

1 *Senate* BILL NO. *426*  
 2 INTRODUCED BY *Murray Deane Ferguson Goodner*  
 3 *Zschender Thomas, Lou Boylan, Ed Pilever*  
 4 ~~FOR~~ AN ACT ENTITLED: "AN ACT PROVIDING FOR THE *Ed Pilever*  
 5 SUCCESSION OF INTEREST BY DESIGNATED FAMILY MEMBERS TO THE *Ed Pilever*  
 6 OWNERSHIP INTERESTS OF A MOTOR VEHICLE DEALERSHIP UPON THE *Ed Pilever*  
 7 DEATH OR INCOMPETENCY OF THE DEALER; PROVIDING A METHOD OR *Ed Pilever*  
 8 PROTEST BY MANUFACTURERS, DISTRIBUTORS, OR IMPORTERS; *Ed Pilever*  
 9 PROVIDING NOTICE AND OPPORTUNITY FOR HEARING BEFORE THE *Ed Pilever*  
 10 DEPARTMENT OF JUSTICE; PROVIDING FOR APPEAL TO THE DISTRICT *Ed Pilever*  
 11 COURT; AND PROVIDING PENALTIES AND DAMAGES."  
 12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Ed Pilever*  
 14 Section 1. Definitions. As used in this act, the *Ed Pilever*  
 15 following definitions apply:  
 16 (1) "Department" means the department of justice. *Ed Pilever*  
 17 (2) "Dealer" means a person who, for commission or *Ed Pilever*  
 18 profit, engages in the business of buying, selling,  
 19 exchanging, or acting as a broker of motor vehicles under a  
 20 franchise or distribution agreement.  
 21 (3) "Designated family member" means the spouse,  
 22 child, grandchild, parent, brother, or sister of a dealer  
 23 who, in the case of a deceased dealer, is entitled to  
 24 inherit the dealer's ownership interest in the dealership  
 25 under the terms of the dealer's will or under the laws of

1 intestate succession of this state or who, in the case of  
 2 an incapacitated dealer, has been appointed by a court as  
 3 the legal representative of the dealer's property. The term  
 4 includes the appointed and qualified personal  
 5 representative and the testamentary trustee of a deceased  
 6 dealer.  
 7 (4) "Person" means an individual, corporation,  
 8 partnership, association, firm, or other legal entity.  
 9 Section 2. Right of designated family member to  
 10 succeed in dealership ownership. (1) Any designated family  
 11 member of a deceased or incapacitated dealer may succeed  
 12 the dealer in the ownership or operation of the dealership  
 13 under the existing franchise or distribution agreement  
 14 provided he gives the manufacturer, factory branch,  
 15 distributor, or importer of new motor vehicles written  
 16 notice of his intention to do so within 120 days of the  
 17 dealer's death or incapacity and unless there exists good  
 18 cause for refusal to honor such succession on the part of  
 19 the manufacturer, factory branch, distributor, or importer.  
 20 (2) The manufacturer, factory branch, distributor, or  
 21 importer may request, and the designated family member shall  
 22 provide, upon request, personal and financial data that is  
 23 reasonably necessary to determine whether the succession  
 24 should be honored.  
 25 Section 3. Refusal to honor succession to ownership —

1 notice required. (1) If a manufacturer, factory branch,  
 2 distributor, or importer believes that good cause exists for  
 3 refusing to honor the succession to the ownership and  
 4 operation of a dealership by a family member of a deceased  
 5 or incapacitated dealer under the existing franchise  
 6 agreement, the manufacturer, factory branch, distributor, or  
 7 importer may, within 30 days of receipt of notice of the  
 8 designated family member's intent to succeed the dealer in  
 9 the ownership and operation of the dealership, serve upon  
 10 the designated family member and the department notice of  
 11 its refusal to honor the succession and of its intent to  
 12 discontinue the existing franchise agreement with the  
 13 dealership no sooner than 60 days from the date such notice  
 14 is served.

