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Senate BILL NO. 500

INTRODUCED BY Hertel

Business Hein

Dea McCarthy BY REQUEST OF THE SENATE BUSINESS AND INDUSTRY COMMITTEE
Emmott

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE LICENSING OF DEALERS OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES AND THE REGULATION OF SALES AND DISTRIBUTION OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 23-2-502, 23-2-619, 23-2-803, 23-2-812, 23-2-818, 61-4-101, 61-4-102, 61-4-201, 61-4-402, AND 61-4-501, MCA."

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

Section 1. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning ~~such~~ the motorboat an identifying number and containing ~~such~~ information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) (a) "Dealer" means ~~any~~ a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(b) A person engaged in the business of buying, selling, or exchanging new and unused personal watercraft or used personal watercraft, or both, is not a dealer for the purposes of this part.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel ~~which~~ that has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly

1 displayed on the motorboat.

2 (7) "License decals" means the serially numbered license stickers issued annually by the county
3 treasurer and displayed as required by law.

4 (8) "Lienholder" means a person holding a security interest.

5 (9) (a) "Manufacturer" means ~~any~~ a person engaged in the business of manufacturing or importing
6 new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

7 (b) A person engaged in the business of manufacturing or importing new and used personal
8 watercraft is not a manufacturer for the purposes of this part.

9 (10) "Motorboat" means any vessel, including a canoe, kayak, personal watercraft, rubber raft, or
10 pontoon, propelled by any machinery, motor, or engine of any description, whether or not ~~such~~ the
11 machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily
12 equipped with detachable motors or engines but does not include a vessel ~~which~~ that has a valid marine
13 document issued by the U.S. coast guard of the United States government or any federal agency successor
14 ~~thereto~~ to the U.S. coast guard.

15 (11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

16 (12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of
17 a motorboat or vessel.

18 (13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat
19 or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to
20 an interest in another person, reserved or created by an agreement securing payment or performance of
21 an obligation, but the term excludes a lessee under a lease not intended as security.

22 (14) "Passenger" means every person carried on board a vessel other than:

23 (a) the owner or ~~his~~ the owner's representative;

24 (b) the operator;

25 (c) bona fide members of the crew engaged in the business of the vessel who have not contributed
26 ~~no~~ consideration for their carriage and who are paid for their services; or

27 (d) any guest on board a vessel ~~which~~ that is being used exclusively for pleasure purposes who
28 has not contributed any consideration, directly or indirectly, for ~~his~~ the individual's carriage.

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

30 (16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine

1 powering a water jet pump as its primary source of propulsion and that is designed to be operated by a
 2 person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or
 3 standing in the vessel.

4 (17) "Security interest" means an interest that is reserved or created by an agreement that secures
 5 payment or performance of an obligation and is valid against third parties generally.

6 (18) "Uniform state waterway marking system" means one of two categories:

7 (a) a system of aids to navigation to supplement the federal system of marking in state waters;

8 (b) a system of regulatory markers to warn a vessel operator of dangers or to provide general
 9 information and directions.

10 (19) "Vessel" means every description of watercraft, unless otherwise defined by the department,
 11 other than a seaplane on the water, used or capable of being used as a means of transportation on water.

12 (20) "Waters of this state" means any waters within the territorial limits of this state."
 13

14 **Section 2.** Section 23-2-619, MCA, is amended to read:

15 **"23-2-619. ~~Dealer registration certificate — use of fees~~ Licensed dealers.** (1) A dealer registration
 16 certificate must be licensed issued in accordance with ~~23-2-601 through 23-2-644~~ the provisions of
 17 61-4-101.

18 ~~(2) The dealer application must be accompanied by an application fee of \$5 and a registration fee~~
 19 ~~of \$5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer~~
 20 ~~snowmobile identification cards that must be carried by the dealer or the dealer's customer when~~
 21 ~~demonstrating the dealer's snowmobiles.~~

22 ~~(3) A bond is not required of the dealer.~~

23 ~~(4) The dealer shall have a principal place of business where the dealer shall maintain all business~~
 24 ~~records and display and sell merchandise.~~

25 ~~(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has~~
 26 ~~sold five or more snowmobiles during the preceding year or pay an additional \$50 renewal registration fee~~
 27 ~~or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with~~
 28 ~~a manufacturer, importer, or distributor.~~

29 ~~(6) Additional dealer snowmobile identification cards as required by need justified to the department~~
 30 ~~of justice may be purchased by the dealer for a fee of \$2.~~

1 ~~(7) Dealer registration certificates and identification cards expire on June 30 following the date of~~
2 ~~issuance.~~

3 ~~(8) (a) The dealer application fees and all interest accruing from use of this money must be~~
4 ~~deposited in the state special revenue fund to the credit of the department, with one half designated for~~
5 ~~use in enforcing the purposes of 23-2-601 through 23-2-644 and one half designated for use in the~~
6 ~~development, maintenance, and operation of snowmobile facilities.~~

7 ~~(b) All money collected from dealer registration and renewal registration fees must be deposited~~
8 ~~in the general fund."~~

9
10 **Section 3.** Section 23-2-803, MCA, is amended to read:

11 **"23-2-803. Fee in lieu of tax on off-highway vehicles -- exception -- disposition of fees.** (1) There
12 is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory
13 of a dealership licensed ~~under~~ as provided in 23-2-818, to be paid to the county treasurer of the county
14 in which the owner of the off-highway vehicle resides.

