisees within the state; and
 16 (d) the name and address of each factory branch,
 17 distributor branch, agent or representative within the
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 20 applicant is in compliance with the provisions of this act,
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 4 is licensed as provided in this act. The obtaining of a
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 5 be signed by an authorized agent of the importer of
 6 foreign-made vehicles whenever there is a direct
 7 importer-dealer agreement or by an authorized agent of the
 8 distributor whenever there is an indirect distributor-dealer
 9 agreement. The distributor's certificate of appointment must
 10 be signed by an authorized agent of the manufacturer of
 11 domestically manufactured vehicles or by an authorized agent
 12 of the manufacturer or importer of foreign made vehicles.

13 (2) A franchisee need not file a written agreement or
 14 certificate of appointment if the manufacturer on direct
 15 dealerships or distributor on indirect dealerships or
 16 importer on direct dealerships uses the identical basic
 17 agreement for all its franchised dealers or distributors in
 18 this state and certifies in the certificate of appointment
 19 that the blanket agreement is on file and the written
 20 agreement with the particular dealer or distributor,
 21 respectively, is identical with the filed blanket agreement
 22 and that he has filed with the department one such agreement
 23 together with a list of franchised dealers or distributors.

24 (3) A manufacturer, distributor, or importer shall
 25 notify the department within 30 days of any revision of or

1 addition to the basic agreement on file or of any franchise
 2 supplement to the agreement. Annual renewal of a certificate
 3 filed as provided in this section is not required.

4 (4) A manufacturer on direct dealerships, distributor
 5 on indirect dealerships, or importer on direct dealerships
 6 who has filed with the department an agreement used by all
 7 its franchisees in this state together with a list of all
 8 such franchisees and who fails to notify the department
 9 within 30 days of any revision, change, or addition thereto
 10 is guilty of a misdemeanor and upon conviction shall be
 11 fined not to exceed \$500.

12 (5) A manufacturer must file with the department a
 13 copy of the delivery and preparation obligations required to
 14 be performed by a dealer prior to the delivery of a new
 15 motor vehicle to a buyer. These delivery and preparation
 16 obligations constitute the dealer's only responsibility for
 17 product liability as between the dealer and the
 18 manufacturer. Any mechanical, body, or parts defects arising
 19 from an express or implied warranty of the manufacturer
 20 constitute the manufacturer's product or warranty liability
 21 only; ~~PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT EFFECT~~
 22 ~~THE OBLIGATIONS OF NEW MOTOR VEHICLE DEALERS TO PERFORM SUCH~~
 23 ~~WARRANTY REPAIR AND MAINTENANCE AS MAY BE REQUIRED BY LAW OR~~
 24 ~~CONTRACT.~~ The manufacturer must compensate an authorized
 25 dealer who performs work to rectify the manufacturer's

1 product or warranty defect or delivery and preparation
2 obligations at the dealer's regular established retail rate
3 for similar work.

4 (6) The dealer must furnish the purchaser of a new
5 vehicle with a signed copy of the manufacturer's delivery
6 and preparation requirements indicating that each of those
7 requirements has been performed.

8 Section 5. Limitations on cancellation and
9 termination. (1) Notwithstanding the terms, provisions, or
10 conditions of any agreement or franchise, no franchisor may
11 cancel, terminate, or refuse to continue a franchise unless
12 the franchisor has cause for termination or noncontinuance.

13 (2) No franchisor may enter into a franchise for the
14 purpose of establishing an additional new motor vehicle
15 dealership in any community in which the same line-make is
16 then represented unless there is good cause for an
17 additional new motor vehicle dealership under a franchise
18 and that it is in the public interest.

19 (3) If a franchisor seeks to terminate or not continue
20 a franchise or seeks to enter into a franchise establishing
21 an additional new motor vehicle dealership of the same
22 line-make, the franchisor shall, within 30 days of the
23 intended action, and the franchisee may, at any time, file a
24 notice with the department of intention to terminate or not
25 continue the franchise or to enter into a franchise for

1 additional representation of the same line-make. No notice
2 of intention to terminate or not continue a franchise may be
3 required from a franchisor until the conclusion of any
4 review proceeding of that intention offered to the
5 franchisee under the franchise. This section does not apply
6 to an intended termination or noncontinuance of a franchise
7 that the franchisee elects voluntarily, pursuant to a plan
8 established by a franchisor, to submit to binding
9 arbitration.

10 (4) Upon receiving a notice of intention under the
11 provisions of subsection (3) of this section, the department
12 shall, within 5 days of receipt of a notice of intention,
13 send by certified mail, with return receipt requested, a
14 copy of the notice to the franchisor and to the franchisee
15 whose franchise the franchisor seeks to establish,
16 terminate, or not continue. If the notice states an intent
17 to establish an additional new motor vehicle dealership, a
18 copy of the notice shall be sent within 5 days of receipt to
19 all franchisees in the community who are then engaged in the
20 business of offering to sell or selling the same line-make.
21 Copies of notices shall be addressed to the principal place
22 of business of each recipient and to the statutory agent of
23 each corporate recipient. The department may also give a
24 copy of the franchisor's notice to any other parties whom
25 the department may consider interested persons, such copy to

1 be in the form and substance and given in the manner the
2 department finds appropriate.

3 (5) A person who receives or is entitled to receive a
4 copy of a notice provided for in subsection (4) of this
5 section may object to the approval of the proposed action by
6 filing a written objection with the department within 15
7 days from the date the notice was received by the person
8 entitled to receive the notice. If no objection is filed
9 within 15 days from the date the notice was received, the
10 proposed action shall be approved.

11 (6) If a timely objection has been filed, the
12 department shall enter an order fixing the time, which shall
13 be within 30 days of the date of the order, and place of a
14 hearing on the objection and shall send by certified mail
15 with return receipt requested a copy of the notice provided
16 for in subsection (4) of this section.

17 (7) The department may upon request continue the date
18 of hearing for a period of 30 days and may upon application,
19 but not ex parte, continue the date of hearing for an
20 additional period of 30 days.

21 (8) Upon hearing, the franchisor has the burden of
22 proof to establish that good cause exists to terminate or
23 not continue the franchise. When there is an objection to
24 the establishment of a new motor vehicle dealership, the
25 burden of proof that good cause does exist shall be with the

1 franchisor.

2 (9) The rules of evidence for such hearing shall be
3 those found in Title 82, chapter 42. The department shall
4 reasonably apportion all costs between the parties.