15 (2) The notice must state the specific grounds for the  
 16 refusal to honor the succession and of its intent to  
 17 discontinue the existing franchise agreement with the  
 18 dealership no sooner than 60 days from the date such notice  
 19 is served.

20 (3) If notice of refusal and discontinuance is not  
 21 timely served upon the family member and the department or  
 22 if the department rules in favor of the complainant in a  
 23 hearing held pursuant to [section 4], the franchise  
 24 agreement shall continue in effect subject to termination  
 25 only as otherwise permitted by law.

1 Section 4. Procedure to determine right to succeed.  
 2 (1) Any designated family member who receives notice of the  
 3 manufacturer's, factory branch, distributor's, or importer's  
 4 refusal to honor his succession to the ownership and  
 5 operation of the dealership may, within the 60-day period,  
 6 file with the department a verified complaint for a hearing  
 7 and determination by the department on whether good cause  
 8 exists for refusal and discontinuance.

9 (2) The manufacturer, factory branch, distributor, or  
 10 importer must establish good cause for refusal by showing  
 11 that the succession would be detrimental to the public  
 12 interest or to the representation of the manufacturer,  
 13 factory branch, distributor, or importer.

14 (3) The franchise agreement shall continue in effect  
 15 until the final determination of the issues raised in the  
 16 complaint.

17 (4) If the manufacturer, factory branch, distributor,  
 18 or importer prevails, the department shall include in its  
 19 order approving the termination of the franchise agreement  
 20 reasonable conditions affording the complainant an  
 21 opportunity to receive fair and reasonable compensation for  
 22 the value of the dealership.

23 (5) Any decision by the department may be reviewed  
 24 pursuant to 82-4216.

25 Section 5. Written designation of succession

1 unaffected. This act does not preclude a dealer from  
2 designating any person as his successor by written  
3 instrument filed with the manufacturer, factory branch,  
4 distributor, or importer.

5 Section 6. Violation — penalty. Any person violating  
6 the provisions of this act shall, upon conviction, be fined  
7 no more than \$5,000.

8 Section 7. Civil damages. Any dealer suffering  
9 pecuniary loss due to a violation of this act, upon  
10 prevailing in a civil action therefor, is entitled to  
11 damages equal to three times the pecuniary loss together  
12 with court costs and reasonable attorneys' fees.

-End-

Approved by Committee  
on Highways & Transportation

SENATE BILL NO. 426

INTRODUCED BY MURRAY, DEVINE, JERGESON,

GOODOVER, FASBENDER, THOMAS, DOVER, BOYLAN,

LEE, PETERSON, DUNKLE, KOLSTAD, WARDEN, ABER,

FLYNN, ROSKIE, MCCALLUM, E. SMITH, BLAYLOCK, GRAHAM,

BERGREN, MATHEKS, MANLEY, HAGER, TURNAGE, HEALY, OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
SUCCESSION OF INTEREST BY DESIGNATED FAMILY MEMBERS TO THE  
OWNERSHIP INTERESTS OF A MOTOR VEHICLE DEALERSHIP UPON THE  
DEATH OR INCOMPETENCY OF THE DEALER; PROVIDING A METHOD OF  
PROTEST BY MANUFACTURERS, DISTRIBUTORS, OR IMPORTERS;  
PROVIDING NOTICE AND OPPORTUNITY FOR HEARING BEFORE THE  
DEPARTMENT OF JUSTICE; PROVIDING FOR APPEAL TO THE DISTRICT  
COURT; AND PROVIDING PENALTIES AND DAMAGES; AND PROVIDING AN  
EFFECTIVE DATE."

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

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

(1) "Department" means the department of justice.

(2) "Dealer" means a person who, for commission or  
profit, engages in the business of buying, selling,  
exchanging, or acting as a broker of motor vehicles under a  
franchise or distribution agreement.

(3) "Designated family member" means the spouse,  
child, grandchild, parent, brother, or sister of a dealer  
who, in the case of a deceased dealer, is entitled to  
inherit the dealer's ownership interest in the dealership  
under the terms of the dealer's will or under the laws of  
intestate succession of this state or who, in the case of  
an incapacitated dealer, has been appointed by a court as  
the legal representative of the dealer's property. The term  
includes the appointed and qualified personal  
representative and the testamentary trustee of a deceased  
dealer.