15 (a) The fee for an off-highway vehicle less than 3 years old is \$19. In all other cases the fee is \$9.

16 (b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated
17 model year from the current calendar year.

18 (2) (a) Except as provided in subsection (2)(b), the county treasurer shall distribute all fees in lieu
19 of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the
20 levies for state, county, school district, and municipal purposes in the same manner as personal property
21 taxes are distributed.

22 (b) The county treasurer shall remit \$1 of the fee in lieu of tax collected on an off-highway vehicle
23 to the department of agriculture for deposit in the noxious weed management trust fund provided for in
24 80-7-811."

25
26 **Section 4.** Section 23-2-812, MCA, is amended to read:

27 **"23-2-812. Transfer of interest.** (1) To transfer a certificate of ownership for an off-highway
28 vehicle registered under 23-2-817, the person whose title or interest is to be transferred shall endorse the
29 certificate of ownership in the appropriate space on the reverse side of the certificate and must have the
30 signature acknowledged before a notary public.

1 (2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the
2 county treasurer of the county in which the transferee resides for:

3 (i) transfer of the endorsed certificate of ownership;

4 (ii) registration of the off-highway vehicle; and

5 (iii) issuance of a decal as required by 23-2-804.

6 (b) The county treasurer shall forward the application and the original certificate of ownership to
7 the department of justice, which shall file the application upon receipt.

8 (c) A certificate of ownership may not be issued by the department of justice until the outstanding
9 certificates are surrendered to that office or their loss is established.

10 (d) The county treasurer shall collect a fee of \$5 for each application for transfer of ownership, of
11 which:

12 (i) \$3.50 must be forwarded to the department of justice for deposit in the general fund; and

13 (ii) \$1.50 must be retained by the county treasurer for the cost of administering this section.

14 (3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of
15 61-3-201(3) are applicable.

16 (4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle
17 dealer licensed under as provided in 23-2-818 shall, within 20 calendar days after the purchase date, apply
18 to the county treasurer of the county in which the person resides for:

19 (i) a certificate of ownership;

20 (ii) registration of the off-highway vehicle; and

21 (iii) a decal as required by 23-2-804.

22 (b) During this period, the sticker provided for in subsection (6) must remain affixed to the
23 off-highway vehicle.

24 (5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle
25 without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of
26 ownership.

27 (6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix
28 to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the
29 name and address of the purchaser, the date of sale, the name and address of the dealer, and a description
30 of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker

1 for the dealer's records and shall send a copy of the sticker to the department of justice.

2 (7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an
 3 off-highway vehicle dealer licensed ~~under~~ as provided in 23-2-818 who intends to resell the vehicle and
 4 who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the
 5 certificate of ownership with an application for a new certificate executed by the new owner in accordance
 6 with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and
 7 application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue
 8 a new certificate of ownership showing the name of the lienholder and the amount due under the contract,
 9 mortgage, or lien as required by 23-2-811(2)(d) and (2)(e)."

10
 11 **Section 5.** Section 23-2-818, MCA, is amended to read:

12 "**23-2-818. Dealer registration certificate—use of fees Licensed dealers.** ~~(1) Unless the a dealer~~
 13 ~~is licensed under the provisions of 61-4-101, a the dealer may not sell off-highway vehicles unless he has~~
 14 ~~first obtained a dealer registration certificate from the department of justice under the provisions of this~~
 15 ~~section.~~

16 ~~(2) The dealer application for registration or renewal of registration must be accompanied by an~~
 17 ~~application or renewal fee of \$5 and a registration fee of \$5. To qualify for the fees in this subsection, the~~
 18 ~~applicant for renewal shall certify that he has sold three or more off-highway vehicles during the preceding~~
 19 ~~year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two~~
 20 ~~dealer off-highway identification cards to be carried by the dealer or the dealer's customer when~~
 21 ~~demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards~~
 22 ~~may be purchased by the dealer from the department of justice for a fee of \$2 each.~~

23 ~~(3) No bond is required of the dealer.~~

24 ~~(4) The dealer shall have a principal place of business where he maintains all his business records~~
 25 ~~and where he displays and sells merchandise.~~

26 ~~(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify~~
 27 ~~under subsection (2) shall:~~

28 ~~(a) pay an additional \$50 renewal registration fee; and~~

29 ~~(b) provide a copy of a new off-highway vehicle franchise or sales agreement that he has with a~~
 30 ~~manufacturer, importer, or distributor.~~

1 ~~(6) Dealer registration certificates and identification cards expire on December 31 following the date~~
2 ~~of issuance.~~

3 ~~(7) (a) The dealer application fees and all interest accruing from use of this money must be~~
4 ~~deposited in the general fund to be used by the department of justice for the administration of this part.~~

5 ~~(b) All dealer registration fees and renewal fees collected must be deposited in the account~~
6 ~~provided in 23-2-804(3). This money and the interest earned on it must be used for off-highway vehicle~~
7 ~~safety and education programs."~~