5 (10) Notwithstanding the terms, provisions, or
6 conditions of an agreement or franchise, the following do
7 not constitute good cause for the termination or
8 noncontinuance of a franchise:

9 (a) a change in ownership of the franchisee's
10 dealership;

11 (b) the fact that the franchisee refused to purchase
12 or accept delivery of a new motor vehicle, part, accessory,
13 or any other commodity or service not ordered by the
14 franchisee.

15 (11) In instances where the change in ownership has the
16 effect of the sale of the franchise, the franchisor may not
17 without good cause withhold its consent to the sale. Good
18 cause relates only to the transferee's financial and
19 managerial capabilities or to the inability of the
20 transferee to comply with a state or federal law relating to
21 new motor vehicle dealerships. The burden of establishing
22 good cause is upon the franchisor.

23 (12) Notwithstanding the terms, provisions, or
24 conditions of an agreement or franchise, in the event of the
25 sale or transfer of ownership of the franchisee's dealership

1 by sale or transfer of the business or by stock transfer to
 2 the dealer's spouse, son, or daughter, the franchisor shall
 3 give effect to such a change in the franchise unless the
 4 transfer of the franchisee's new motor vehicle dealer's
 5 license is denied or the new owner is unable to obtain a
 6 license under the laws of this state.

7 (13) The department may issue subpoenas, administer
 8 oaths, compel the attendance of witnesses, and production of
 9 books, papers, documents, and all other evidence. The
 10 department may apply to the district court of the county in
 11 which the hearing is held for a court order enforcing this
 12 section. The hearing shall be conducted pursuant to Title
 13 82, chapter 42.

14 (14) If a franchisor enters into or attempts to enter
 15 into a franchise, whether upon termination or refusal to
 16 continue another franchise or upon the establishment of an
 17 additional new motor vehicle dealership in a community where
 18 the same line-make is then represented without first
 19 complying with the provisions of this act, no license under
 20 53-118 may be issued to that franchisee or proposed
 21 franchisee to engage in the business of selling new motor
 22 vehicles manufactured or distributed by that franchisor.

23 (15) In determining whether good cause has been
 24 established for terminating or not continuing a franchise,
 25 the department shall take into consideration the existing

1 circumstances, including but not limited to:

- 2 (a) amount of business transacted by the franchise;
 3 (b) investment necessarily made and obligations
 4 incurred by the franchisee in the performance of his part of
 5 the franchise;
 6 (c) permanency of the investment;
 7 (d) whether it is injurious to the public welfare for
 8 the business of the franchisee to be discontinued;
 9 (e) whether the franchisee has adequate new motor
 10 vehicle facilities, equipment, parts, and qualified
 11 management, sales, and service personnel to reasonably
 12 provide consumer care for the new motor vehicles sold at
 13 retail by the franchisee and any other new motor vehicle of
 14 the same line-make;
 15 (f) whether the franchisee refuses to honor warranties
 16 of the franchisor to be performed by the franchisee if the
 17 franchisor reimburses the franchisee for such warranty work
 18 performed by the franchisee; and
 19 (g) except as provided in subsection (10) of this
 20 section, failure by the franchisee to substantially comply
 21 with those requirements of the franchise that are determined
 22 by the department to be reasonable and material.
- 23 (16) In determining whether good cause has been
 24 established for entering into an additional franchise for
 25 the same line-make the department shall take into

1 consideration the existing circumstances, including but not
2 limited to:

3 (a) amount of business transacted by other franchisees
4 of the same line-make in that community;

5 (b) investment necessarily made and obligations
6 incurred by other franchisees of the same line-make in that
7 community in the performance of their part of their
8 franchises; and

9 (c) whether the franchisees of the same line-make in
10 that community are providing adequate consumer care for the
11 new motor vehicle products of the line-make which shall
12 include the adequacy of new motor vehicle dealer sales and
13 service facilities, equipment, supply of parts, and
14 qualified management, sales, and service personnel.

15 (17) A transcript of the testimony of each witness
16 taken at the hearing shall be made and preserved. Within 30
17 days after the hearing, the department shall make written
18 findings of fact and conclusions and enter a final order.

19 (18) Any party to the hearing before the department may
20 appeal pursuant to Title 82, chapter 42.

21 Section 6. Coercion prohibited. (1) A manufacturer of
22 new motor vehicles, factory branch, distributor, distributor
23 branch, importer, field representative, officer, agent, or
24 any representative thereof may not coerce or attempt to
25 coerce a new motor vehicle dealer to accept delivery of a

1 new motor vehicle, a part, or an accessory therefor, or any
2 other commodity that has not been ordered by the dealer.

3 (2) A manufacturer, factory branch, distributor,
4 distributor branch, importer, field representative, officer,
5 agent or representative thereof may not coerce or attempt to
6 coerce a new motor vehicle dealer to enter into an agreement
7 with such manufacturer, factory branch, distributor,
8 distributor branch, or representative thereof or do any
9 other act unfair to the dealer by:

10 (a) threatening to cancel or not renew a franchise
11 existing between the manufacturer, factory branch,
12 distributor, distributor branch, or representative thereof
13 and the dealer; or

14 (b) threatening to withhold, delay, or disrupt the
15 receipt of new motor vehicles or any motor vehicle parts or
16 supplies ordered by the dealer from the manufacturer,
17 factory branch, distributor, distributor branch, importer,
18 or representative or agent thereof.

19 Section 7. Penalties. (1) A person who violates any
20 provision of this act is guilty of a misdemeanor and upon
21 conviction shall be fined not less than \$500 or more than
22 \$1,000 for each violation. Each day that a violation
23 continues or occurs constitutes a separate violation.

24 (2) If any new motor vehicle dealer incurs pecuniary
25 loss due to a violation of this act by a manufacturer,

1 distributor, importer, or factory branch or representative
2 or agent thereof, the dealer may recover damages therefor in
3 a court of competent jurisdiction in amount equal to three
4 times the pecuniary loss, together with costs including
5 reasonable attorney's fees.

6 Section 8. Cease and desist orders. When the
7 department has reasonable cause to believe, from information
8 furnished to or from an investigation made by it, that any
9 person is engaged in any business regulated by this act
10 without being licensed as required, it shall immediately
11 issue and serve upon such person, by certified mail, a cease
12 and desist order, requiring him to cease and desist from
13 further engaging in that business. Upon failure of that
14 person to comply with the order, the department shall file
15 an action in the district court of Lewis and Clark County to
16 restrain and enjoin the person from engaging in the
17 business. The court in the action shall proceed as in other
18 actions for injunctions.