(4) "Person" means an individual, corporation,  
partnership, association, firm, or other legal entity.

Section 2. Right of designated family member to  
succeed in dealership ownership. (1) Any designated family  
member of a deceased or incapacitated dealer may succeed  
the dealer in the ownership or operation of the dealership  
under the existing franchise or distribution agreement  
provided he gives the manufacturer, factory branch,  
distributor, or importer of new motor vehicles written  
notice of his intention to do so within 120 days of the  
dealer's death or incapacity and unless there exists good  
cause for refusal to honor such succession on the part of  
the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or

SECOND READING

1 importer may request, and the designated family member shall  
2 provide, upon request, personal and financial data that is  
3 reasonably necessary to determine whether the succession  
4 should be honored.

5 Section 3. Refusal to honor succession to ownership --  
6 notice required. (1) If a manufacturer, factory branch,  
7 distributor, or importer believes that good cause exists for  
8 refusing to honor the succession to the ownership and  
9 operation of a dealership by a family member of a deceased  
10 or incapacitated dealer under the existing franchise  
11 agreement, the manufacturer, factory branch, distributor, or  
12 importer may, within 30 days of receipt of notice of the  
13 designated family member's intent to succeed the dealer in  
14 the ownership and operation of the dealership, serve upon  
15 the designated family member and the department notice of  
16 its refusal to honor the succession and of its intent to  
17 discontinue the existing franchise agreement with the  
18 dealership no sooner than 60 days from the date such notice  
19 is served.

20 (2) The notice must state the specific grounds for the  
21 refusal to honor the succession and of its intent to  
22 discontinue the existing franchise agreement with the  
23 dealership no sooner than 60 days from the date such notice  
24 is served.

25 (3) If notice of refusal and discontinuance is not

1 timely served upon the family member and the department or  
2 if the department rules in favor of the complainant in a  
3 hearing held pursuant to [section 4], the franchise  
4 agreement shall continue in effect subject to termination  
5 only as otherwise permitted by law.

6 Section 4. Procedure to determine right to succeed.

7 (1) Any designated family member who receives notice of the  
8 manufacturer's, factory branch, distributor's, or importer's  
9 refusal to honor his succession to the ownership and  
10 operation of the dealership may, within the 60-day period,  
11 file with the department a verified complaint for a hearing  
12 and determination by the department on whether good cause  
13 exists for refusal and discontinuance.

14 (2) The manufacturer, factory branch, distributor, or  
15 importer must establish good cause for refusal by showing  
16 that the succession would be detrimental to the public  
17 interest or to the representation of the manufacturer,  
18 factory branch, distributor, or importer.

19 (3) The franchise agreement shall continue in effect  
20 until the final determination of the issues raised in the  
21 complaint.

22 (4) If the manufacturer, factory branch, distributor,  
23 or importer prevails, the department shall include in its  
24 order approving the termination of the franchise agreement  
25 reasonable conditions affording the complainant an

1 opportunity to receive fair and reasonable compensation for  
2 the value of the dealership.

3 (b) Any decision by the department may be reviewed  
4 pursuant to 82-4216.

5 Section 5. Written designation of succession  
6 unaffected. This act does not preclude a dealer from  
7 designating any person as his successor by written  
8 instrument filed with the manufacturer, factory branch,  
9 distributor, or importer.

10 Section 6. Violation -- penalty. Any person violating  
11 the provisions of this act shall, upon conviction, be fined  
12 no more than \$5,000.

13 Section 7. Civil damages. Any dealer suffering  
14 pecuniary loss due to a violation of this act, upon  
15 prevailing in a civil action therefor, is entitled to  
16 damages equal to three times the pecuniary loss together  
17 with court costs and reasonable attorneys' fees.

