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Senate BILL NO. *343*

Gillon

INTRODUCED BY

Thomas Stiles, Leland Harris, and Emily

Kelly Grady and Ferguson

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101, 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license or wholesaler's license. (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,

1 and an application for relicensure must be filed not later than January 1 of each year. If an application for
2 renewal of a license has been received by the department ~~prior to~~ before the expiration of the license, the
3 licensee may operate the business and display dealer or demonstrator plates under the expired license
4 between January 1 and February 15 following expiration.

5 (2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates
6 as provided in this subsection, the applicant ~~must~~ shall furnish the following information and qualify under
7 the following provisions:

8 (a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ shall:

9 (i) state the name under which the business is to be conducted and the location of the premises
10 (street address, city, county, and state) where records are kept, sales are made, and stock of motor
11 vehicles is displayed;

12 (ii) state the name, ~~and~~ address, date of birth, and social security number of all owners or persons
13 having an interest in the business, provided that in the case of a corporation, the names and addresses of
14 the president and secretary are sufficient;

15 (iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another
16 state having an interest in another dealership owned by the applicant, and disclose whether the applicant
17 or other person with interest in a dealership owned by the applicant has been convicted of a felony;

18 (iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance,
19 pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

20 ~~(iii)~~ (v) state the name and make of all motor vehicles handled and the name and address of the
21 manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise
22 or sales agreement;

23 ~~(iv)~~ (vi) execute a certificate to the effect that the applicant has a permanent building for the display
24 and sale of new motor vehicles at the location of the premises where sales are conducted;

25 ~~(v)~~ (vii) execute a certificate to the effect that the applicant has a bona fide service department for
26 the repair, service, and maintenance of motor vehicles; and

27 ~~(vi)~~ (viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor
28 vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new
29 motor vehicles.

30 (b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational

1 vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer
 2 and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates;
 3 or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set
 4 forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ through (2)(a)(iv), provide:

5 (i) a statement that the:

6 (A) applicant has an established place of business that includes a lot or lots upon which motor
 7 vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where
 8 records are kept and sales are made; or

9 (B) wholesaler applicant has an established place of business that includes a permanent
 10 nonresidential building or office where records are kept in order that those records may be inspected;

11 (ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor
 12 vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles.
 13 An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the
 14 person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

15 (c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office
 16 facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's
 17 established place of business shall display a sign that indicates the firm name and that vehicles are offered
 18 for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a
 19 minimum distance of 150 feet.

20 (d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an
 21 annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the
 22 requirements of subsection (2)(b).

23 (e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor
 24 vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

25 (3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a
 26 bond of ~~\$25,000~~ \$50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a
 27 recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer
 28 dealer or a trailer wholesaler shall file the ~~\$25,000~~ \$50,000 surety bond only if special mobile equipment,
 29 commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes,
 30 or house trailers are sold; ~~otherwise, all~~ All other trailer dealer, motorcycle dealer, or wholesaler license

1 applicants shall file a bond in the sum of \$10,000. All bonds must be conditioned that the applicant shall
 2 conduct the business in accordance with the requirements of the law. The bond may extend to any other
 3 type of dealer license issued to the applicant at the same place of business, provided that all types of
 4 licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be
 5 approved by the department, ~~and~~ must be filed in its office, and must be renewed annually.

6 (b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler
 7 licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting
 8 on the bond. The judgment must determine a specific loss or damage amount and conclude that the
 9 licensee's unlawful operation caused the loss or damage before payment on the bond is required."
 10

11 **Section 2.** Section 61-4-104, MCA, is amended to read:

12 **"61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep
 13 a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles
 14 and a description of the vehicles, together with the name and address of the seller, of the purchaser, and
 15 of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was
 16 sold or delivered, as the case may be. The description in the case of motor vehicles must also include the
 17 vehicle identification number and engine number, if any, maker's number, if any, chassis number, if any,
 18 ~~and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement
 19 that a number has been obliterated, defaced, or changed if ~~such is the fact~~ that has occurred. In the case
 20 of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number
 21 and other numbers or identification marks that appear ~~thereon~~ on the trailer, semitrailer, or special mobile
 22 equipment. The dealer or wholesaler must also have ~~in his possession,~~ a duly assigned certificate of
 23 ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle
 24 is delivered to ~~him~~ the dealer or wholesaler until it has been disposed of by ~~him~~ the dealer or wholesaler,
 25 ~~a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler.~~
 26 It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of
 27 ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign
 28 the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to
 29 be kept in accordance with this section, in addition to the required retention of odometer disclosure
 30 information under 61-3-206(4), must be physically located and maintained within the building referred to

1 in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ the
2 representative's credentials, may inspect and have access to and copy any records required under this
3 chapter."

4
5 **Section 3.** Section 61-4-120, MCA, is amended to read:

6 **"61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm,
7 association, or corporation that takes possession of a motor vehicle owned by another person through
8 consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest
9 bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by
10 mail or otherwise in the office of the department a verified application for licensure as an auto auction. The
11 application must be made in the following manner:

12 (a) Each application and all of the information contained in it must be verified by the department
13 or an authorized representative of the department on a form to be furnished by the department for that
14 purpose. The application must provide the following information:

15 (i) the name in which the business is to be conducted and the location of premises, including {street
16 address, city, county, and state}, where records are kept, sales are made, and motor vehicle stock is
17 displayed as an established place of business that displays a sign indicating the firm name and that vehicles
18 are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of
19 traffic at a minimum distance of 150 feet.

20 (ii) the name and address of all owners or persons having an interest in the business. In the case
21 of a corporation, the names and addresses of the president and secretary are sufficient.

22 (iii) a statement that the applicant is authorized to auction used motor vehicles, recreational
23 vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license.
24 A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor
25 vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a
26 closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or
27 importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing
28 new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An
29 auto auction licensed under the provisions of this section shall notify and update the department with
30 current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct

1 a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

2 (b) Each application must be accompanied by a bond of ~~\$25,000~~ \$50,000 and must be conditioned
3 that the applicant shall conduct business in accordance with the requirements of the law. All bonds must
4 run to the state of Montana, must be approved by the department and filed in its office, and must be
5 renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction
6 licensed under this section may proceed in the same manner as provided for licensed dealers and
7 wholesalers in 61-4-101(3)(b).

8 (2) An auto auction's license must be renewed and paid for annually to the department, and an
9 application for relicensure must be filed by January 1 of each year. The fee required for each first-time
10 applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly
11 completed application, fee, and bond, the department shall issue the auto auction license and assign an
12 auto auction license number for each applicant in a manner determined by the department. Auto auctions
13 dealing in motor vehicles may sell only to licensed dealers and wholesalers.

14 (3) Auto auctions that are licensed under this section and that hold a current license number may
15 issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle
16 purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of
17 purchase and may be used only for the purpose of driving or transporting a vehicle from the auction
18 premises to the purchaser's established place of business or point of destination. Temporary permits must
19 be on a form prescribed by the department and must contain the name, address, and license number of the
20 purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and
21 a description of the vehicle, including its serial number. The department shall collect a fee of \$10 from the
22 auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than
23 \$10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to
24 issue more than one temporary permit per vehicle sale.

25 (4) A licensed auto auction may apply for and may be authorized by the department to purchase
26 and use license plates of a type and amount approved by the department, upon payment of a fee to the
27 department to offset the cost of production. Licensed auto auctions may use the license plates to transport
28 inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of
29 business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting,
30 upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed

1 on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations,
2 service stations, or repair garages to use the license plate only when conducting work for the auto auction
3 involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle.
4 Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a
5 sworn affidavit on a form prescribed by the department, listing each authorized person designated by the
6 auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit
7 within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this
8 section is liable for the proper use of the license plates, which may not be used for private purposes. The
9 department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an
10 auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the
11 provisions of this section.

12 (5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by
13 the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor
14 vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title
15 transfer, and a description of the motor vehicle, together with the name and address of the seller, the
16 purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received
17 or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

- 18 (i) the vehicle identification number ~~or~~ and engine number, if any; and
19 (ii) ~~other numbers or identification marks on the motor vehicle; and~~
20 (iii) a statement that a number has been obliterated, defaced, or changed, if it has.