19 ~~SECTION 9. EFFECTIVE DATE. THIS ACT SHALL BE~~
20 ~~EFFECTIVE UPON PASSAGE AND APPROVAL AND SHALL BE APPLICABLE~~
21 ~~TO ALL ACTS AND TRANSACTIONS COMMENCED OR COMPLETED AFTER~~
22 ~~SUCH EFFECTIVE DATE.~~

-End-

1 SENATE BILL NO. 386

2 INTRODUCED BY MURRAY, DEVINE, TURNAGE,

3 STEPHENS, GOODOVER, BOYLAN, ROSKIE, ABER,

4 MATHERS, HEALY, F. SMITH, McCALLUM, OLSON,

5 DUNKLE, LONE, HIMSL, KOLSTAD, DOVER, FLYNN,

6 PETERSON, LEE, RASSMUSSEN, MEHRENS, THOMAS,

7 GRAHAM, MANLEY, FASBENDER, WARDEN, BERGREN, BLAYLOCK

8

9 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
 10 RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
 11 VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
 12 PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
 13 MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
 14 ADMINISTRATION BY THE DEPARTMENT OF JUSTICE BUSINESS
 15 REGULATION; PROVIDING FOR THE REGULATION AND REVIEW OF
 16 TRANSACTIONS BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
 17 VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
 18 PROVIDING FOR THE LIMITATION OF NEW MOTOR VEHICLE DEALER'S
 19 PRODUCTS LIABILITY; PROVIDING FOR NOTICE, HEARING, AND
 20 APPEAL IN DISPUTES BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW
 21 MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
 22 PROHIBITING COERCION OF NEW MOTOR VEHICLE DEALERS; AND
 23 PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; AND PROVIDING AN
 24 EFFECTIVE DATE."

25

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

2 Section 1. Definitions. As used in this act, the
 3 following definitions apply:

4 (1) "Community" means the relevant market area of a
 5 franchise. For the purposes of this act, the relevant market
 6 area of a franchise is the county or counties in which the
 7 franchise FRANCHISEE is located.

8 (2) "Distributor" or "wholesaler" means a person who
 9 sells or distributes new motor vehicles to new motor vehicle
 10 dealers in this state or who maintains distributor
 11 representatives in this state.

12 (3) "Distributor branch" means a branch office
 13 maintained or availed of by a distributor or wholesaler for
 14 the sale of new motor vehicles to new motor vehicle dealers
 15 in this state for directing or supervising its
 16 representatives in this state.

17 (4) "Factory branch" means a branch office maintained
 18 or availed of by a manufacturer for the sale of new motor
 19 vehicles to distributors or for the sale of new motor
 20 vehicles to new motor vehicle dealers in this state or for
 21 directing or supervising its representatives in this state.

22 (5) "Franchise" means a contract between or among two
 23 or more persons when all of the following conditions are
 24 included:

25 (a) a commercial relationship of definite duration or

1 continuing indefinite duration is involved;

2 (b) the franchisee is granted the right to offer,

3 sell, and service in this state new motor vehicles

4 manufactured or distributed by the franchisor;

5 (c) the franchisee, as a separate business,

6 constitutes a component of franchisor's distribution system;

7 and

8 (d) the operation of the franchisee's business is

9 substantially reliant on the franchisor for the continued

10 supply of new motor vehicles, parts, and accessories.

11 (6) "Franchisee" means a person who receives new motor

12 vehicles from the franchisor under a franchise and who

13 offers, sells, and services such new motor vehicles to and

14 for the general public.

15 (7) "Franchisor" means a person who manufactures,

16 imports, or distributes new motor vehicles and who may

17 enter into a franchise.

18 (8) "Importer" means a person who transports or

19 arranges for the transportation of a foreign manufactured

20 new motor vehicle into the United States for sale in this

21 state.

22 (9) "Manufacturer" means a person who manufactures or

23 assembles new motor vehicles or who manufactures or installs

24 on previously assembled truck chassis special bodies or

25 equipment, which when installed form an integral part of the

1 new motor vehicle and which constitutes a major

2 manufacturing alteration, but does not include a person who

3 installs a camper on a pickup truck.

4 (10) "Motor vehicle" means a self-propelled vehicle

5 including without limitation an automobile, motor bus,

6 motorcycle, truck, and a truck-tractor.

7 (11) "New motor vehicle dealer" means a person who

8 buys, sells, exchanges, or offers or attempts to negotiate a

9 sale or exchange or any interest in or who is engaged in the

10 business of selling new motor vehicles or used motor

11 vehicles taken in trade on new motor vehicles.

12 (12) "Department" means the department of justice

13 BUSINESS REGULATION.

14 Section 2. Persons subject to licensing. (1) No

15 manufacturer, distributor, factory branch, or distributor

16 branch may engage in business in Montana except in

17 accordance with the requirements of this act. The provisions

18 of this act do not apply to a public officer engaged in the

19 discharge of his official duties or to a trustee, receiver,

20 or other officer acting under the jurisdiction of a court;

21 to financial institutions disposing of repossessed vehicles;

22 or to a person disposing of his personal vehicle. The

23 provisions of this act regulating and licensing

24 manufacturers, distributors, factory branches, distributor

25 branches, and franchisors apply only to those manufacturers,

1 distributors, factory branches, distributor branches, and
2 franchisors of motor vehicles as defined by this act.

3 (2) A manufacturer, distributor, factory branch,
4 distributor branch, importer, or franchisor transacting
5 business within Montana by offering, selling, trading,
6 consigning, or otherwise transferring a new motor vehicle to
7 a new motor vehicle dealer must be licensed by the state of
8 Montana. The department shall issue licenses to qualified
9 applicants upon receipt of a license fee in the amount of
10 \$15 accompanied by the information required in this section.
11 The following information shall be submitted by an applicant
12 upon forms supplied by the department:

- 13 (a) the name and address of the applicant;
14 (b) the make and model of each new motor vehicle to be
15 franchised;
16 (c) the name and address of each of the applicant's
17 franchisees within the state; and
18 (d) the name and address of each factory branch,
19 distributor branch, agent or representative within the
20 state.

21 (3) The license may be renewed each year if the
22 applicant is in compliance with the provisions of this act,
23 remits a renewal fee in the amount of \$15, and notifies the
24 department of any changes in the information previously
25 supplied.

1 (4) No new motor vehicle may be sold in this state
2 unless either the manufacturer on direct dealership of
3 domestic vehicles, the importer of foreign manufactured
4 vehicles on direct dealership, or the distributor on
5 indirect dealerships of either domestic or foreign vehicles
6 is licensed as provided in this act. The obtaining of a
7 license under this act conclusively establishes that a
8 manufacturer, distributor, or importer is subject to the
9 laws of this state regulating manufacturers, importers, and
10 distributors.