8

9 **Section 6.** Section 61-4-101, MCA, is amended to read:

10 **"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application
11 for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department
12 by each person, firm, corporation, or association that, for commission or profit, engages in:

13 (i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new
14 motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded
15 weight of less than 500 pounds), semitrailers, mobile homes, ~~or~~ special mobile equipment as defined in
16 61-1-104, new or used personal watercraft as defined in 23-2-502, new or used snowmobiles as defined
17 in 23-2-601, or new or used off-highway vehicles as defined in 23-2-801; or

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

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

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

26 (d) Each license application and all of the information contained in it must be verified by the
27 department or an authorized representative of the department on a form to be furnished by the department
28 for that purpose and must contain the information required. Each application must be accompanied by the
29 license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,
30 and an application for relicensure must be filed not later than January 1 of each year. If an application for

1 renewal of a license has been received by the department prior to the expiration of the license, the licensee
2 may operate the business and display dealer or demonstrator plates under the expired license between
3 January 1 and February 15 following expiration.

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

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

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

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

14 (iii) state the name and make of all motor vehicles handled and the name and address of the
15 manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise
16 or sales agreement;

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

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

21 (vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles
22 and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor
23 vehicles.

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

29 (i) a statement that the:

30 (A) applicant has an established place of business that includes a lot or lots upon which motor

1 vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where
2 records are kept and sales are made; or

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

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

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

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

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

19 (3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a
20 bond of \$25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational
21 vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a
22 trailer wholesaler shall file the \$25,000 surety bond only if special mobile equipment, commercial trailers
23 and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers
24 are sold; otherwise, all other trailer dealer, motorcycle dealer, personal watercraft dealer, snowmobile
25 dealer, off-highway vehicle dealer, or wholesaler license applicants shall file a bond in the sum of \$10,000.
26 All bonds must be conditioned that the applicant shall conduct the business in accordance with the
27 requirements of the law. All bonds must run to the state of Montana, must be approved by the department
28 and filed in its office, and must be renewed annually.

29 (b) A person who suffers loss or damage ~~due to~~ because of the unlawful conduct of a dealer or
30 wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior

1 to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude
2 that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

3
4 **Section 7.** Section 61-4-102, MCA, is amended to read:

5 **"61-4-102. Fees -- restrictions on licensees.** (1) Upon making ~~such~~ the license application required
6 in 61-4-101, the applicant shall pay to the department, in addition to the fees required of dealers and
7 wholesalers under the provisions of subsection (2), a fee of \$5. Upon receipt of the application, fee, and
8 bond, as provided ~~above~~ in 61-4-101, the department shall examine the application, and may, prior to
9 issuing a license, make individual investigation of the truth of the statements contained in the application.
10 If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions
11 of this chapter, the department may issue the license. The department may refuse, after investigation, to
12 issue a license to an applicant as allowed by law.

13 (2) Registration or license fees ~~shall~~ must be paid upon registration or reregistration of dealers in
14 motor vehicles, recreational vehicles, or trailers as follows:

15 (a) (i) all dealers in motor vehicles and recreational vehicles, a fee of \$25, which ~~shall entitle such~~
16 entitles the dealer to one set of number plates, and \$25 additional fee for each additional set of number
17 plates, subject to the following limitations on the number of additional sets allowed a dealer:

18 (A) 5% of the first 100 vehicle sales for the previous year; plus

19 (B) 3% of the next 100 vehicle sales for the previous year; plus

20 (C) 2% of vehicle sales in excess of 200 for the previous year; and

21 (D) any additional sets upon a showing of good cause by the applicant dealer to the department.

22 (ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased
23 one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a
24 cost determined by the department to offset the cost of production. Demonstrator plates must be used in
25 lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates
26 in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from
27 dealer demonstrator plates in a manner determined by the department.

28 (b) dealers in motorcycles, quadricycles, personal watercraft, snowmobiles, off-highway vehicles,
29 and trailers, including housetrailer, \$45; and

30 (c) wholesalers in used motor vehicles, recreational vehicles, trailers, ~~including~~ semitrailers and

1 special mobile equipment), ~~and~~ motorcycles, ~~(including quadricycles)~~, personal watercraft, snowmobiles,
 2 and off-highway vehicles, \$30.

3 (3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set
 4 by law, the registration or license fee for the remainder of the year is one-half of the regular fee ~~above~~
 5 ~~given~~.

6 (4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more
 7 than one place of business or who maintains a branch establishment or establishments shall register and
 8 pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only
 9 from ~~his~~ a licensed place of business unless the dealer notifies the department 10 days in advance, on a
 10 form prescribed by the department, of the opening date and location of an off-premises sale. Except for
 11 recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the
 12 dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that
 13 is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business
 14 days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

15 (5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay \$300 to the
 16 department in addition to any other sums required by this section or other provisions of the law. An
 17 applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that ~~he~~
 18 the applicant has sold more than five used motor vehicles during the preceding calendar year or pay an
 19 additional \$300 before ~~he~~ the applicant may be licensed.