21 (b) An auto auction licensed under this section shall validate the sale of a motor vehicle through
22 its auction by stamping its name and license number upon the certificate of ownership at a location on the
23 front or back of the certificate, at the margin in the assignment section as executed between the transferor
24 and transferee. An auto auction's stamp must be legible and may not interfere with the information
25 recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks
26 adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of
27 the auction invoice bearing the:

- 28 (i) name and license number of the auction, along with an indication of the vehicle year, make,
29 model, and identification number;
30 (ii) name, address, and signature of the transferor;

1 (iii) name, license number, and signature of the transferee; and

2 (iv) ~~the~~ date the vehicle was sold through the auction.

3 (c) The invoice must be attached to the certificate of ownership and must be presented to the
4 department with any application for title.

5 (d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name
6 of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer,
7 the vehicle identification number, and the odometer reading on the date the auto auction took possession
8 of the motor vehicle. The odometer information may be retained in any way that is systematically
9 retrievable and is not required to be maintained on any special disclosure form. The information may be part
10 of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An
11 auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for
12 providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for
13 the buyer under the provisions of 61-3-206."

14

15 **Section 4.** Section 61-4-121, MCA, is amended to read:

16 "**61-4-121. Twenty-day permit -- limitation on issuance and transfer -- violation -- penalty.** (1) (a)

17 A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

18 (b) A dealer may not transfer 20-day permits to another dealer unless the dealer:

19 (i) notifies the department within 3 days of the transfer;

20 (ii) identifies to the department the dealer to whom any permits have been transferred;

21 (iii) informs the department of the date of the transfer and the quantity and serial numbers of
22 vehicles covered by the transferred permits.

23 (2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege
24 to issue 20-day permits for a period of time determined by the department."

25

26 **Section 5.** Section 61-4-131, MCA, is amended to read:

27 "**61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

28 ~~(1) "Department" means the department of commerce.~~

29 ~~(2) "Designated "designated family member" means the spouse, child, grandchild, parent, brother,~~
30 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership

1 interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in
2 writing by a deceased dealer to succeed ~~him~~ the deceased in the motor vehicle dealership, or under the
3 laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed
4 by a court as the legal representative of the dealer's property. The term includes the appointed and
5 qualified personal representative and the testamentary trustee of a deceased dealer."

6

7 **Section 6.** Section 61-4-133, MCA, is amended to read:

8 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
9 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession
10 to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer
11 under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may,
12 within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the
13 ownership and operation of the dealership, serve upon the designated family member and the department
14 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement
15 with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

16 (2) The notice must state the specific grounds for the refusal to honor the succession and of its
17 intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from
18 the date ~~such~~ the notice is served.

19 (3) If notice of refusal and discontinuance is not timely served upon the family member and the
20 department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134,
21 the franchise agreement ~~shall~~ must continue in effect subject to termination only as otherwise permitted
22 by law."

23

24 **Section 7.** Section 61-4-134, MCA, is amended to read:

25 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who
26 receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ the
27 family member's succession to the ownership and operation of the dealership may, within the ~~60-day~~
28 90-day period, file with the department a verified complaint for a hearing and determination by the
29 department on whether good cause exists for refusal and discontinuance.

30 (2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal

1 by showing that the succession would be detrimental to the public interest or to the representation of the
2 manufacturer, factory branch, distributor, or importer.

3 (3) The franchise agreement ~~shall~~ must continue in effect until the final ~~determination of the issues~~
4 ~~raised in the complaint~~ adjudication by the department on the verified complaint and the exhaustion of all
5 appellate remedies available to the designated family member. The manufacturer, factory branch,
6 distributor, or importer and the designated family member shall abide by the terms of the franchise
7 agreement and the laws of Montana during the appeals process.

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

11 (5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4, Title 2, chapter~~
12 4, part 7."

13

14 **Section 8.** Section 61-4-201, MCA, is amended to read:

15 **"61-4-201. Definitions.** As used in this part, the following definitions apply:

16 (1) "Community" means the relevant market area of a franchise. For the purposes of this part, the
17 relevant market area of a franchise is the county or counties in which the franchisee is located.

18 ~~(2) "Department" means the department of justice.~~

19 ~~(3)~~(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles
20 to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

21 ~~(4)~~(3) "Distributor branch" means a branch office maintained or availed of by a distributor or
22 wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or
23 supervising its representatives in this state.

24 ~~(5)~~(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the
25 sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle
26 dealers in this state or for directing or supervising its representatives in this state.

27 ~~(6)~~(5) "Franchise" means a contract between or among two or more persons when all of the
28 following conditions are included:

29 (a) a commercial relationship of definite duration or continuing indefinite duration is involved;

30 (b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles

1 manufactured or distributed by the franchisor;

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

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

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

8 ~~(8)~~(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles
9 and who may enter into a franchise.

10 ~~(9)~~(8) "Importer" means a person who transports or arranges for the transportation of a foreign
11 manufactured new motor vehicle into the United States for sale in this state.

12 ~~(10)~~(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who
13 manufactures or installs on previously assembled truck chassis special bodies or equipment, ~~which that,~~
14 when installed, ~~form forms~~ an integral part of the new motor vehicle and ~~which that~~ constitutes a major
15 manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

16 (10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale
17 regardless of the mileage of the vehicle.

18 (11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts
19 to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor
20 vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken
21 in trade on new motor vehicles.

22 (12) (a) "Retail sale" means the sale of a new motor vehicle.

23 (b) "Retail sale" does not mean a sale:

24 (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale;

25 or

26 (ii) that is the result of a transfer between two licensed new motor vehicle dealers."

27

28 **Section 9.** Section 61-4-205, MCA, is amended to read:

29 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,
30 or conditions of any agreement or franchise, ~~no~~ a franchisor may not cancel, terminate, or refuse to

1 continue a franchise unless the franchisor has cause for termination or noncontinuance.

2 (2) ~~No~~ A franchisor may not enter into a franchise for the purpose of establishing an additional new
3 motor vehicle dealership in any community in which the same line-make is then represented unless there
4 is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public
5 interest.

6 (3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
7 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less
8 than ~~30~~ 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the
9 department of intention to terminate or not continue the franchise or to enter into a franchise for additional
10 representation of the same line-make. ~~No~~ A notice of intention to terminate or not continue a franchise ~~may~~
11 ~~be~~ is not required from a franchisor until the conclusion of any review proceeding of that intention offered
12 to the franchisee under the franchise. This section does not apply to an intended termination or
13 noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a
14 franchisor, to submit to binding arbitration.

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

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

30 (6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event

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

6 (7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or
 7 refusal to continue another franchise or upon the establishment of an additional new motor vehicle
 8 dealership in a community where the same line-make is then represented, without first complying with the
 9 provisions of this part, ~~no~~ a license under 61-4-101 through 61-4-105 may not be issued to that franchisee
 10 or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed
 11 by that franchisor."

12

13 **Section 10.** Section 61-4-206, MCA, is amended to read:

14 "**61-4-206. Objections -- hearing.** (1) A person who receives or is entitled to receive a copy of a
 15 notice provided for in ~~subsection (4) of~~ 61-4-205(4) may object to the approval of the proposed action by
 16 filing a written objection with the department within 15 days from the date the notice was received by the
 17 person entitled to receive the notice. If ~~no~~ an objection is not filed within 15 days from the date the notice
 18 was received, the proposed action ~~shall~~ must be approved.

19 (2) If a timely objection has been filed, the department shall enter an order fixing the time, which
 20 ~~shall~~ must be within 30 days of the date of the order, and place of a hearing on the objection and shall send
 21 by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~
 22 61-4-205(4).

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

25 (4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the
 26 franchisor has the burden of proof to establish that good cause exists to terminate, ~~or not continue,~~ or not
 27 establish the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership,~~
 28 ~~the burden of proof that good cause does exist shall be with the franchisor.~~

29 (5) The rules of evidence for ~~such a hearing provided for in subsection (2) shall be~~ are the same
 30 as those found in chapter 4, Title 2, chapter 4. The department shall reasonably apportion all costs between

1 the parties.

2 (6) The department may issue subpoenas, administer oaths, and compel the attendance of
3 witnesses and production of books, papers, documents, and all other evidence. The department may apply
4 to the district court of the county in which the hearing is held for a court order enforcing this section. The
5 hearing ~~shall~~ must be conducted pursuant to ~~chapter 4, Title 2, chapter 4.~~

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

9 (8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4, Title 2,~~
10 chapter 4.