11 Section 3. Administration. The department shall
12 supervise and regulate all persons required by this act to
13 be licensed. In the supervision and regulation thereof the
14 department may:

- 15 (1) make investigations it considers necessary;
16 (2) conduct hearings and compel attendance of
17 witnesses at the hearings pursuant to Title 82, chapter 42;
18 and
19 (3) prescribe rules it determines necessary to carry
20 out the provisions of this act.

21 Section 4. Filing agreement -- product liability. (1)
22 A franchisee must, at the time he applies for a new motor
23 vehicle dealer license under the provisions of 53-118 file
24 with the department a certified copy of his written
25 agreement with a manufacturer and a certificate of

1 appointment as dealer or distributor. The certificate of
 2 appointment must be signed by an authorized agent of the
 3 manufacturer of domestic vehicles whenever there is a direct
 4 manufacturer dealer agreement or by an authorized agent of
 5 the distributor whenever the manufacturer is wholesaling
 6 through an appointed distributorship. The certificate must
 7 be signed by an authorized agent of the importer of
 8 foreign-made vehicles whenever there is a direct
 9 importer-dealer agreement or by an authorized agent of the
 10 distributor whenever there is an indirect distributor-dealer
 11 agreement. The distributor's certificate of appointment must
 12 be signed by an authorized agent of the manufacturer of
 13 domestically manufactured vehicles or by an authorized agent
 14 of the manufacturer or importer of foreign made vehicles.

15 (2) A franchisee need not file a written agreement or
 16 certificate of appointment if the manufacturer on direct
 17 dealerships or distributor on indirect dealerships or
 18 importer on direct dealerships uses the identical basic
 19 agreement for all its franchised dealers or distributors in
 20 this state and certifies in the certificate of appointment
 21 that the blanket agreement is on file and the written
 22 agreement with the particular dealer or distributor,
 23 respectively, is identical with the filed blanket agreement
 24 and that he has filed with the department one such agreement
 25 together with a list of franchised dealers or distributors.

1 (3) A manufacturer, distributor, or importer shall
 2 notify the department within 30 days of any revision of or
 3 addition to the basic agreement on file or of any franchise
 4 supplement to the agreement. Annual renewal of a certificate
 5 filed as provided in this section is not required.

6 (4) A manufacturer on direct dealerships, distributor
 7 on indirect dealerships, or importer on direct dealerships
 8 who has filed with the department an agreement used by all
 9 its franchisees in this state together with a list of all
 10 such franchisees and who fails to notify the department
 11 within 30 days of any revision, change, or addition thereto
 12 is guilty of a misdemeanor and upon conviction shall be
 13 fined not to exceed \$500.

14 (5) A manufacturer must file with the department a
 15 copy of the delivery and preparation obligations required to
 16 be performed by a dealer prior to the delivery of a new
 17 motor vehicle to a buyer. These delivery and preparation
 18 obligations constitute the dealer's only responsibility for
 19 product liability as between the dealer and the
 20 manufacturer. Any mechanical, body, or parts defects arising
 21 from an express or implied warranty of the manufacturer
 22 constitute the manufacturer's product or warranty liability
 23 only; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT EFFECT
 24 THE OBLIGATIONS OF NEW MOTOR VEHICLE DEALERS TO PERFORM SUCH
 25 WARRANTY REPAIR AND MAINTENANCE AS MAY BE REQUIRED BY LAW OR

1 **CONTRACT.** The manufacturer must compensate an authorized
 2 dealer who performs work to rectify the manufacturer's
 3 product or warranty defect or delivery and preparation
 4 obligations at the dealer's regular established retail rate
 5 for similar work.

6 (6) The dealer must furnish the purchaser of a new
 7 vehicle with a signed copy of the manufacturer's delivery
 8 and preparation requirements indicating that each of those
 9 requirements has been performed.

10 Section 5. Limitations on cancellation and
 11 termination. (1) Notwithstanding the terms, provisions, or
 12 conditions of any agreement or franchise, no franchisor may
 13 cancel, terminate, or refuse to continue a franchise unless
 14 the franchisor has cause for termination or noncontinuance.

15 (2) No franchisor may enter into a franchise for the
 16 purpose of establishing an additional new motor vehicle
 17 dealership in any community in which the same line-make is
 18 then represented unless there is good cause for an
 19 additional new motor vehicle dealership under a franchise
 20 and that it is in the public interest.

21 (3) If a franchisor seeks to terminate or not continue
 22 a franchise or seeks to enter into a franchise establishing
 23 an additional new motor vehicle dealership of the same
 24 line-make, the franchisor shall, within 30 days of the
 25 intended action, and the franchisee may, at any time, file a

1 notice with the department of intention to terminate or not
 2 continue the franchise or to enter into a franchise for
 3 additional representation of the same line-make. No notice
 4 of intention to terminate or not continue a franchise may be
 5 required from a franchisor until the conclusion of any
 6 review proceeding of that intention offered to the
 7 franchisee under the franchise. This section does not apply
 8 to an intended termination or noncontinuance of a franchise
 9 that the franchisee elects voluntarily, pursuant to a plan
 10 established by a franchisor, to submit to binding
 11 arbitration.

12 (4) Upon receiving a notice of intention under the
 13 provisions of subsection (3) of this section, the department
 14 shall, within 5 days of receipt of a notice of intention,
 15 send by certified mail, with return receipt requested, a
 16 copy of the notice to the franchisor and to the franchisee
 17 whose franchise the franchisor seeks to establish,
 18 terminate, or not continue. If the notice states an intent
 19 to establish an additional new motor vehicle dealership, a
 20 copy of the notice shall be sent within 5 days of receipt to
 21 all franchisees in the community who are then engaged in the
 22 business of offering to sell or selling the same line-make.
 23 Copies of notices shall be addressed to the principal place
 24 of business of each recipient and to the statutory agent of
 25 each corporate recipient. The department may also give a

1 copy of the franchisor's notice to any other parties whom
2 the department may consider interested persons, such copy to
3 be in the form and substance and given in the manner the
4 department finds appropriate.

5 (5) A person who receives or is entitled to receive a
6 copy of a notice provided for in subsection (4) of this
7 section may object to the approval of the proposed action by
8 filing a written objection with the department within 15
9 days from the date the notice was received by the person
10 entitled to receive the notice. If no objection is filed
11 within 15 days from the date the notice was received, the
12 proposed action shall be approved.

13 (6) If a timely objection has been filed, the
14 department shall enter an order fixing the time, which shall
15 be within 30 days of the date of the order, and place of a
16 hearing on the objection and shall send by certified mail
17 with return receipt requested a copy of the notice provided
18 for in subsection (4) of this section.

19 (7) The department may upon request continue the date
20 of hearing for a period of 30 days and may upon application,
21 but not ex parte, continue the date of hearing for an
22 additional period of 30 days.