18 ~~SECTION 8. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON~~  
19 ~~PASSAGE AND APPROVAL AND SHALL APPLY TO ALL ACTS AND~~  
20 ~~TRANSACTIONS COMMENCED OR COMPLETED AFTER THE EFFECTIVE~~  
21 ~~DATE.~~

-End-

SENATE BILL NO. 426

INTRODUCED BY MURRAY, DEVINE, JERGESON,  
GODDIVER, FASBENDER, THOMAS, DOVER, BOYLAN,  
LEE, PETERSON, DUNKLE, KOLSTAD, WARDEN, ABER,  
FLYNN, ROSKIE, McCALLUM, E. SMITH, BLAYLOCK, GRAHAM,  
BERGREN, MATHERS, MANLEY, HAGER, TURNAGE, HEALY, OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
SUCCESSION OF INTEREST BY DESIGNATED FAMILY MEMBERS TO THE  
OWNERSHIP INTERESTS OF A MOTOR VEHICLE DEALERSHIP UPON THE  
DEATH OR INCOMPETENCY OF THE DEALER; PROVIDING A METHOD OF  
PROTEST BY MANUFACTURERS, DISTRIBUTORS, OR IMPORTERS;  
PROVIDING NOTICE AND OPPORTUNITY FOR HEARING BEFORE THE  
DEPARTMENT OF JUSTICE BUSINESS REGULATION; PROVIDING FOR  
APPEAL TO THE DISTRICT COURT; AND PROVIDING PENALTIES AND  
DAMAGES; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

(2) "Dealer" means a person who, for commission or  
profit, engages in the business of buying, selling,  
exchanging, or acting as a broker of motor vehicles under a

franchise or distribution agreement.

(3) "Designated family member" means the spouse,  
child, grandchild, parent, brother, or sister of a dealer  
who, in the case of a deceased dealer, is entitled to  
inherit the dealer's ownership interest in the dealership  
under the terms of the dealer's will or under the laws of  
intestate succession of this state or who, in the case of  
an incapacitated dealer, has been appointed by a court as  
the legal representative of the dealer's property. The term  
includes the appointed and qualified personal  
representative and the testamentary trustee of a deceased  
dealer.

(4) "Person" means an individual, corporation,  
partnership, association, firm, or other legal entity.

Section 2. Right of designated family member to  
succeed in dealership ownership. (1) Any designated family  
member of a deceased or incapacitated dealer may succeed  
the dealer in the ownership or operation of the dealership  
under the existing franchise or distribution agreement  
provided he gives the manufacturer, factory branch,  
distributor, or importer of new motor vehicles written  
notice of his intention to do so within 120 days of the  
dealer's death or incapacity and unless there exists good  
cause for refusal to honor such succession on the part of  
the manufacturer, factory branch, distributor, or importer.

1 (2) The manufacturer, factory branch, distributor, or  
 2 importer may request, and the designated family member shall  
 3 provide, upon request, personal and financial data that is  
 4 reasonably necessary to determine whether the succession  
 5 should be honored.

6 Section 3. Refusal to honor succession to ownership --  
 7 notice required. (1) If a manufacturer, factory branch,  
 8 distributor, or importer believes that good cause exists for  
 9 refusing to honor the succession to the ownership and  
 10 operation of a dealership by a family member of a deceased  
 11 or incapacitated dealer under the existing franchise  
 12 agreement, the manufacturer, factory branch, distributor, or  
 13 importer may, within 30 days of receipt of notice of the  
 14 designated family member's intent to succeed the dealer in  
 15 the ownership and operation of the dealership, serve upon  
 16 the designated family member and the department notice of  
 17 its refusal to honor the succession and of its intent to  
 18 discontinue the existing franchise agreement with the  
 19 dealership no sooner than 60 days from the date such notice  
 20 is served.

21 (2) The notice must state the specific grounds for the  
 22 refusal to honor the succession and of its intent to  
 23 discontinue the existing franchise agreement with the  
 24 dealership no sooner than 60 days from the date such notice  
 25 is served.