11 (9) The franchise agreement must continue in effect until the adjudication by the department on
12 the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The
13 franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the
14 appeals process."

15
16 **Section 11.** Section 61-4-207, MCA, is amended to read:

17 **"61-4-207. Determination of good cause.** (1) In determining whether good cause has been
18 established for terminating or not continuing a franchise, the department shall take into consideration the
19 existing circumstances, including but not limited to:

20 (a) amount of business transacted by the franchise;

21 (b) investment necessarily made and obligations incurred by the franchisee in the performance of
22 ~~his~~ the franchisee's part of the franchise;

23 (c) permanency of the investment;

24 (d) whether it is injurious to the public welfare for the business of the franchisee to be
25 discontinued;

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

29 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the
30 franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee;

1 and

2 (g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially
3 comply with ~~these~~ the written and uniformly applied requirements of the franchise that are determined by
4 the department to be reasonable and material.

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

7 (a) a change in ownership of the franchisee's dealership; or

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

10 (3) In determining whether good cause has been established for entering into an additional
11 franchise for the same line-make, the department shall take into consideration the existing circumstances,
12 including but not limited to:

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

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

16 (c) whether the franchisees of the same line-make in that community are providing adequate
17 consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts
18 supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the
19 line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities,~~
20 ~~equipment, supply of parts, and qualified management, sales, and service personnel."~~

21

22 **Section 12.** Section 61-4-208, MCA, is amended to read:

23 "**61-4-208. ~~Coercion prohibited~~ Prohibited acts.** (1) A manufacturer of new motor vehicles,
24 factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any
25 representative ~~thereof~~ of the persons or entities listed may not:

26 (a) coerce, or attempt to coerce, or require a new motor vehicle dealer to:

27 ~~(1)(i)~~ (i) accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ for a new motor
28 vehicle or any other commodity that has not been ordered by the dealer;

29 ~~(2)(ii)~~ (ii) participate in or contribute to any local, regional, or national advertising fund or to participate
30 in or to contribute to contests, giveaways, or other sales devices; ~~or~~

1 (iii) change location of the dealership or to make substantial alterations to the use or number of
 2 franchises or the dealership premises or facilities when to do so would be unreasonable, or without written
 3 assurance of a sufficient supply of new motor vehicles that would justify an expansion;

4 (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an
 5 existing franchise relationship with another manufacturer that was established before [the effective date
 6 of this act] when those requirements are not justified by reasonable business considerations;

7 (v) refrain from participation in the management of, investment in, or acquisition of any other line
 8 of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of
 9 credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital
 10 standards and facility requirements of the manufacturer; or

11 ~~(3)~~(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,
 12 or representative thereof of the listed persons or entities or do any other act unfair to the dealer by:

13 ~~(a)~~(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory
 14 branch, distributor, distributor branch, or representative thereof of the listed persons or entities and the
 15 dealer; or

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

19 (b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative
 20 to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer
 21 if the new vehicles are publicly advertised as being available for immediate delivery; or

22 (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor
 23 vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition
 24 covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with
 25 subjective standards.

26 (2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer,
 27 factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."

28
 29 **NEW SECTION. Section 13. Manufacturer's right of first refusal.** (1) Regardless of the terms of
 30 any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or

1 distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This
2 may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer
3 agreement with the proposed new owner or transferee if all the following requirements are met:

4 (a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's
5 intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale
6 or transfer;

7 (b) the dealer and the dealer's owner receive the same or greater consideration as they have
8 contracted to receive in connection with the proposed change of ownership or transfer;

9 (c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to
10 a member or members of the family of one or more dealer owners or to a qualified manager, partnership,
11 or corporation controlled by a member of the family of a dealer owner; and

12 (d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the
13 proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable,
14 the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the
15 manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may
16 request the accounting before exercising the manufacturer's or distributor's right of first refusal.

17 (2) This section does not affect any contractual right of a manufacturer or distributor to charge
18 back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's
19 purchase of the vehicles.

20

21 **NEW SECTION. Section 14. Codification instruction.** [Section 13] is intended to be codified as
22 an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to
23 [section 13].

24

25 **NEW SECTION. Section 15. Saving clause.** [This act] does not affect rights and duties that
26 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
27 act].

28

29 **NEW SECTION. Section 16. Effective date.** [This act] is effective on passage and approval.

30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0343, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising and clarifying laws governing motor vehicle dealers, manufacturers, and distributors.

FISCAL IMPACT:

There is no fiscal impact to the state.

Dave Lewis 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Thomas 2-15-97
FRED THOMAS, PRIMARY SPONSOR DATE

Fiscal Note for SB0343, as introduced
SB343

1 SENATE BILL NO. 343

2 INTRODUCED BY THOMAS, SLITER, LYNCH, HARP, BECK, BITNEY, GILLAN, HALLIGAN, GRADY,
3 MOHL, JERGSON, STANG, HIBBARD, PAVLOVICH, TROPILA, HERTEL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR
6 VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101,
7 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207,
8 AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 61-4-101, MCA, is amended to read:

13 **"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application
14 for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department
15 by each person, firm, corporation, or association that, for commission or profit, engages in:

16 (i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new
17 motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded
18 weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in
19 61-1-104; or

20 (ii) business as a wholesaler as defined in 61-1-319.

21 (b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for
22 consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

23 (c) The sale of more than three motor vehicles or the offering for sale of more than three motor
24 vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie
25 evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not
26 have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to
27 display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

28 (d) Each license application and all of the information contained in it must be verified by the
29 department or an authorized representative of the department on a form to be furnished by the department
30 for that purpose and must contain the information required. Each application must be accompanied by the

1 license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,
 2 and an application for relicensure must be filed not later than January 1 of each year. If an application for
 3 renewal of a license has been received by the department ~~prior to~~ before the expiration of the license, the
 4 licensee may operate the business and display dealer or demonstrator plates under the expired license
 5 between January 1 and February 15 following expiration.

6 (2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates
 7 as provided in this subsection, the applicant ~~must~~ shall furnish the following information and qualify under
 8 the following provisions:

9 (a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ shall:

10 (i) state the name under which the business is to be conducted and the location of the premises
 11 (street address, city, county, and state) where records are kept, sales are made, and stock of motor
 12 vehicles is displayed;

13 (ii) state the name, ~~and address,~~ date of birth, and social security number of all owners or persons
 14 having an interest in the business, provided that in the case of a corporation, the names and addresses of
 15 the president and secretary are sufficient;

16 (iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another
 17 state having an interest in another dealership owned by the applicant, and disclose whether the applicant
 18 or other person with interest in a dealership owned by the applicant has been convicted of a felony;

19 (iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance,
 20 pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

21 ~~(iii)(v)~~ state the name and make of all motor vehicles handled and the name and address of the
 22 manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise
 23 or sales agreement;

24 ~~(iv)(vi)~~ execute a certificate to the effect that the applicant has a permanent building for the display
 25 and sale of new motor vehicles at the location of the premises where sales are conducted;

26 ~~(v)(vii)~~ execute a certificate to the effect that the applicant has a bona fide service department for
 27 the repair, service, and maintenance of motor vehicles; and

28 ~~(vi)(viii)~~ execute a certificate to the effect that the applicant is a bona fide dealer in new motor
 29 vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new
 30 motor vehicles.

1 (b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational
2 vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer
3 and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates;
4 or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set
5 forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ through (2)(a)(iv), provide:

6 (i) a statement that the:

7 (A) applicant has an established place of business that includes a lot or lots upon which motor
8 vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where
9 records are kept and sales are made; or

10 (B) wholesaler applicant has an established place of business that includes a permanent
11 nonresidential building or office where records are kept in order that those records may be inspected;

12 (ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor
13 vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles.
14 An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the
15 person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

16 (c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office
17 facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's
18 established place of business shall display a sign that indicates the firm name and that vehicles are offered
19 for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a
20 minimum distance of 150 feet.

21 (d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an
22 annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the
23 requirements of subsection (2)(b).