23 (8) Upon hearing, the franchisor has the burden of
24 proof to establish that good cause exists to terminate or
25 not continue the franchise. When there is an objection to

1 the establishment of a new motor vehicle dealership, the
2 burden of proof that good cause does exist shall be with the
3 franchisor.

4 (9) The rules of evidence for such hearing shall be
5 those found in Title 82, chapter 42. The department shall
6 reasonably apportion all costs between the parties.

7 (10) Notwithstanding the terms, provisions, or
8 conditions of an agreement or franchise, the following do
9 not constitute good cause for the termination or
10 noncontinuance of a franchise:

11 (a) a change in ownership of the franchisee's
12 dealership;

13 (b) the fact that the franchisee refused to purchase
14 or accept delivery of a new motor vehicle, part, accessory,
15 or any other commodity or service not ordered by the
16 franchisee.

17 (11) In instances where the change in ownership has the
18 effect of the sale of the franchise, the franchisor may not
19 without good cause withhold its consent to the sale. Good
20 cause relates only to the transferee's financial and
21 managerial capabilities or to the inability of the
22 transferee to comply with a state or federal law relating to
23 new motor vehicle dealerships. The burden of establishing
24 good cause is upon the franchisor.

25 (12) Notwithstanding the terms, provisions, or

1 conditions of an agreement or franchise, in the event of the
 2 sale or transfer of ownership of the franchisee's dealership
 3 by sale or transfer of the business or by stock transfer to
 4 the dealer's spouse, son, or daughter, the franchisor shall
 5 give effect to such a change in the franchise unless the
 6 transfer of the franchisee's new motor vehicle dealer's
 7 license is denied or the new owner is unable to obtain a
 8 license under the laws of this state.

9 (13) The department may issue subpoenas, administer
 10 oaths, compel the attendance of witnesses, and production of
 11 books, papers, documents, and all other evidence. The
 12 department may apply to the district court of the county in
 13 which the hearing is held for a court order enforcing this
 14 section. The hearing shall be conducted pursuant to Title
 15 82, chapter 42.

16 (14) If a franchisor enters into or attempts to enter
 17 into a franchise, whether upon termination or refusal to
 18 continue another franchise or upon the establishment of an
 19 additional new motor vehicle dealership in a community where
 20 the same line-make is then represented without first
 21 complying with the provisions of this act, no license under
 22 53-118 may be issued to that franchisee or proposed
 23 franchisee to engage in the business of selling new motor
 24 vehicles manufactured or distributed by that franchisor.

25 (15) In determining whether good cause has been

1 established for terminating or not continuing a franchise,
 2 the department shall take into consideration the existing
 3 circumstances, including but not limited to:

- 4 (a) amount of business transacted by the franchise;
- 5 (b) investment necessarily made and obligations
 6 incurred by the franchisee in the performance of his part of
 7 the franchise;
- 8 (c) permanency of the investment;
- 9 (d) whether it is injurious to the public welfare for
 10 the business of the franchisee to be discontinued;
- 11 (e) whether the franchisee has adequate new motor
 12 vehicle facilities, equipment, parts, and qualified
 13 management, sales, and service personnel to reasonably
 14 provide consumer care for the new motor vehicles sold at
 15 retail by the franchisee and any other new motor vehicle of
 16 the same line-make;
- 17 (f) whether the franchisee refuses to honor warranties
 18 of the franchisor to be performed by the franchisee if the
 19 franchisor reimburses the franchisee for such warranty work
 20 performed by the franchisee; and
- 21 (g) except as provided in subsection (10) of this
 22 section, failure by the franchisee to substantially comply
 23 with those requirements of the franchise that are determined
 24 by the department to be reasonable and material.

25 (16) In determining whether good cause has been

1 established for entering into an additional franchise for
 2 the same line-make the department shall take into
 3 consideration the existing circumstances, including but not
 4 limited to:

5 (a) amount of business transacted by other franchisees
 6 of the same line-make in that community;

7 (b) investment necessarily made and obligations
 8 incurred by other franchisees of the same line-make in that
 9 community in the performance of their part of their
 10 franchises; and

11 (c) whether the franchisees of the same line-make in
 12 that community are providing adequate consumer care for the
 13 new motor vehicle products of the line-make which shall
 14 include the adequacy of new motor vehicle dealer sales and
 15 service facilities, equipment, supply of parts, and
 16 qualified management, sales, and service personnel.

17 (17) A transcript of the testimony of each witness
 18 taken at the hearing shall be made and preserved. Within 30
 19 days after the hearing, the department shall make written
 20 findings of fact and conclusions and enter a final order.

21 (18) Any party to the hearing before the department may
 22 appeal pursuant to Title 82, chapter 42.

23 Section 6. Coercion prohibited. (1) A manufacturer of
 24 new motor vehicles, factory branch, distributor, distributor
 25 branch, importer, field representative, officer, agent, or

1 any representative thereof may not coerce or attempt to
 2 coerce a new motor vehicle dealer to accept delivery of a
 3 new motor vehicle, a part, or an accessory therefor, or any
 4 other commodity that has not been ordered by the dealer.

5 (2) A manufacturer, factory branch, distributor,
 6 distributor branch, importer, field representative, officer,
 7 agent or representative thereof may not coerce or attempt to
 8 coerce a new motor vehicle dealer to enter into an agreement
 9 with such manufacturer, factory branch, distributor,
 10 distributor branch, or representative thereof or do any
 11 other act unfair to the dealer by:

12 (a) threatening to cancel or not renew a franchise
 13 existing between the manufacturer, factory branch,
 14 distributor, distributor branch, or representative thereof
 15 and the dealer; or

16 (b) threatening to withhold, delay, or disrupt the
 17 receipt of new motor vehicles or any motor vehicle parts or
 18 supplies ordered by the dealer from the manufacturer,
 19 factory branch, distributor, distributor branch, importer,
 20 or representative or agent thereof.

21 Section 7. Penalties. (1) A person who violates any
 22 provision of this act is guilty of a misdemeanor and upon
 23 conviction shall be fined not less than \$500 or more than
 24 \$1,000 for each violation. Each day that a violation
 25 continues or occurs constitutes a separate violation.

1 (2) If any new motor vehicle dealer incurs pecuniary
 2 loss due to a violation of this act by a manufacturer,
 3 distributor, importer, or factory branch or representative
 4 or agent thereof, the dealer may recover damages therefor in
 5 a court of competent jurisdiction in amount equal to three
 6 times the pecuniary loss, together with costs including
 7 reasonable attorney's fees.