20 (6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

21 (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

22 (i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated
 23 by an individual holding a valid operator's license;

24 (ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time
 25 employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts,
 26 and equipment;

27 (iii) on authorized vehicles being tested for repair;

28 (iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

29 (v) on authorized vehicles being moved to or from service and repair facilities before sale;

30 (vi) on authorized vehicles being moved to or from exhibitions within the state, provided ~~any such~~

1 the exhibition does not exceed a period of 20 days.

2 (b) Mobile home and trailer dealer demonstrator plates may be used:

3 (i) on units hauled to or from the place of business of the manufacturer and the place of business
4 of the dealer or to and from places of business of the dealer;

5 (ii) on mobile homes hauled to a customer's location for setup after sale;

6 (iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle ~~provided that~~
7 if a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

8 (iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing
9 mobile home and travel trailer dealer license plates of the dealer owning ~~any such~~ the motor vehicle;

10 (v) on vehicles being moved to or from vehicle exhibitions within the state, provided ~~any such~~ the
11 exhibition does not exceed a period of 20 days."

12
13 **Section 8.** Section 61-4-201, MCA, is amended to read:

14 **"61-4-201. Definitions.** As used in this part, the following definitions apply:

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

17 (2) "Department" means the department of justice.

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

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

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

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

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

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

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

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

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

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

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

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

15 (11) "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as
16 defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

17 ~~(11)(12)~~ (12) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or
18 attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new
19 motor vehicles or used motor vehicles taken in trade on new motor vehicles."
20

21 **Section 9.** Section 61-4-402, MCA, is amended to read:

22 **"61-4-402. Definitions.** (1) "Finance company" or "finance agency" ~~shall mean any~~ means a
23 person, firm, association, corporation, or other organization engaged in the business of buying, selling,
24 assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of
25 purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either
26 secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor
27 vehicles in this state.

28 (2) The term "manufacturer" ~~shall mean any~~ means a person, firm, corporation, partnership, or
29 association engaged either directly or indirectly in the manufacture or wholesale distribution of motor
30 vehicles.

1 (3) The term "motor vehicle", as used in this part, includes a personal watercraft as defined in
 2 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

3 ~~(3)~~(4) The terms "sell", "sold", "buy", and "purchase", as used in this part, include exchange,
 4 barter, gift, and offer or contract to sell or buy.

5 ~~(4)~~(5) The term "wholesale distributor" ~~shall mean~~ means any person, firm, association,
 6 corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles
 7 to agents or to dealers."

8
 9 **Section 10.** Section 61-4-501, MCA, is amended to read:

10 **"61-4-501. Definitions.** For purposes of this part, the following definitions apply:

11 (1) "Collateral charge" means all governmental charges, including but not limited to sales tax,
 12 property tax, license and registration fees, and fees in lieu of tax.

13 (2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that
 14 has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or
 15 alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of
 16 an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the
 17 warranty to the benefits of its provisions.

18 (3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

19 (4) "Manufacturer" has the meaning applied to that word in 61-4-201.

20 (5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as
 21 defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon
 22 the public highways, and sold in this state. The term also includes a personal watercraft as defined in
 23 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

24 (b) The term does not include a truck with 10,000 pounds or more gross vehicle weight rating or
 25 a motorcycle as defined in 61-1-105. Motor vehicle does not include components, systems, fixtures,
 26 appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for
 27 residential purposes.

28 (6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle
 29 by the consumer and any previous consumers prior to the first written notice of the nonconformity to the
 30 manufacturer or its agent and during any subsequent period when the vehicle is not out of service because

1 of nonconformity. The reasonable allowance for use ~~shall~~ must be computed by multiplying the total
2 contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator
3 the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

4 (7) "Warranty period" means the period ending 2 years after the date of the original delivery to the
5 consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0376, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act transferring the licensing of dealers of personal watercraft, snowmobiles, and off-highway vehicles and the regulation of sales and distribution of personal watercraft, snowmobiles, and off-highway vehicles to the Department of Justice.

ASSUMPTIONS:

1. The Department of Fish, Wildlife and Parks would continue to license boat dealers.
2. The Department of Justice would license personal watercraft dealers and would continue to license snowmobile and off-highway dealers.
3. In 1996 the Department of Fish, Wildlife and Parks licensed 117 boat dealers and the Department of Justice licensed 69 snowmobile dealers and 29 off-highway dealers. No wholesaler licenses have been authorized previously; therefore, the number of wholesaler dealers seeking licensure is unknown.
4. Moving the licensure of snowmobile and off-highway dealers from Title 23 to Title 61 would eliminate the \$5.00 application fee (state special revenue) and the \$5.00 registration fee (69 + 29 = 98 x \$5 = \$490 state special revenue) paid by each of these dealers to the Department of Fish, Wildlife and Parks.
5. Registration fees collected by the Department of Justice for the registration of personal watercraft, snowmobile, and off-highway dealers are estimated at \$11,228 in fiscal 1998 and \$9,675 in fiscal 1999. Revenues for application fees would increase this estimate.