24 (e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor
25 vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

26 (3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a
27 bond of ~~\$25,000~~ ~~\$50,000~~ \$25,000 for a license as a new motor vehicle dealer, a used motor vehicle
28 dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as
29 a trailer dealer or a trailer wholesaler shall file the ~~\$25,000~~ ~~\$50,000~~ \$25,000 surety bond only if special
30 mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded

1 weight, mobile homes, or house trailers are sold; ~~otherwise, all~~ All other trailer dealer, motorcycle dealer,
 2 or wholesaler license applicants shall file a bond in the sum of \$10,000. All bonds must be conditioned that
 3 the applicant shall conduct the business in accordance with the requirements of the law. The bond may
 4 extend to any other type of dealer license issued to the applicant at the same place of business, provided
 5 that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana,
 6 must be approved by the department, ~~and~~ must be filed in its office, and must be renewed annually.

7 (b) A person who suffers loss or damage due to the unlawful conduct of a dealer or ~~wholesaler~~
 8 licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting
 9 on the bond. The judgment must determine a specific loss or damage amount and conclude that the
 10 licensee's unlawful operation caused the loss or damage before payment on the bond is required."
 11

12 **Section 2.** Section 61-4-104, MCA, is amended to read:

13 **"61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep
 14 a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles
 15 and a description of the vehicles, together with the name and address of the seller, of the purchaser, and
 16 of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was
 17 sold or delivered, as the case may be. The description in the case of motor vehicles must also include the
 18 vehicle identification number and engine number, if any, maker's number, if any, chassis number, if any,
 19 ~~and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement
 20 that a number has been obliterated, defaced, or changed if ~~such is the fact~~ that has occurred. In the case
 21 of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number
 22 and other numbers or identification marks that appear ~~thereon~~ on the trailer, semitrailer, or special mobile
 23 equipment. The dealer or wholesaler must also have ~~in his possession,~~ a duly assigned certificate of
 24 ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle
 25 is delivered to ~~him~~ the dealer or wholesaler until it has been disposed of by ~~him~~ the dealer or wholesaler,
 26 ~~a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler.~~
 27 It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of
 28 ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign
 29 the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to
 30 be kept in accordance with this section, in addition to the required retention of odometer disclosure

1 information under 61-3-206(4), must be physically located and maintained within the building referred to
2 in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ the
3 representative's credentials, may inspect and have access to and copy any records required under this
4 chapter."

5

6 **Section 3.** Section 61-4-120, MCA, is amended to read:

7 **"61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm,
8 association, or corporation that takes possession of a motor vehicle owned by another person through
9 consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest
10 bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by
11 mail or otherwise in the office of the department a verified application for licensure as an auto auction. The
12 application must be made in the following manner:

13 (a) Each application and all of the information contained in it must be verified by the department
14 or an authorized representative of the department on a form to be furnished by the department for that
15 purpose. The application must provide the following information:

16 (i) the name in which the business is to be conducted and the location of premises, including {street
17 address, city, county, and state}, where records are kept, sales are made, and motor vehicle stock is
18 displayed as an established place of business that displays a sign indicating the firm name and that vehicles
19 are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of
20 traffic at a minimum distance of 150 feet.

21 (ii) the name and address of all owners or persons having an interest in the business. In the case
22 of a corporation, the names and addresses of the president and secretary are sufficient.

23 (iii) a statement that the applicant is authorized to auction used motor vehicles, recreational
24 vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license.
25 A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor
26 vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a
27 closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or
28 importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing
29 new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An
30 auto auction licensed under the provisions of this section shall notify and update the department with

1 current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct
2 a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

3 (b) Each application must be accompanied by a bond of ~~\$25,000~~ \$50,000 \$25,000 and must be
4 conditioned that the applicant shall conduct business in accordance with the requirements of the law. All
5 bonds must run to the state of Montana, must be approved by the department and filed in its office, and
6 must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto
7 auction licensed under this section may proceed in the same manner as provided for licensed dealers and
8 wholesalers in 61-4-101(3)(b).

9 (2) An auto auction's license must be renewed and paid for annually to the department, and an
10 application for relicensure must be filed by January 1 of each year. The fee required for each first-time
11 applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly
12 completed application, fee, and bond, the department shall issue the auto auction license and assign an
13 auto auction license number for each applicant in a manner determined by the department. Auto auctions
14 dealing in motor vehicles may sell only to licensed dealers and wholesalers.

15 (3) Auto auctions that are licensed under this section and that hold a current license number may
16 issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle
17 purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of
18 purchase and may be used only for the purpose of driving or transporting a vehicle from the auction
19 premises to the purchaser's established place of business or point of destination. Temporary permits must
20 be on a form prescribed by the department and must contain the name, address, and license number of the
21 purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and
22 a description of the vehicle, including its serial number. The department shall collect a fee of \$10 from the
23 auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than
24 \$10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to
25 issue more than one temporary permit per vehicle sale.

26 (4) A licensed auto auction may apply for and may be authorized by the department to purchase
27 and use license plates of a type and amount approved by the department, upon payment of a fee to the
28 department to offset the cost of production. Licensed auto auctions may use the license plates to transport
29 inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of
30 business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting,

1 upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed
2 on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations,
3 service stations, or repair garages to use the license plate only when conducting work for the auto auction
4 involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle.
5 Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a
6 sworn affidavit on a form prescribed by the department, listing each authorized person designated by the
7 auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit
8 within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this
9 section is liable for the proper use of the license plates, which may not be used for private purposes. The
10 department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an
11 auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the
12 provisions of this section.

13 (5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by
14 the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor
15 vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title
16 transfer, and a description of the motor vehicle, together with the name and address of the seller, the
17 purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received
18 or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

- 19 (i) the vehicle identification number ~~or~~ and engine number, if any; and
20 (ii) ~~other numbers or identification marks on the motor vehicle; and~~
21 ~~(iii)~~ a statement that a number has been obliterated, defaced, or changed, if it has.

22 (b) An auto auction licensed under this section shall validate the sale of a motor vehicle through
23 its auction by stamping its name and license number upon the certificate of ownership at a location on the
24 front or back of the certificate, at the margin in the assignment section as executed between the transferor
25 and transferee. An auto auction's stamp must be legible and may not interfere with the information
26 recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks
27 adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of
28 the auction invoice bearing the:

- 29 (i) name and license number of the auction, along with an indication of the vehicle year, make,
30 model, and identification number;

- 1 (ii) name, address, and signature of the transferor;
 2 (iii) name, license number, and signature of the transferee; and
 3 (iv) ~~the~~ date the vehicle was sold through the auction.

4 (c) The invoice must be attached to the certificate of ownership and must be presented to the
 5 department with any application for title.

6 (d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name
 7 of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer,
 8 the vehicle identification number, and the odometer reading on the date the auto auction took possession
 9 of the motor vehicle. The odometer information may be retained in any way that is systematically
 10 retrievable and is not required to be maintained on any special disclosure form. The information may be part
 11 of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An
 12 auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for
 13 providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for
 14 the buyer under the provisions of 61-3-206."

15

16 **Section 4.** Section 61-4-121, MCA, is amended to read:

17 "**61-4-121. Twenty-day permit -- limitation on issuance and transfer -- violation -- penalty.** (1) (a)

18 A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

19 **(b) A dealer may not transfer 20-day permits to another dealer unless the dealer:**

20 **(i) notifies the department within 3 days of the transfer;**

21 **(ii) identifies to the department the dealer to whom any permits have been transferred;**

22 **(iii) informs the department of the date of the transfer and the quantity and serial numbers of**
 23 **vehicles covered by the transferred permits.**

24 (2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege
 25 to issue 20-day permits for a period of time determined by the department."

26

27 **Section 5.** Section 61-4-131, MCA, is amended to read:

28 "**61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

29 ~~(1) "Department" means the department of commerce.~~

30 ~~(2) "Designated "designated family member" means the spouse, child, grandchild, parent, brother,~~

1 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership
 2 interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in
 3 writing by a deceased dealer to succeed ~~him~~ the deceased in the motor vehicle dealership, or under the
 4 laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed
 5 by a court as the legal representative of the dealer's property. The term includes the appointed and
 6 qualified personal representative and the testamentary trustee of a deceased dealer."

7

8 **Section 6.** Section 61-4-133, MCA, is amended to read:

9 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
 10 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession
 11 to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer
 12 under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may,
 13 within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the
 14 ownership and operation of the dealership, serve upon the designated family member and the department
 15 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement
 16 with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

17 (2) The notice must state the specific grounds for the refusal to honor the succession and of its
 18 intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from
 19 the date ~~such~~ the notice is served.