8 Section 8. Cease and desist orders. When the
 9 department has reasonable cause to believe, from information
 10 furnished to or from an investigation made by it, that any
 11 person is engaged in any business regulated by this act
 12 without being licensed as required, it shall immediately
 13 issue and serve upon such person, by certified mail, a cease
 14 and desist order, requiring him to cease and desist from
 15 further engaging in that business. Upon failure of that
 16 person to comply with the order, the department shall file
 17 an action in the district court of Lewis and Clark County to
 18 restrain and enjoin the person from engaging in the
 19 business. The court in the action shall proceed as in other
 20 actions for injunctions.

21 SECTION 9. EFFECTIVE DATE. THIS ACT SHALL BE
 22 EFFECTIVE UPON PASSAGE AND APPROVAL AND SHALL BE APPLICABLE
 23 TO ALL ACTS AND TRANSACTIONS COMMENCED OR COMPLETED AFTER
 24 SUCH EFFECTIVE DATE.

25 SECTION 10. SEVERABILITY. IF A PART OF THIS ACT IS

1 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
 2 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
 3 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
 4 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
 5 INVALID APPLICATIONS.

-End-

HOUSE OF REPRESENTATIVES

March 22, 1977

Committee of the whole amendment to SENATE BILL NO. 386, third reading copy.

1. Amend page 9, section 5, subsection (3), line 24.

Following: "shall,"

Strike: "within 30 days of"

Insert: "not less than 30 days prior to"

AS AMENDED BE CONCURRED IN

SENATE BILL NO. 386

INTRODUCED BY MURRAY, DEVINE, TURNAGE,
STEPHENS, GOODOVER, BOYLAN, ROSKIE, ABER,
MATHERS, HEALY, E. SMITH, McCALLUM, OLSON,
DUNKLE, LOWE, HIMSL, KOLSTAD, DOVER, FLYNN,
PETERSON, LEE, RASMUSSEN, MEHRENS, THOMAS,
GRAHAM, MANLEY, FASBENDER, WARDEN, BERGREN, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
ADMINISTRATION BY THE DEPARTMENT OF JUSTICE BUSINESS
REGULATION; PROVIDING FOR THE REGULATION AND REVIEW OF
TRANSACTIONS BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LIMITATION OF NEW MOTOR VEHICLE DEALER'S
PRODUCTS LIABILITY; PROVIDING FOR NOTICE, HEARING, AND
APPEAL IN DISPUTES BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW
MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROHIBITING COERCION OF NEW MOTOR VEHICLE DEALERS; AND
PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; AND PROVIDING AN
EFFECTIVE DATE."

REFERENCE BILL

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

Section 1. Definitions. As used in this act, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this act, the relevant market area of a franchise is the county or counties in which the franchise ~~FRANCHISEE~~ is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or

1 continuing indefinite duration is involved;

2 (b) the franchisee is granted the right to offer,
3 sell, and service in this state new motor vehicles
4 manufactured or distributed by the franchisor;

5 (c) the franchisee, as a separate business,
6 constitutes a component of franchisor's distribution system;
7 and

8 (d) the operation of the franchisee's business is
9 substantially reliant on the franchisor for the continued
10 supply of new motor vehicles, parts, and accessories.

11 (6) "Franchisee" means a person who receives new motor
12 vehicles from the franchisor under a franchise and who
13 offers, sells, and services such new motor vehicles to and
14 for the general public.

15 (7) "Franchisor" means a person who manufactures,
16 imports, or distributes new motor vehicles and who may
17 enter into a franchise.

18 (8) "Importer" means a person who transports or
19 arranges for the transportation of a foreign manufactured
20 new motor vehicle into the United States for sale in this
21 state.

22 (9) "Manufacturer" means a person who manufactures or
23 assembles new motor vehicles or who manufactures or installs
24 on previously assembled truck chassis special bodies or
25 equipment, which when installed form an integral part of the

1 new motor vehicle and which constitutes a major
2 manufacturing alteration, but does not include a person who
3 installs a camper on a pickup truck.

4 (10) "Motor vehicle" means a self-propelled vehicle
5 including without limitation an automobile, motor bus,
6 motorcycle, truck, and a truck-tractor.

7 (11) "New motor vehicle dealer" means a person who
8 buys, sells, exchanges, or offers or attempts to negotiate a
9 sale or exchange or any interest in or who is engaged in the
10 business of selling new motor vehicles or used motor
11 vehicles taken in trade on new motor vehicles.

12 (12) "Department" means the department of justice
13 BUSINESS REGULATION.

14 Section 2. Persons subject to licensing. (1) No
15 manufacturer, distributor, factory branch, or distributor
16 branch may engage in business in Montana except in
17 accordance with the requirements of this act. The provisions
18 of this act do not apply to a public officer engaged in the
19 discharge of his official duties or to a trustee, receiver,
20 or other officer acting under the jurisdiction of a court;
21 to financial institutions disposing of repossessed vehicles;
22 or to a person disposing of his personal vehicle. The
23 provisions of this act regulating and licensing
24 manufacturers, distributors, factory branches, distributor
25 branches, and franchisors apply only to those manufacturers,

1 distributors, factory branches, distributor branches, and
2 franchisors of motor vehicles as defined by this act.

3 (2) A manufacturer, distributor, factory branch,
4 distributor branch, importer, or franchisor transacting
5 business within Montana by offering, selling, trading,
6 consigning, or otherwise transferring a new motor vehicle to
7 a new motor vehicle dealer must be licensed by the state of
8 Montana. The department shall issue licenses to qualified
9 applicants upon receipt of a license fee in the amount of
10 \$15 accompanied by the information required in this section.
11 The following information shall be submitted by an applicant
12 upon forms supplied by the department:

- 13 (a) the name and address of the applicant;
14 (b) the make and model of each new motor vehicle to be
15 franchised;
16 (c) the name and address of each of the applicant's
17 franchisees within the state; and
18 (d) the name and address of each factory branch,
19 distributor branch, agent or representative within the
20 state.

21 (3) The license may be renewed each year if the
22 applicant is in compliance with the provisions of this act,
23 remits a renewal fee in the amount of \$15, and notifies the
24 department of any changes in the information previously
25 supplied.

1 (4) No new motor vehicle may be sold in this state
2 unless either the manufacturer on direct dealership of
3 domestic vehicles, the importer of foreign manufactured
4 vehicles on direct dealership, or the distributor on
5 indirect dealerships of either domestic or foreign vehicles
6 is licensed as provided in this act. The obtaining of a
7 license under this act conclusively establishes that a
8 manufacturer, distributor, or importer is subject to the
9 laws of this state regulating manufacturers, importers, and
10 distributors.