Assuming that the 117 boat dealers licensed with the Department of Fish, Wildlife and Parks would also become licensed as personal watercraft dealers with the Department of Justice, personal watercraft dealer registration fees are estimated at \$5,265 in fiscal 1998 and in fiscal 1999. (117 x \$45 = \$5,265)

Under current law registration of the snowmobile dealers expires on June 30. Under Title 61 registration of the snowmobile dealers would expire on December 31; therefore, it is assumed that in fiscal 1998 the snowmobile dealers would be required to pay a half-year registration for the period from June 30 through December 31, 1997, as currently provided for in Title 61. Snowmobile dealer registration fees are estimated at \$4,658 in fiscal 1998 and \$3,105 in fiscal 1999.

FY98 7-1-97 through 12-31-97 \$45.00 x .5 = \$22.50 x 69 dealers = \$1,552.50

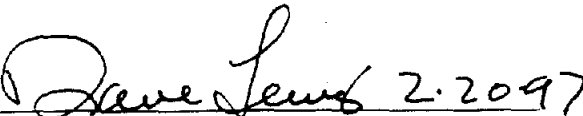
FY98 1-1-98 through 12-31-98 \$45 x 69 dealers = \$3,105

FY99 1-1-99 through 12-31-99 \$45 x 69 dealers = \$3,105

Off-highway dealer registration fees are estimated at \$1,305 in fiscal 1998 and \$1,305 in fiscal 1999. (29 dealers x \$45.00 = \$1,305.00)

6. The Department of Justice is currently licensing and registering snowmobile and off-highway dealers. The additional 117 personal watercraft dealers would create an increase in workload that could be handled by temporary reassignment of existing staff.
7. There is no provision in this bill to provide dealers with demonstrator plates or decals; therefore, the Department of Justice is not projecting an increase in operating expenses.
8. According to Department of Justice reports, 15,352 off-highway vehicles; 16,612 snowmobiles; and 46,296 boats were registered in 1996. Of these, 1,790 off-highway vehicles, 1,421 snowmobiles, and 1,618 boats were purchased new in 1996, making them subject to the New Motor Vehicle Warranty Act as amended by SB 376. Under the proposed legislation, 4,739 additional craft per year would be covered under the New Motor Vehicle Warranty Act.

(Continued)


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JOHN HERTEL, PRIMARY SPONSOR DATE

Fiscal Note for SB0376, as introduced

SB 376

(continued)

9. The Department of Commerce is responsible under 61-4-515 and 61-4-518, MCA, to provide an investigation and arbitration procedure for disputes that arise under the New Motor Vehicle Warranty Act that cannot be resolved by a certified manufacturer arbitration programs. It is assumed the majority of manufacturers of these craft do not have arbitration programs. It is assumed the Department of Commerce would be asked to investigate 150 disputes per year involving off-road vehicles, snowmobiles, or boats, and provide arbitration in 30 cases per year of the biennium.
10. An arbitration fee of \$250 would be paid by the manufacturer per case and the consumer would pay \$50 per case, resulting in projected revenues of \$9,000 a year. (30 x \$250 + \$50 = \$9,000) The arbitration fees are deposited in the general fund.
11. Implementation of the arbitration activities of SB 376 would require an additional 2.00 FTE. A grade 14 investigator and a grade 12 compliance specialist. Estimated fiscal 1998 and fiscal 1999 personal services costs would be \$59,173.
12. In addition estimated operating expenses would be \$17,500 in fiscal 1998 and fiscal 1999. Included in these expenses would be other professional services, supplies and materials, communications, travel, rent, and other expenses. Equipment expenses are \$10,000 in fiscal 1998 only which includes the purchase of computers, desks, chairs, calculators, and file cabinets.

FISCAL IMPACT:

Department of Commerce - Consumer Affairs:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	2.00	2.00
Personal Services	59,173	59,173
Operating Expenses	17,500	17,500
Equipment	<u>10,000</u>	<u>10,000</u>
Total	86,673	76,673
<u>Funding:</u>		
General Fund (01)	86,673	76,673
<u>Revenues:</u>		
Department of Fish, Wildlife & Parks:		
Registration Fees (02)	(490)	(490)
Department of Justice:		
Registration Fees (01)	11,228	9,675
Department of Commerce:		
Arbitration Fees (01)	9,000	9,000
<u>Net Impact on Fund Balance:</u>		
General Fund (01)	(66,445)	(57,998)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Inclusion of state consumer protection under the New Vehicle Warrant Act, or "Lemon Law" for purchasers of new off-road vehicles, snowmobiles, and boats.

TECHNICAL NOTES:

1. There is no provision in SB 376 for the issuance of demonstrator plates or certificates for personal watercraft, snowmobile and off-highway dealers; therefore, individuals demonstrating these vehicles would be in violation of state statutes and could be issued citations.
2. Under existing law snowmobile dealer licenses expire on June 30. Dealer licensing under Title 61 is on a calendar year basis, expiring on December 31. Therefore, an effective date for snowmobile dealers needs to be referenced to reduce the gaps in the licensure authority. Also, if a provision is included to issue demonstrator plates or certificates for snowmobile dealers, under Title 61 snowmobile dealers would be required to obtain 2 sets since the dealers license would expire on December 31 in mid-season.