20 (3) If notice of refusal and discontinuance is not timely served upon the family member and the
 21 department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134,
 22 the franchise agreement ~~shall~~ must continue in effect subject to termination only as otherwise permitted
 23 by law."

24

25 **Section 7.** Section 61-4-134, MCA, is amended to read:

26 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who
 27 receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ the
 28 family member's succession to the ownership and operation of the dealership may, within the ~~60-day~~
 29 90-day period, file with the department a verified complaint for a hearing and determination by the
 30 department on whether good cause exists for refusal and discontinuance.

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

4 (3) The franchise agreement ~~shall~~ must continue in effect until the final ~~determination of the issues~~
 5 ~~raised in the complaint~~ adjudication by the department on the verified complaint and the exhaustion of all
 6 appellate remedies available to the designated family member. The manufacturer, factory branch,
 7 distributor, or importer and the designated family member shall abide by the terms of the franchise
 8 agreement and the laws of Montana during the appeals process.

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

12 (5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4, Title 2, chapter~~
 13 4, part 7."

14
 15 **Section 8.** Section 61-4-201, MCA, is amended to read:

16 **"61-4-201. Definitions.** As used in this part, the following definitions apply:

17 (1) "Community" means the relevant market area of a franchise. For the purposes of this part, the
 18 relevant market area of a franchise is the county or counties in which the franchisee is located.

19 ~~(2) "Department" means the department of justice.~~

20 ~~(3)~~(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles
 21 to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

22 ~~(4)~~(3) "Distributor branch" means a branch office maintained or availed of by a distributor or
 23 wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or
 24 supervising its representatives in this state.

25 ~~(5)~~(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the
 26 sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle
 27 dealers in this state or for directing or supervising its representatives in this state.

28 ~~(6)~~(5) "Franchise" means a contract between or among two or more persons when all of the
 29 following conditions are included:

30 (a) a commercial relationship of definite duration or continuing indefinite duration is involved;

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

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

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

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

9 ~~(8)~~(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles
10 and who may enter into a franchise.

11 ~~(9)~~(8) "Importer" means a person who transports or arranges for the transportation of a foreign
12 manufactured new motor vehicle into the United States for sale in this state.

13 ~~(10)~~(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who
14 manufactures or installs on previously assembled truck chassis special bodies or equipment, ~~which that,~~
15 when installed, ~~form forms~~ an integral part of the new motor vehicle and ~~which that~~ constitutes a major
16 manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

17 (10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale
18 regardless of the mileage of the vehicle.

19 (11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts
20 to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor
21 vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken
22 in trade on new motor vehicles.

23 (12) (a) "Retail sale" means the sale of a new motor vehicle.

24 (b) "Retail sale" does not mean a sale:

25 (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale;

26 or

27 (ii) that is the result of a transfer between two licensed new motor vehicle dealers."

28

29 **Section 9.** Section 61-4-205, MCA, is amended to read:

30 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,

1 or conditions of any agreement or franchise, ~~no~~ a franchisor may not cancel, terminate, or refuse to
 2 continue a franchise unless the franchisor has cause for termination or noncontinuance.

3 (2) ~~No~~ A franchisor may not enter into a franchise for the purpose of establishing an additional new
 4 motor vehicle dealership in any community in which the same line-make is then represented unless there
 5 is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public
 6 interest.

7 (3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
 8 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less
 9 than ~~30~~ 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the
 10 department of intention to terminate or not continue the franchise or to enter into a franchise for additional
 11 representation of the same line-make. ~~No~~ A notice of intention to terminate or not continue a franchise ~~may~~
 12 ~~be~~ is not required from a franchisor until the conclusion of any review proceeding of that intention offered
 13 to the franchisee under the franchise. This section does not apply to an intended termination or
 14 noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a
 15 franchisor, to submit to binding arbitration.

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

26 (5) In instances where the change in ownership has the effect of the sale of the franchise, the
 27 franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the
 28 transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state
 29 or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the
 30 franchisor.

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

7 (7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or
 8 refusal to continue another franchise or upon the establishment of an additional new motor vehicle
 9 dealership in a community where the same line-make is then represented, without first complying with the
 10 provisions of this part, ~~no~~ a license under 61-4-101 through 61-4-105 may not be issued to that franchisee
 11 or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed
 12 by that franchisor."

13

14 **Section 10.** Section 61-4-206, MCA, is amended to read:

15 "**61-4-206. Objections -- hearing.** (1) A person who receives or is entitled to receive a copy of a
 16 notice provided for in ~~subsection (4) of~~ 61-4-205(4) may object to the approval of the proposed action by
 17 filing a written objection with the department within 15 days from the date the notice was received by the
 18 person entitled to receive the notice. If ~~no~~ an objection is not filed within 15 days from the date the notice
 19 was received, the proposed action ~~shall~~ must be approved.

20 (2) If a timely objection has been filed, the department shall enter an order fixing the time, which
 21 ~~shall~~ must be within 30 days of the date of the order, and place of a hearing on the objection and shall send
 22 by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~
 23 61-4-205(4).

24 (3) The department may upon request continue the date of hearing for a period of 30 days and may
 25 upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

26 (4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the
 27 franchisor has the burden of proof to establish that good cause exists to terminate, ~~or not continue,~~ or not
 28 establish the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership,~~
 29 ~~the burden of proof that good cause does exist shall be with the franchisor.~~

30 (5) The rules of evidence for ~~such a hearing provided for in subsection (2)~~ shall be are the same

1 ~~as~~ those found in ~~chapter 4, Title 2, chapter 4.~~ The department shall reasonably apportion all costs between
2 the parties.

3 (6) The department may issue subpoenas, administer oaths, and compel the attendance of
4 witnesses and production of books, papers, documents, and all other evidence. The department may apply
5 to the district court of the county in which the hearing is held for a court order enforcing this section. The
6 hearing ~~shall~~ must be conducted pursuant to ~~chapter 4, Title 2, chapter 4.~~

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

10 (8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4, Title 2,~~
11 chapter 4.

12 (9) The franchise agreement must continue in effect until the adjudication by the department on
13 the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The
14 franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the
15 appeals process."

16

17 **Section 11.** Section 61-4-207, MCA, is amended to read:

18 "**61-4-207. Determination of good cause.** (1) In determining whether good cause has been
19 established for terminating or not continuing a franchise, the department shall take into consideration the
20 existing circumstances, including but not limited to:

21 (a) amount of business transacted by the franchise;

22 (b) investment necessarily made and obligations incurred by the franchisee in the performance of
23 ~~his~~ the franchisee's part of the franchise;

24 (c) permanency of the investment;

25 (d) whether it is injurious to the public welfare for the business of the franchisee to be
26 discontinued;

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

30 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the

1 franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee;
2 and

3 (g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially
4 comply with ~~these~~ the written and uniformly applied requirements of the franchise that are determined by
5 the department to be reasonable and material.

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

8 (a) a change in ownership of the franchisee's dealership; or

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

11 (3) In determining whether good cause has been established for entering into an additional
12 franchise for the same line-make, the department shall take into consideration the existing circumstances,
13 including but not limited to:

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

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

17 (c) whether the franchisees of the same line-make in that community are providing adequate
18 consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts
19 supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the
20 line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities,~~
21 ~~equipment, supply of parts, and qualified management, sales, and service personnel."~~

22

23 **Section 12.** Section 61-4-208, MCA, is amended to read:

24 "**61-4-208. ~~Coercion prohibited~~ Prohibited acts.** (1) A manufacturer of new motor vehicles,
25 factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any
26 representative ~~thereof~~ of the persons or entities listed may not:

27 (a) coerce, or attempt to coerce, or require a new motor vehicle dealer to:

28 ~~(1)(i)~~ (i) accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ for a new motor
29 vehicle or any other commodity that has not been ordered by the dealer;

30 ~~(2)(ii)~~ (ii) participate in or contribute to any local, regional, or national advertising fund or to participate

1 in or to contribute to contests, giveaways, or other sales devices; ~~or~~

2 ~~(iii) change location of the dealership or to make substantial alterations to the use or number of~~
3 ~~franchises or the dealership premises or facilities when to do so would be unreasonable, or without written~~
4 ~~assurance of a sufficient supply of new motor vehicles that would justify an expansion;~~