1 (3) If notice of refusal and discontinuance is not  
 2 timely served upon the family member and the department or  
 3 if the department rules in favor of the complainant in a  
 4 hearing held pursuant to [section 4], the franchise  
 5 agreement shall continue in effect subject to termination  
 6 only as otherwise permitted by law.

7 Section 4. Procedure to determine right to succeed.  
 8 (1) Any designated family member who receives notice of the  
 9 manufacturer's, factory branch, distributor's, or importer's  
 10 refusal to honor his succession to the ownership and  
 11 operation of the dealership may, within the 60-day period,  
 12 file with the department a verified complaint for a hearing  
 13 and determination by the department on whether good cause  
 14 exists for refusal and discontinuance.

15 (2) The manufacturer, factory branch, distributor, or  
 16 importer must establish good cause for refusal by showing  
 17 that the succession would be detrimental to the public  
 18 interest or to the representation of the manufacturer,  
 19 factory branch, distributor, or importer.

20 (3) The franchise agreement shall continue in effect  
 21 until the final determination of the issues raised in the  
 22 complaint.

23 (4) If the manufacturer, factory branch, distributor,  
 24 or importer prevails, the department shall include in its  
 25 order approving the termination of the franchise agreement



1 reasonable conditions affording the complainant an  
 2 opportunity to receive fair and reasonable compensation for  
 3 the value of the dealership.

4 (5) Any decision by the department may be reviewed  
 5 pursuant to 82-4216.

6 Section 5. Written designation of succession  
 7 unaffected. This act does not preclude a dealer from  
 8 designating any person as his successor by written  
 9 instrument filed with the manufacturer, factory branch,  
 10 distributor, or importer.

11 Section 6. Violation -- penalty. Any person violating  
 12 the provisions of this act shall, upon conviction, be fined  
 13 no more than \$5,000.

14 Section 7. Civil damages. Any dealer suffering  
 15 pecuniary loss due to a violation of this act, upon  
 16 prevailing in a civil action therefor, is entitled to  
 17 damages equal to three times the pecuniary loss together  
 18 with court costs and reasonable attorneys' fees.

19 ~~SECTION 8. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON~~  
 20 ~~PASSAGE AND APPROVAL AND SHALL APPLY TO ALL ACTS AND~~  
 21 ~~TRANSACTIONS COMMENCED OR COMPLETED AFTER THE EFFECTIVE~~  
 22 ~~DATE.~~

23 ~~SECTION 9. SEVERABILITY. IF A PART OF THIS ACT IS~~  
 24 ~~INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID~~  
 25 ~~PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN~~

1 ~~ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~  
 2 ~~IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE~~  
 3 ~~INVALID APPLICATIONS.~~

-End-

HOUSE OF REPRESENTATIVES

March 22, 1977

Committee of the whole amendment to SENATE BILL NO. 426, third reading copy.

1. Amend page 2, section 1, subsection (3), line 6.

Following: "will"

Insert: ", or who has otherwise been disignated in writing by a deceased dealer to succeed him in the motor vehicle dealership,"

AS AMENDED BE CONCURRED IN

SENATE BILL NO. 426

INTRODUCED BY MURRAY, DEVINE, JERGESON, GOODOVER, FASBENDER, THOMAS, DOVER, BOYLAN, LEE, PETERSON, DUNKLE, KOLSTAD, WARDEN, ABER, FLYNN, ROSKIE, MCCALLUM, E. SMITH, BLAYLOCK, GRAHAM, BERGREN, MATHERS, MANLEY, HAGER, TURNAGE, HEALY, OLSON

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franchise or distribution agreement.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, OR WHO HAS OTHERWISE BEEN DESIGNATED IN WRITING BY A DECEASED DEALER TO SUCCEED HIM IN THE MOTOR VEHICLE DEALERSHIP, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

Section 2. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good

1 cause for refusal to honor such succession on the part of  
2 the manufacturer, factory branch, distributor, or importer.

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23 until the final determination of the issues raised in the  
24 complaint.

25 (4) If the manufacturer, factory branch, distributor,

1 or importer prevails, the department shall include in its  
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-End-