(Continued)

(continued)

3. Section 4 states that the endorsement on a certificate of ownership to transfer an off-highway vehicle is made on the reverse side of the certificate. It should be noted that many of the certificates issued by Montana and by other jurisdictions require this endorsement on the front of the certificate while others still require the endorsement on the back of the certificate.
4. Under existing law, dealers are not required to get a bond. Under SB 376, they would be required to provide a \$10,000 bond when registering for licensure.
5. It is difficult to estimate the number of cases for arbitration that would arise under the amended law. It is the Department of Commerce's opinion that sufficient revenues would not exist to cover anticipated costs and that the general fund would be used to makeup the difference.

Senate BILL NO. 376

1
2 INTRODUCED BY Hertel Business
3 Dea McCarthy BY REQUEST OF THE SENATE BUSINESS AND INDUSTRY COMMITTEE
4 Emerson

5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE LICENSING OF DEALERS OF PERSONAL
6 WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES AND THE REGULATION OF SALES AND
7 DISTRIBUTION OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO THE
8 DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 23-2-502, 23-2-619, 23-2-803, 23-2-812,
9 23-2-818, 61-4-101, 61-4-102, 61-4-201, 61-4-402, AND 61-4-501, MCA."

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

12
13 **Section 1.** Section 23-2-502, MCA, is amended to read:

14 **"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different
15 meaning, the following definitions apply:

16 (1) "Certificate of number" means the certificate issued annually by the county treasurer to the
17 owner of a motorboat or by the department of justice to dealers or manufacturers, assigning ~~such~~ the
18 motorboat an identifying number and containing ~~such~~ information as required.

19 (2) "Certificate of ownership" means a certificate issued by the department of justice identifying
20 the owner of a motorboat or sailboat 12 feet in length or longer.

21 (3) (a) "Dealer" means ~~any~~ a person who engages in whole or in part in the business of buying,
22 selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional
23 sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale,
24 trade, and display of vessels. A yacht broker is a dealer.

25 (b) A person engaged in the business of buying, selling, or exchanging new and unused personal
26 watercraft or used personal watercraft, or both, is not a dealer for the purposes of this part.

27 (4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

28 (5) "Documented vessel" means a vessel ~~which~~ that has and is required to have a valid marine
29 document as a vessel of the United States.

30 (6) "Identifying number" means the boat number set forth in the certificate of number and properly

1 displayed on the motorboat.

2 (7) "License decals" means the serially numbered license stickers issued annually by the county
3 treasurer and displayed as required by law.

4 (8) "Lienholder" means a person holding a security interest.

5 (9) (a) "Manufacturer" means ~~any~~ a person engaged in the business of manufacturing or importing
6 new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

7 (b) A person engaged in the business of manufacturing or importing new and used personal
8 watercraft is not a manufacturer for the purposes of this part.

9 (10) "Motorboat" means any vessel, including a canoe, kayak, personal watercraft, rubber raft, or
10 pontoon, propelled by any machinery, motor, or engine of any description, whether or not ~~such~~ the
11 machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily
12 equipped with detachable motors or engines but does not include a vessel ~~which~~ that has a valid marine
13 document issued by the U.S. coast guard of the United States government or any federal agency successor
14 ~~thereto~~ to the U.S. coast guard.

15 (11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

16 (12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of
17 a motorboat or vessel.

18 (13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat
19 or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to
20 an interest in another person, reserved or created by an agreement securing payment or performance of
21 an obligation, but the term excludes a lessee under a lease not intended as security.

22 (14) "Passenger" means every person carried on board a vessel other than:

23 (a) the owner or ~~his~~ the owner's representative;

24 (b) the operator;

25 (c) bona fide members of the crew engaged in the business of the vessel who have not contributed
26 ~~no~~ consideration for their carriage and who are paid for their services; or

27 (d) any guest on board a vessel ~~which~~ that is being used exclusively for pleasure purposes who
28 has not contributed any consideration, directly or indirectly, for ~~his~~ the individual's carriage.

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

30 (16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine

1 powering a water jet pump as its primary source of propulsion and that is designed to be operated by a
 2 person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or
 3 standing in the vessel.

4 (17) "Security interest" means an interest that is reserved or created by an agreement that secures
 5 payment or performance of an obligation and is valid against third parties generally.

6 (18) "Uniform state waterway marking system" means one of two categories:

7 (a) a system of aids to navigation to supplement the federal system of marking in state waters;

8 (b) a system of regulatory markers to warn a vessel operator of dangers or to provide general
 9 information and directions.

10 (19) "Vessel" means every description of watercraft, unless otherwise defined by the department,
 11 other than a seaplane on the water, used or capable of being used as a means of transportation on water.

12 (20) "Waters of this state" means any waters within the territorial limits of this state."
 13

14 **Section 2.** Section 23-2-619, MCA, is amended to read:

15 "**23-2-619. ~~Dealer registration certificate—use of fees~~ Licensed dealers.** ~~(1)~~ A dealer registration
 16 certificate must be licensed ~~issued~~ in accordance with ~~23-2-601 through 23-2-644~~ the provisions of
 17 61-4-101.