5 ~~(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an~~
6 ~~existing franchise relationship with another manufacturer that was established before [the effective date~~
7 ~~of this act] when those requirements are not justified by reasonable business considerations;~~

8 ~~(v) refrain from participation in the management of, investment in, or acquisition of any other line~~
9 ~~of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of~~
10 ~~credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital~~
11 ~~standards and facility requirements of the manufacturer; or~~

12 ~~(3)(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,~~
13 ~~or representative thereof of the listed persons or entities or do any other act unfair to the dealer by:~~

14 ~~(a)(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory~~
15 ~~branch, distributor, distributor branch, or representative thereof of the listed persons or entities and the~~
16 ~~dealer; or~~

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

20 ~~(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative~~
21 ~~to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer~~
22 ~~if the new vehicles are publicly advertised as being available for immediate delivery; or~~

23 ~~(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor~~
24 ~~vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition~~
25 ~~covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with~~
26 ~~subjective standards.~~

27 ~~(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer,~~
28 ~~factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."~~

29
30 **NEW SECTION. Section 13. Manufacturer's right of first refusal.** (1) Regardless of the terms of

1 any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or
2 distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This
3 may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer
4 agreement with the proposed new owner or transferee if all the following requirements are met:

5 (a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's
6 intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale
7 or transfer;

8 (b) the dealer and the dealer's owner receive the same or greater consideration as they have
9 contracted to receive in connection with the proposed change of ownership or transfer;

10 (c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to
11 a member or members of the family of one or more dealer owners or to a qualified manager, partnership,
12 or corporation controlled by a member of the family of a dealer owner; and

13 (d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the
14 proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable,
15 the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the
16 manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may
17 request the accounting before exercising the manufacturer's or distributor's right of first refusal.

18 (2) This section does not affect any contractual right of a manufacturer or distributor to charge
19 back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's
20 purchase of the vehicles.

21

22 NEW SECTION. **Section 14. Codification instruction.** [Section 13] is intended to be codified as
23 an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to
24 [section 13].

25

26 NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that
27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
28 act].

29

30 NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

-END-

1 SENATE BILL NO. 343

2 INTRODUCED BY THOMAS, SLITER, LYNCH, HARP, BECK, BITNEY, GILLAN, HALLIGAN, GRADY,
3 MOHL, JERGESON, STANG, HIBBARD, PAVLOVICH, TROPILA, HERTEL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR
6 VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101,
7 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207,
8 AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

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8 AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 61-4-101, MCA, is amended to read:

13 **"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application
14 for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department
15 by each person, firm, corporation, or association that, for commission or profit, engages in:

16 (i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new
17 motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded
18 weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in
19 61-1-104; or

20 (ii) business as a wholesaler as defined in 61-1-319.

21 (b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for
22 consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

23 (c) The sale of more than three motor vehicles or the offering for sale of more than three motor
24 vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie
25 evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not
26 have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to
27 display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

28 (d) Each license application and all of the information contained in it must be verified by the
29 department or an authorized representative of the department on a form to be furnished by the department
30 for that purpose and must contain the information required. Each application must be accompanied by the

1 license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,
 2 and an application for relicensure must be filed not later than January 1 of each year. If an application for
 3 renewal of a license has been received by the department ~~prior to~~ before the expiration of the license, the
 4 licensee may operate the business and display dealer or demonstrator plates under the expired license
 5 between January 1 and February 15 following expiration.

6 (2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates
 7 as provided in this subsection, the applicant ~~must~~ shall furnish the following information and qualify under
 8 the following provisions:

9 (a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ shall:

10 (i) state the name under which the business is to be conducted and the location of the premises
 11 (street address, city, county, and state) where records are kept, sales are made, and stock of motor
 12 vehicles is displayed;

13 (ii) state the name, ~~and address,~~ date of birth, and social security number of all owners or persons
 14 having an interest in the business, provided that in the case of a corporation, the names and addresses of
 15 the president and secretary are sufficient;

16 (iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another
 17 state having an interest in another dealership owned by the applicant, and disclose whether the applicant
 18 or other person with interest in a dealership owned by the applicant has been convicted of a felony;

19 (iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance,
 20 pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

21 ~~(v)~~ (v) state the name and make of all motor vehicles handled and the name and address of the
 22 manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise
 23 or sales agreement;

24 ~~(vi)~~ (vi) execute a certificate to the effect that the applicant has a permanent building for the display
 25 and sale of new motor vehicles at the location of the premises where sales are conducted;

26 ~~(vii)~~ (vii) execute a certificate to the effect that the applicant has a bona fide service department for
 27 the repair, service, and maintenance of motor vehicles; and

28 ~~(viii)~~ (viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor
 29 vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new
 30 motor vehicles.

1 (b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational
 2 vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer
 3 and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates;
 4 or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set
 5 forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ through (2)(a)(iv), provide:

6 (i) a statement that the:

7 (A) applicant has an established place of business that includes a lot or lots upon which motor
 8 vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where
 9 records are kept and sales are made; or

10 (B) wholesaler applicant has an established place of business that includes a permanent
 11 nonresidential building or office where records are kept in order that those records may be inspected;

12 (ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor
 13 vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles.
 14 An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the
 15 person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

16 (c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office
 17 facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's
 18 established place of business shall display a sign that indicates the firm name and that vehicles are offered
 19 for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a
 20 minimum distance of 150 feet.

21 (d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an
 22 annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the
 23 requirements of subsection (2)(b).

24 (e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor
 25 vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

26 (3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a
 27 bond of ~~\$25,000~~ ~~\$50,000~~ \$25,000 for a license as a new motor vehicle dealer, a used motor vehicle
 28 dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as
 29 a trailer dealer or a trailer wholesaler shall file the ~~\$25,000~~ ~~\$50,000~~ \$25,000 surety bond only if special
 30 mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded

1 weight, mobile homes, or house trailers are sold; ~~otherwise, all~~ All other trailer dealer, motorcycle dealer,
 2 or wholesaler license applicants shall file a bond in the sum of \$10,000. All bonds must be conditioned that
 3 the applicant shall conduct the business in accordance with the requirements of the law. The bond may
 4 extend to any other type of dealer license issued to the applicant at the same place of business, provided
 5 that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana,
 6 must be approved by the department, ~~and~~ must be filed in its office, and must be renewed annually.

7 (b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler
 8 licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting
 9 on the bond. The judgment must determine a specific loss or damage amount and conclude that the
 10 licensee's unlawful operation caused the loss or damage before payment on the bond is required."

11
 12 **Section 2.** Section 61-4-104, MCA, is amended to read:

13 **"61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep
 14 a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles
 15 and a description of the vehicles, together with the name and address of the seller, of the purchaser, and
 16 of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was
 17 sold or delivered, as the case may be. The description in the case of motor vehicles must also include the
 18 vehicle identification number and engine number, if any, maker's number, if any, chassis number, if any,
 19 ~~and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement
 20 that a number has been obliterated, defaced, or changed if ~~such is the fact~~ that has occurred. In the case
 21 of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number
 22 and other numbers or identification marks that appear ~~thereon~~ on the trailer, semitrailer, or special mobile
 23 equipment. The dealer or wholesaler must also have ~~in his possession,~~ a duly assigned certificate of
 24 ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle
 25 is delivered to ~~him~~ the dealer or wholesaler until it has been disposed of by ~~him~~ the dealer or wholesaler,
 26 ~~a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler.~~
 27 It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of
 28 ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign
 29 the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to
 30 be kept in accordance with this section, in addition to the required retention of odometer disclosure

1 information under 61-3-206(4), must be physically located and maintained within the building referred to
2 in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ the
3 representative's credentials, may inspect and have access to and copy any records required under this
4 chapter."

5

6 **Section 3.** Section 61-4-120, MCA, is amended to read:

7 **"61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm,
8 association, or corporation that takes possession of a motor vehicle owned by another person through
9 consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest
10 bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by
11 mail or otherwise in the office of the department a verified application for licensure as an auto auction. The
12 application must be made in the following manner:

13 (a) Each application and all of the information contained in it must be verified by the department
14 or an authorized representative of the department on a form to be furnished by the department for that
15 purpose. The application must provide the following information:

16 (i) the name in which the business is to be conducted and the location of premises, including {street
17 address, city, county, and state}, where records are kept, sales are made, and motor vehicle stock is
18 displayed as an established place of business that displays a sign indicating the firm name and that vehicles
19 are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of
20 traffic at a minimum distance of 150 feet.