11 Section 3. Administration. The department shall
12 supervise and regulate all persons required by this act to
13 be licensed. In the supervision and regulation thereof the
14 department may:

- 15 (1) make investigations it considers necessary;
16 (2) conduct hearings and compel attendance of
17 witnesses at the hearings pursuant to Title 82, chapter 42;
18 and
19 (3) prescribe rules it determines necessary to carry
20 out the provisions of this act.

21 Section 4. Filing agreement -- product liability. (1)
22 A franchisee must, at the time he applies for a new motor
23 vehicle dealer license under the provisions of 53-118 file
24 with the department a certified copy of his written
25 agreement with a manufacturer and a certificate of

1 appointment as dealer or distributor. The certificate of
 2 appointment must be signed by an authorized agent of the
 3 manufacturer of domestic vehicles whenever there is a direct
 4 manufacturer dealer agreement or by an authorized agent of
 5 the distributor whenever the manufacturer is wholesaling
 6 through an appointed distributorship. The certificate must
 7 be signed by an authorized agent of the importer of
 8 foreign-made vehicles whenever there is a direct
 9 importer-dealer agreement or by an authorized agent of the
 10 distributor whenever there is an indirect distributor-dealer
 11 agreement. The distributor's certificate of appointment must
 12 be signed by an authorized agent of the manufacturer of
 13 domestically manufactured vehicles or by an authorized agent
 14 of the manufacturer or importer of foreign made vehicles.

15 (2) A franchisee need not file a written agreement or
 16 certificate of appointment if the manufacturer on direct
 17 dealerships or distributor on indirect dealerships or
 18 importer on direct dealerships uses the identical basic
 19 agreement for all its franchised dealers or distributors in
 20 this state and certifies in the certificate of appointment
 21 that the blanket agreement is on file and the written
 22 agreement with the particular dealer or distributor,
 23 respectively, is identical with the filed blanket agreement
 24 and that he has filed with the department one such agreement
 25 together with a list of franchised dealers or distributors.

1 (3) A manufacturer, distributor, or importer shall
 2 notify the department within 30 days of any revision of or
 3 addition to the basic agreement on file or of any franchise
 4 supplement to the agreement. Annual renewal of a certificate
 5 filed as provided in this section is not required.

6 (4) A manufacturer on direct dealerships, distributor
 7 on indirect dealerships, or importer on direct dealerships
 8 who has filed with the department an agreement used by all
 9 its franchisees in this state together with a list of all
 10 such franchisees and who fails to notify the department
 11 within 30 days of any revision, change, or addition thereto
 12 is guilty of a misdemeanor and upon conviction shall be
 13 fined not to exceed \$500.

14 (5) A manufacturer must file with the department a
 15 copy of the delivery and preparation obligations required to
 16 be performed by a dealer prior to the delivery of a new
 17 motor vehicle to a buyer. These delivery and preparation
 18 obligations constitute the dealer's only responsibility for
 19 product liability as between the dealer and the
 20 manufacturer. Any mechanical, body, or parts defects arising
 21 from an express or implied warranty of the manufacturer
 22 constitute the manufacturer's product or warranty liability
 23 only. PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT EFFECT
 24 THE OBLIGATIONS OF NEW MOTOR VEHICLE DEALERS TO PERFORM SUCH
 25 WARRANTY REPAIR AND MAINTENANCE AS MAY BE REQUIRED BY LAW OR

1 ~~CONTRACT~~. The manufacturer must compensate an authorized
2 dealer who performs work to rectify the manufacturer's
3 product or warranty defect or delivery and preparation
4 obligations at the dealer's regular established retail rate
5 for similar work.

6 (6) The dealer must furnish the purchaser of a new
7 vehicle with a signed copy of the manufacturer's delivery
8 and preparation requirements indicating that each of those
9 requirements has been performed.

10 Section 5. Limitations on cancellation and
11 termination. (1) Notwithstanding the terms, provisions, or
12 conditions of any agreement or franchise, no franchisor may
13 cancel, terminate, or refuse to continue a franchise unless
14 the franchisor has cause for termination or noncontinuance.

15 (2) No franchisor may enter into a franchise for the
16 purpose of establishing an additional new motor vehicle
17 dealership in any community in which the same line-make is
18 then represented unless there is good cause for an
19 additional new motor vehicle dealership under a franchise
20 and that it is in the public interest.

21 (3) If a franchisor seeks to terminate or not continue
22 a franchise or seeks to enter into a franchise establishing
23 an additional new motor vehicle dealership of the same
24 line-make, the franchisor shall, ~~within 30 days of~~ NOI LESS
25 THAN 30 DAYS PRIOR TO the intended action, and the

1 franchisee may, at any time, file a notice with the
2 department of intention to terminate or not continue the
3 franchise or to enter into a franchise for additional
4 representation of the same line-make. No notice of intention
5 to terminate or not continue a franchise may be required
6 from a franchisor until the conclusion of any review
7 proceeding of that intention offered to the franchisee
8 under the franchise. This section does not apply to an
9 intended termination or noncontinuance of a franchise that
10 the franchisee elects voluntarily, pursuant to a plan
11 established by a franchisor, to submit to binding
12 arbitration.

13 (4) Upon receiving a notice of intention under the
14 provisions of subsection (3) of this section, the department
15 shall, within 5 days of receipt of a notice of intention,
16 send by certified mail, with return receipt requested, a
17 copy of the notice to the franchisor and to the franchisee
18 whose franchise the franchisor seeks to establish,
19 terminate, or not continue. If the notice states an intent
20 to establish an additional new motor vehicle dealership, a
21 copy of the notice shall be sent within 5 days of receipt to
22 all franchisees in the community who are then engaged in the
23 business of offering to sell or selling the same line-make.
24 Copies of notices shall be addressed to the principal place
25 of business of each recipient and to the statutory agent of

1 each corporate recipient. The department may also give a
 2 copy of the franchisor's notice to any other parties whom
 3 the department may consider interested persons, such copy to
 4 be in the form and substance and given in the manner the
 5 department finds appropriate.

6 (5) A person who receives or is entitled to receive a
 7 copy of a notice provided for in subsection (4) of this
 8 section may object to the approval of the proposed action by
 9 filing a written objection with the department within 15
 10 days from the date the notice was received by the person
 11 entitled to receive the notice. If no objection is filed
 12 within 15 days from the date the notice was received, the
 13 proposed action shall be approved.

14 (6) If a timely objection has been filed, the
 15 department shall enter an order fixing the time, which shall
 16 be within 30 days of the date of the order, and place of a
 17 hearing on the objection and shall send by certified mail
 18 with return receipt requested a copy of the notice provided
 19 for in subsection (4) of this section.