18 ~~(2) The dealer application must be accompanied by an application fee of \$5 and a registration fee~~
 19 ~~of \$5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer~~
 20 ~~snowmobile identification cards that must be carried by the dealer or the dealer's customer when~~
 21 ~~demonstrating the dealer's snowmobiles.~~

22 ~~(3) A bond is not required of the dealer.~~

23 ~~(4) The dealer shall have a principal place of business where the dealer shall maintain all business~~
 24 ~~records and display and sell merchandise.~~

25 ~~(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has~~
 26 ~~sold five or more snowmobiles during the preceding year or pay an additional \$50 renewal registration fee~~
 27 ~~or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with~~
 28 ~~a manufacturer, importer, or distributor.~~

29 ~~(6) Additional dealer snowmobile identification cards as required by need justified to the department~~
 30 ~~of justice may be purchased by the dealer for a fee of \$2.~~

1 ~~(7) Dealer registration certificates and identification cards expire on June 30 following the date of~~
2 ~~issuance.~~

3 ~~(8) (a) The dealer application fees and all interest accruing from use of this money must be~~
4 ~~deposited in the state special revenue fund to the credit of the department, with one half designated for~~
5 ~~use in enforcing the purposes of 23-2-601 through 23-2-644 and one half designated for use in the~~
6 ~~development, maintenance, and operation of snowmobile facilities.~~

7 ~~(b) All money collected from dealer registration and renewal registration fees must be deposited~~
8 ~~in the general fund."~~

9
10 **Section 3.** Section 23-2-803, MCA, is amended to read:

11 **"23-2-803. Fee in lieu of tax on off-highway vehicles -- exception -- disposition of fees.** (1) There
12 is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory
13 of a dealership licensed ~~under~~ as provided in 23-2-818, to be paid to the county treasurer of the county
14 in which the owner of the off-highway vehicle resides.

15 (a) The fee for an off-highway vehicle less than 3 years old is \$19. In all other cases the fee is \$9.

16 (b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated
17 model year from the current calendar year.

18 (2) (a) Except as provided in subsection (2)(b), the county treasurer shall distribute all fees in lieu
19 of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the
20 levies for state, county, school district, and municipal purposes in the same manner as personal property
21 taxes are distributed.

22 (b) The county treasurer shall remit \$1 of the fee in lieu of tax collected on an off-highway vehicle
23 to the department of agriculture for deposit in the noxious weed management trust fund provided for in
24 80-7-811."

25
26 **Section 4.** Section 23-2-812, MCA, is amended to read:

27 **"23-2-812. Transfer of interest.** (1) To transfer a certificate of ownership for an off-highway
28 vehicle registered under 23-2-817, the person whose title or interest is to be transferred shall endorse the
29 certificate of ownership in the appropriate space on the reverse side of the certificate and must have the
30 signature acknowledged before a notary public.

1 (2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the
2 county treasurer of the county in which the transferee resides for:

3 (i) transfer of the endorsed certificate of ownership;

4 (ii) registration of the off-highway vehicle; and

5 (iii) issuance of a decal as required by 23-2-804.

6 (b) The county treasurer shall forward the application and the original certificate of ownership to
7 the department of justice, which shall file the application upon receipt.

8 (c) A certificate of ownership may not be issued by the department of justice until the outstanding
9 certificates are surrendered to that office or their loss is established.

10 (d) The county treasurer shall collect a fee of \$5 for each application for transfer of ownership, of
11 which:

12 (i) \$3.50 must be forwarded to the department of justice for deposit in the general fund; and

13 (ii) \$1.50 must be retained by the county treasurer for the cost of administering this section.

14 (3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of
15 61-3-201(3) are applicable.

16 (4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle
17 dealer licensed ~~under~~ as provided in 23-2-818 shall, within 20 calendar days after the purchase date, apply
18 to the county treasurer of the county in which the person resides for:

19 (i) a certificate of ownership;

20 (ii) registration of the off-highway vehicle; and

21 (iii) a decal as required by 23-2-804.

22 (b) During this period, the sticker provided for in subsection (6) must remain affixed to the
23 off-highway vehicle.

24 (5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle
25 without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of
26 ownership.

27 (6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix
28 to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the
29 name and address of the purchaser, the date of sale, the name and address of the dealer, and a description
30 of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker

1 for the dealer's records and shall send a copy of the sticker to the department of justice.

2 (7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an
 3 off-highway vehicle dealer licensed ~~under~~ as provided in 23-2-818 who intends to resell the vehicle and
 4 who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the
 5 certificate of ownership with an application for a new certificate executed by the new owner in accordance
 6 with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and
 7 application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue
 8 a new certificate of ownership showing the name of the lienholder and the amount due under the contract,
 9 mortgage, or lien as required by 23-2-811(2)(d) and (2)(e)."

10
 11 **Section 5.** Section 23-2-818, MCA, is amended to read:

12 "**23-2-818. ~~Dealer registration certificate—use of fees~~ Licensed dealers.** (1) Unless the a dealer
 13 is licensed under the provisions of 61-4-101, a the dealer may not sell off-highway vehicles unless he has
 14 first obtained a dealer registration certificate from the department of justice under the provisions of this
 15 section.