21 (ii) the name and address of all owners or persons having an interest in the business. In the case
22 of a corporation, the names and addresses of the president and secretary are sufficient.

23 (iii) a statement that the applicant is authorized to auction used motor vehicles, recreational
24 vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license.
25 A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor
26 vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a
27 closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or
28 importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing
29 new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An
30 auto auction licensed under the provisions of this section shall notify and update the department with

1 current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct
2 a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

3 (b) Each application must be accompanied by a bond of ~~\$25,000~~ \$50,000 \$25,000 and must be
4 conditioned that the applicant shall conduct business in accordance with the requirements of the law. All
5 bonds must run to the state of Montana, must be approved by the department and filed in its office, and
6 must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto
7 auction licensed under this section may proceed in the same manner as provided for licensed dealers and
8 wholesalers in 61-4-101(3)(b).

9 (2) An auto auction's license must be renewed and paid for annually to the department, and an
10 application for relicensure must be filed by January 1 of each year. The fee required for each first-time
11 applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly
12 completed application, fee, and bond, the department shall issue the auto auction license and assign an
13 auto auction license number for each applicant in a manner determined by the department. Auto auctions
14 dealing in motor vehicles may sell only to licensed dealers and wholesalers.

15 (3) Auto auctions that are licensed under this section and that hold a current license number may
16 issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle
17 purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of
18 purchase and may be used only for the purpose of driving or transporting a vehicle from the auction
19 premises to the purchaser's established place of business or point of destination. Temporary permits must
20 be on a form prescribed by the department and must contain the name, address, and license number of the
21 purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and
22 a description of the vehicle, including its serial number. The department shall collect a fee of \$10 from the
23 auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than
24 \$10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to
25 issue more than one temporary permit per vehicle sale.

26 (4) A licensed auto auction may apply for and may be authorized by the department to purchase
27 and use license plates of a type and amount approved by the department, upon payment of a fee to the
28 department to offset the cost of production. Licensed auto auctions may use the license plates to transport
29 inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of
30 business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting,

1 upholstery, polishing, and related activities. One license plate is required to be conspicuously displayed
 2 on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations,
 3 service stations, or repair garages to use the license plate only when conducting work for the auto auction
 4 involving repairing, painting, upholstery, polishing, or performing similar types of work upon a vehicle.
 5 Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a
 6 sworn affidavit on a form prescribed by the department, listing each authorized person designated by the
 7 auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit
 8 within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this
 9 section is liable for the proper use of the license plates, which may not be used for private purposes. The
 10 department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an
 11 auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the
 12 provisions of this section.

13 (5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by
 14 the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor
 15 vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title
 16 transfer, and a description of the motor vehicle, together with the name and address of the seller, the
 17 purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received
 18 or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

- 19 (i) the vehicle identification number ~~or~~ and engine number, if any; and
 20 (ii) ~~other numbers or identification marks on the motor vehicle; and~~
 21 ~~(iii)~~ a statement that a number has been obliterated, defaced, or changed, if it has.

22 (b) An auto auction licensed under this section shall validate the sale of a motor vehicle through
 23 its auction by stamping its name and license number upon the certificate of ownership at a location on the
 24 front or back of the certificate, at the margin in the assignment section as executed between the transferor
 25 and transferee. An auto auction's stamp must be legible and may not interfere with the information
 26 recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks
 27 adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of
 28 the auction invoice bearing the:

- 29 (i) name and license number of the auction, along with an indication of the vehicle year, make,
 30 model, and identification number;

1 (ii) name, address, and signature of the transferor;

2 (iii) name, license number, and signature of the transferee; and

3 (iv) ~~the~~ date the vehicle was sold through the auction.

4 (c) The invoice must be attached to the certificate of ownership and must be presented to the
5 department with any application for title.

6 (d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name
7 of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer,
8 the vehicle identification number, and the odometer reading on the date the auto auction took possession
9 of the motor vehicle. The odometer information may be retained in any way that is systematically
10 retrievable and is not required to be maintained on any special disclosure form. The information may be part
11 of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An
12 auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for
13 providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for
14 the buyer under the provisions of 61-3-206."

15
16 **Section 4.** Section 61-4-121, MCA, is amended to read:

17 "**61-4-121. Twenty-day permit -- limitation on issuance and transfer -- violation -- penalty.** (1) (a)

18 A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

19 (b) A dealer may not transfer 20-day permits to another dealer unless the dealer:

20 (i) notifies the department within 3 days of the transfer;

21 (ii) identifies to the department the dealer to whom any permits have been transferred;

22 (iii) informs the department of the date of the transfer and the quantity and serial numbers of
23 vehicles covered by the transferred permits.

24 (2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege
25 to issue 20-day permits for a period of time determined by the department."

26
27 **Section 5.** Section 61-4-131, MCA, is amended to read:

28 "**61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

29 ~~(1) "Department" means the department of commerce.~~

30 ~~(2) "Designated~~ "designated family member" means the spouse, child, grandchild, parent, brother,

1 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership
 2 interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in
 3 writing by a deceased dealer to succeed ~~him~~ the deceased in the motor vehicle dealership, or under the
 4 laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed
 5 by a court as the legal representative of the dealer's property. The term includes the appointed and
 6 qualified personal representative and the testamentary trustee of a deceased dealer."

7
 8 **Section 6.** Section 61-4-133, MCA, is amended to read:

9 **"61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer,
 10 factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession
 11 to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer
 12 under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may,
 13 within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the
 14 ownership and operation of the dealership, serve upon the designated family member and the department
 15 notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement
 16 with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

17 (2) The notice must state the specific grounds for the refusal to honor the succession and of its
 18 intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from
 19 the date ~~such~~ the notice is served.

20 (3) If notice of refusal and discontinuance is not timely served upon the family member and the
 21 department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134,
 22 the franchise agreement ~~shall~~ must continue in effect subject to termination only as otherwise permitted
 23 by law."

24
 25 **Section 7.** Section 61-4-134, MCA, is amended to read:

26 **"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who
 27 receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ the
 28 family member's succession to the ownership and operation of the dealership may, within the ~~60-day~~
 29 90-day period, file with the department a verified complaint for a hearing and determination by the
 30 department on whether good cause exists for refusal and discontinuance.

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

4 (3) The franchise agreement ~~shall~~ must continue in effect until the final ~~determination of the issues~~
 5 ~~raised in the complaint adjudication by the department on the verified complaint and the exhaustion of all~~
 6 ~~appellate remedies available to the designated family member. The manufacturer, factory branch,~~
 7 ~~distributor, or importer and the designated family member shall abide by the terms of the franchise~~
 8 ~~agreement and the laws of Montana during the appeals process.~~

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

12 (5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4, Title 2, chapter~~
 13 ~~4, part 7."~~

14
 15 **Section 8.** Section 61-4-201, MCA, is amended to read:

16 "**61-4-201. Definitions.** As used in this part, the following definitions apply:

17 (1) "Community" means the relevant market area of a franchise. For the purposes of this part, the
 18 relevant market area of a franchise is the county or counties in which the franchisee is located.

19 ~~(2) "Department" means the department of justice.~~

20 ~~(2)~~ (2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles
 21 to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

22 ~~(3)~~ (3) "Distributor branch" means a branch office maintained or availed of by a distributor or
 23 wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or
 24 supervising its representatives in this state.

25 ~~(4)~~ (4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the
 26 sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle
 27 dealers in this state or for directing or supervising its representatives in this state.

28 ~~(5)~~ (5) "Franchise" means a contract between or among two or more persons when all of the
 29 following conditions are included:

30 (a) a commercial relationship of definite duration or continuing indefinite duration is involved;

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

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

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

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

9 ~~(8)~~(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles
10 and who may enter into a franchise.

11 ~~(9)~~(8) "Importer" means a person who transports or arranges for the transportation of a foreign
12 manufactured new motor vehicle into the United States for sale in this state.