20 (7) The department may upon request continue the date
 21 of hearing for a period of 30 days and may upon application,
 22 but not ex parte, continue the date of hearing for an
 23 additional period of 30 days.

24 (8) Upon hearing, the franchisor has the burden of
 25 proof to establish that good cause exists to terminate or

1 not continue the franchise. When there is an objection to
 2 the establishment of a new motor vehicle dealership, the
 3 burden of proof that good cause does exist shall be with the
 4 franchisor.

5 (9) The rules of evidence for such hearing shall be
 6 those found in Title 82, chapter 42. The department shall
 7 reasonably apportion all costs between the parties.

8 (10) Notwithstanding the terms, provisions, or
 9 conditions of an agreement or franchise, the following do
 10 not constitute good cause for the termination or
 11 noncontinuance of a franchise:

12 (a) a change in ownership of the franchisee's
 13 dealership;

14 (b) the fact that the franchisee refused to purchase
 15 or accept delivery of a new motor vehicle, part, accessory,
 16 or any other commodity or service not ordered by the
 17 franchisee.

18 (11) In instances where the change in ownership has the
 19 effect of the sale of the franchise, the franchisor may not
 20 without good cause withhold its consent to the sale. Good
 21 cause relates only to the transferee's financial and
 22 managerial capabilities or to the inability of the
 23 transferee to comply with a state or federal law relating to
 24 new motor vehicle dealerships. The burden of establishing
 25 good cause is upon the franchisor.

1 (12) Notwithstanding the terms, provisions, or
 2 conditions of an agreement or franchise, in the event of the
 3 sale or transfer of ownership of the franchisee's dealership
 4 by sale or transfer of the business or by stock transfer to
 5 the dealer's spouse, son, or daughter, the franchisor shall
 6 give effect to such a change in the franchise unless the
 7 transfer of the franchisee's new motor vehicle dealer's
 8 license is denied or the new owner is unable to obtain a
 9 license under the laws of this state.

10 (13) The department may issue subpoenas, administer
 11 oaths, compel the attendance of witnesses, and production of
 12 books, papers, documents, and all other evidence. The
 13 department may apply to the district court of the county in
 14 which the hearing is held for a court order enforcing this
 15 section. The hearing shall be conducted pursuant to Title
 16 82, chapter 42.

17 (14) If a franchisor enters into or attempts to enter
 18 into a franchise, whether upon termination or refusal to
 19 continue another franchise or upon the establishment of an
 20 additional new motor vehicle dealership in a community where
 21 the same line-make is then represented without first
 22 complying with the provisions of this act, no license under
 23 53-118 may be issued to that franchisee or proposed
 24 franchisee to engage in the business of selling new motor
 25 vehicles manufactured or distributed by that franchisor.

1 (15) In determining whether good cause has been
 2 established for terminating or not continuing a franchise,
 3 the department shall take into consideration the existing
 4 circumstances, including but not limited to:

5 (a) amount of business transacted by the franchise;
 6 (b) investment necessarily made and obligations
 7 incurred by the franchisee in the performance of his part of
 8 the franchise;

9 (c) permanency of the investment;
 10 (d) whether it is injurious to the public welfare for
 11 the business of the franchisee to be discontinued;

12 (e) whether the franchisee has adequate new motor
 13 vehicle facilities, equipment, parts, and qualified
 14 management, sales, and service personnel to reasonably
 15 provide consumer care for the new motor vehicles sold at
 16 retail by the franchisee and any other new motor vehicle of
 17 the same line-make;

18 (f) whether the franchisee refuses to honor warranties
 19 of the franchisor to be performed by the franchisee if the
 20 franchisor reimburses the franchisee for such warranty work
 21 performed by the franchisee; and

22 (g) except as provided in subsection (10) of this
 23 section, failure by the franchisee to substantially comply
 24 with those requirements of the franchise that are determined
 25 by the department to be reasonable and material.

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2 established for entering into an additional franchise for
3 the same line-make the department shall take into
4 consideration the existing circumstances, including but not
5 limited to:

6 (a) amount of business transacted by other franchisees
7 of the same line-make in that community;

8 (b) investment necessarily made and obligations
9 incurred by other franchisees of the same line-make in that
10 community in the performance of their part of their
11 franchises; and

12 (c) whether the franchisees of the same line-make in
13 that community are providing adequate consumer care for the
14 new motor vehicle products of the line-make which shall
15 include the adequacy of new motor vehicle dealer sales and
16 service facilities, equipment, supply of parts, and
17 qualified management, sales, and service personnel.

18 (17) A transcript of the testimony of each witness
19 taken at the hearing shall be made and preserved. Within 30
20 days after the hearing, the department shall make written
21 findings of fact and conclusions and enter a final order.

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23 appeal pursuant to Title 82, chapter 42.

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2 any representative thereof may not coerce or attempt to
3 coerce a new motor vehicle dealer to accept delivery of a
4 new motor vehicle, a part, or an accessory therefor, or any
5 other commodity that has not been ordered by the dealer.

6 (2) A manufacturer, factory branch, distributor,
7 distributor branch, importer, field representative, officer,
8 agent or representative thereof may not coerce or attempt to
9 coerce a new motor vehicle dealer to enter into an agreement
10 with such manufacturer, factory branch, distributor,
11 distributor branch, or representative thereof or do any
12 other act unfair to the dealer by:

13 (a) threatening to cancel or not renew a franchise
14 existing between the manufacturer, factory branch,
15 distributor, distributor branch, or representative thereof
16 and the dealer; or

17 (b) threatening to withhold, delay, or disrupt the
18 receipt of new motor vehicles or any motor vehicle parts or
19 supplies ordered by the dealer from the manufacturer,
20 factory branch, distributor, distributor branch, importer,
21 or representative or agent thereof.

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23 provision of this act is guilty of a misdemeanor and upon
24 conviction shall be fined not less than \$500 or more than
25 \$1,000 for each violation. Each day that a violation

1 continues or occurs constitutes a separate violation.

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3 loss due to a violation of this act by a manufacturer,
4 distributor, importer, or factory branch or representative
5 or agent thereof, the dealer may recover damages therefor in
6 a court of competent jurisdiction in amount equal to three
7 times the pecuniary loss, together with costs including
8 reasonable attorney's fees.

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11 furnished to or from an investigation made by it, that any
12 person is engaged in any business regulated by this act
13 without being licensed as required, it shall immediately
14 issue and serve upon such person, by certified mail, a cease
15 and desist order, requiring him to cease and desist from
16 further engaging in that business. Upon failure of that
17 person to comply with the order, the department shall file
18 an action in the district court of Lewis and Clark County to
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-End-