13 ~~(10)~~(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who
14 manufactures or installs on previously assembled truck chassis special bodies or equipment, ~~which that,~~
15 when installed, ~~form forms~~ an integral part of the new motor vehicle and ~~which that~~ constitutes a major
16 manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

17 (10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale
18 regardless of the mileage of the vehicle.

19 (11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts
20 to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor
21 vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken
22 in trade on new motor vehicles.

23 (12) (a) "Retail sale" means the sale of a new motor vehicle.

24 (b) "Retail sale" does not mean a sale:

25 (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale;

26 or

27 (ii) that is the result of a transfer between two licensed new motor vehicle dealers."

28
29 **Section 9.** Section 61-4-205, MCA, is amended to read:

30 **"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions.

1 or conditions of any agreement or franchise, ~~no~~ a franchisor may not cancel, terminate, or refuse to
2 continue a franchise unless the franchisor has cause for termination or noncontinuance.

3 (2) ~~No~~ A franchisor may not enter into a franchise for the purpose of establishing an additional new
4 motor vehicle dealership in any community in which the same line-make is then represented unless there
5 is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public
6 interest.

7 (3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise
8 establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less
9 than ~~30~~ 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the
10 department of intention to terminate or not continue the franchise or to enter into a franchise for additional
11 representation of the same line-make. ~~No~~ A notice of intention to terminate or not continue a franchise ~~may~~
12 be is not required from a franchisor until the conclusion of any review proceeding of that intention offered
13 to the franchisee under the franchise. This section does not apply to an intended termination or
14 noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a
15 franchisor, to submit to binding arbitration.

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

26 (5) In instances where the change in ownership has the effect of the sale of the franchise, the
27 franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the
28 transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state
29 or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the
30 franchisor.

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

7 (7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or
 8 refusal to continue another franchise or upon the establishment of an additional new motor vehicle
 9 dealership in a community where the same line-make is then represented, without first complying with the
 10 provisions of this part, ~~no~~ a license under 61-4-101 through 61-4-105 may not be issued to that franchisee
 11 or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed
 12 by that franchisor."

13
 14 **Section 10.** Section 61-4-206, MCA, is amended to read:

15 "**61-4-206. Objections -- hearing.** (1) A person who receives or is entitled to receive a copy of a
 16 notice provided for in ~~subsection (4) of~~ 61-4-205(4) may object to the approval of the proposed action by
 17 filing a written objection with the department within 15 days from the date the notice was received by the
 18 person entitled to receive the notice. If ~~no~~ an objection is not filed within 15 days from the date the notice
 19 was received, the proposed action ~~shall~~ must be approved.

20 (2) If a timely objection has been filed, the department shall enter an order fixing the time, which
 21 ~~shall~~ must be within 30 days of the date of the order, and place of a hearing on the objection and shall send
 22 by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~
 23 61-4-205(4).

24 (3) The department may upon request continue the date of hearing for a period of 30 days and may
 25 upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

26 (4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the
 27 franchisor has the burden of proof to establish that good cause exists to terminate, ~~or~~ not continue, or not
 28 establish the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership,~~
 29 ~~the burden of proof that good cause does exist shall be with the franchisor.~~

30 (5) The rules of evidence for ~~such a hearing~~ provided for in subsection (2) ~~shall be~~ are the same

1 as those found in ~~chapter 4~~, Title 2, chapter 4. The department shall reasonably apportion all costs between
2 the parties.

3 (6) The department may issue subpoenas, administer oaths, and compel the attendance of
4 witnesses and production of books, papers, documents, and all other evidence. The department may apply
5 to the district court of the county in which the hearing is held for a court order enforcing this section. The
6 hearing ~~shall~~ must be conducted pursuant to ~~chapter 4~~, Title 2, chapter 4.

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

10 (8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4~~, Title 2,
11 chapter 4.

12 (9) The franchise agreement must continue in effect until the adjudication by the department on
13 the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The
14 franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the
15 appeals process."

16
17 **Section 11.** Section 61-4-207, MCA, is amended to read:

18 **"61-4-207. Determination of good cause.** (1) In determining whether good cause has been
19 established for terminating or not continuing a franchise, the department shall take into consideration the
20 existing circumstances, including but not limited to:

- 21 (a) amount of business transacted by the franchise;
- 22 (b) investment necessarily made and obligations incurred by the franchisee in the performance of
23 his the franchisee's part of the franchise;
- 24 (c) permanency of the investment;
- 25 (d) whether it is injurious to the public welfare for the business of the franchisee to be
26 discontinued;
- 27 (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and
28 qualified management, sales, and service personnel to reasonably provide consumer care for the new motor
29 vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;
- 30 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the

1 franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee;
2 and

3 (g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially
4 comply with ~~these~~ the written and uniformly applied requirements of the franchise that are determined by
5 the department to be reasonable and material.

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

8 (a) a change in ownership of the franchisee's dealership; or

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

11 (3) In determining whether good cause has been established for entering into an additional
12 franchise for the same line-make, the department shall take into consideration the existing circumstances,
13 including but not limited to:

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

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

17 (c) whether the franchisees of the same line-make in that community are providing adequate
18 consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts
19 supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the
20 line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities,~~
21 ~~equipment, supply of parts, and qualified management, sales, and service personnel."~~

22

23 **Section 12.** Section 61-4-208, MCA, is amended to read:

24 **"61-4-208. ~~Coercion prohibited~~ Prohibited acts.** (1) A manufacturer of new motor vehicles,
25 factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any
26 representative ~~thereof~~ of the persons or entities listed may not:

27 (a) coerce, or attempt to coerce, or require a new motor vehicle dealer to:

28 ~~(1)(i)~~ (i) accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ for a new motor
29 vehicle or any other commodity that has not been ordered by the dealer;

30 ~~(2)(ii)~~ (ii) participate in or contribute to any local, regional, or national advertising fund or to participate

1 in or to contribute to contests, giveaways, or other sales devices; or

2 (iii) change location of the dealership or to make substantial alterations to the use or number of
3 franchises or the dealership premises or facilities when to do so would be unreasonable, or without written
4 assurance of a sufficient supply of new motor vehicles that would justify an expansion;

5 (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an
6 existing franchise relationship with another manufacturer that was established before [the effective date
7 of this act] when those requirements are not justified by reasonable business considerations;

8 (v) refrain from participation in the management of, investment in, or acquisition of any other line
9 of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of
10 credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital
11 standards and facility requirements of the manufacturer; or

12 ~~(3)(vi)~~ enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,
13 or representative ~~thereof~~ of the listed persons or entities or do any other act unfair to the dealer by:

14 ~~(a)(A)~~ threatening to cancel or not renew a franchise existing between the manufacturer, factory
15 branch, distributor, distributor branch, or representative ~~thereof~~ of the listed persons or entities and the
16 dealer; or

17 ~~(b)(B)~~ threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor
18 vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor
19 branch, importer, or representative or agent ~~thereof~~ of the listed entities-;

20 (b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative
21 to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer
22 if the new vehicles are publicly advertised as being available for immediate delivery; or

23 (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor
24 vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition
25 covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with
26 subjective standards.

27 (2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer,
28 factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."

29
30 NEW SECTION. Section 13. Manufacturer's right of first refusal. (1) Regardless of the terms of

1 any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or
2 distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This
3 may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer
4 agreement with the proposed new owner or transferee if all the following requirements are met:

5 (a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's
6 intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale
7 or transfer;

8 (b) the dealer and the dealer's owner receive the same or greater consideration as they have
9 contracted to receive in connection with the proposed change of ownership or transfer;

10 (c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to
11 a member or members of the family of one or more dealer owners or to a qualified manager, partnership,
12 or corporation controlled by a member of the family of a dealer owner; and

13 (d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the
14 proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable,
15 the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the
16 manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may
17 request the accounting before exercising the manufacturer's or distributor's right of first refusal.

18 (2) This section does not affect any contractual right of a manufacturer or distributor to charge
19 back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's
20 purchase of the vehicles.

21
22 **NEW SECTION. Section 14. Codification instruction.** [Section 13] is intended to be codified as
23 an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to
24 [section 13].

25
26 **NEW SECTION. Section 15. Saving clause.** [This act] does not affect rights and duties that
27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
28 act].

29
30 **NEW SECTION. Section 16. Effective date.** [This act] is effective on passage and approval.

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