16 ~~(2) The dealer application for registration or renewal of registration must be accompanied by an~~
 17 ~~application or renewal fee of \$5 and a registration fee of \$5. To qualify for the fees in this subsection, the~~
 18 ~~applicant for renewal shall certify that he has sold three or more off highway vehicles during the preceding~~
 19 ~~year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two~~
 20 ~~dealer off highway identification cards to be carried by the dealer or the dealer's customer when~~
 21 ~~demonstrating the dealer's off highway vehicles. Additional dealer off highway vehicle identification cards~~
 22 ~~may be purchased by the dealer from the department of justice for a fee of \$2 each.~~

23 ~~(3) No bond is required of the dealer.~~

24 ~~(4) The dealer shall have a principal place of business where he maintains all his business records~~
 25 ~~and where he displays and sells merchandise.~~

26 ~~(5) An applicant for renewal of an off highway vehicle dealer registration who does not qualify~~
 27 ~~under subsection (2) shall:~~

28 ~~(a) pay an additional \$50 renewal registration fee; and~~

29 ~~(b) provide a copy of a new off highway vehicle franchise or sales agreement that he has with a~~
 30 ~~manufacturer, importer, or distributor.~~

1 ~~(6) Dealer registration certificates and identification cards expire on December 31 following the date~~
2 ~~of issuance.~~

3 ~~(7) (a) The dealer application fees and all interest accruing from use of this money must be~~
4 ~~deposited in the general fund to be used by the department of justice for the administration of this part.~~

5 ~~(b) All dealer registration fees and renewal fees collected must be deposited in the account~~
6 ~~provided in 23-2-804(3). This money and the interest earned on it must be used for off highway vehicle~~
7 ~~safety and education programs."~~

8
9 **Section 6.** Section 61-4-101, MCA, is amended to read:

10 **"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application
11 for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department
12 by each person, firm, corporation, or association that, for commission or profit, engages in:

13 (i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new
14 motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded
15 weight of less than 500 pounds), semitrailers, mobile homes, ~~or~~ special mobile equipment as defined in
16 61-1-104, new or used personal watercraft as defined in 23-2-502, new or used snowmobiles as defined
17 in 23-2-601, or new or used off-highway vehicles as defined in 23-2-801; or

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

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

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

26 (d) Each license application and all of the information contained in it must be verified by the
27 department or an authorized representative of the department on a form to be furnished by the department
28 for that purpose and must contain the information required. Each application must be accompanied by the
29 license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,
30 and an application for relicensure must be filed not later than January 1 of each year. If an application for

1 renewal of a license has been received by the department prior to the expiration of the license, the licensee
2 may operate the business and display dealer or demonstrator plates under the expired license between
3 January 1 and February 15 following expiration.

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

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

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

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

14 (iii) state the name and make of all motor vehicles handled and the name and address of the
15 manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise
16 or sales agreement;

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

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

21 (vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles
22 and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor
23 vehicles.

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

29 (i) a statement that the:

30 (A) applicant has an established place of business that includes a lot or lots upon which motor

1 vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where
2 records are kept and sales are made; or

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

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

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

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

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

19 (3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a
20 bond of \$25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational
21 vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a
22 trailer wholesaler shall file the \$25,000 surety bond only if special mobile equipment, commercial trailers
23 and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers
24 are sold; otherwise, all other trailer dealer, motorcycle dealer, personal watercraft dealer, snowmobile
25 dealer, off-highway vehicle dealer, or wholesaler license applicants shall file a bond in the sum of \$10,000.
26 All bonds must be conditioned that the applicant shall conduct the business in accordance with the
27 requirements of the law. All bonds must run to the state of Montana, must be approved by the department
28 and filed in its office, and must be renewed annually.

29 (b) A person who suffers loss or damage ~~due to~~ because of the unlawful conduct of a dealer or
30 wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior

1 to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude
2 that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

3
4 **Section 7.** Section 61-4-102, MCA, is amended to read:

5 **"61-4-102. Fees -- restrictions on licensees.** (1) Upon making ~~such~~ the license application required
6 in 61-4-101, the applicant shall pay to the department, in addition to the fees required of dealers and
7 wholesalers under the provisions of subsection (2), a fee of \$5. Upon receipt of the application, fee, and
8 bond, as provided ~~above~~ in 61-4-101, the department shall examine the application, and may, prior to
9 issuing a license, make individual investigation of the truth of the statements contained in the application.
10 If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions
11 of this chapter, the department may issue the license. The department may refuse, after investigation, to
12 issue a license to an applicant as allowed by law.

13 (2) Registration or license fees ~~shall~~ must be paid upon registration or reregistration of dealers in
14 motor vehicles, recreational vehicles, or trailers as follows:

15 (a) (i) all dealers in motor vehicles and recreational vehicles, a fee of \$25, which ~~shall entitle such~~
16 entitles the dealer to one set of number plates, and \$25 additional fee for each additional set of number
17 plates, subject to the following limitations on the number of additional sets allowed a dealer:

18 (A) 5% of the first 100 vehicle sales for the previous year; plus

19 (B) 3% of the next 100 vehicle sales for the previous year; plus

20 (C) 2% of vehicle sales in excess of 200 for the previous year; and

21 (D) any additional sets upon a showing of good cause by the applicant dealer to the department.

22 (ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased
23 one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a
24 cost determined by the department to offset the cost of production. Demonstrator plates must be used in
25 lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates
26 in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from
27 dealer demonstrator plates in a manner determined by the department.

28 (b) dealers in motorcycles, quadricycles, personal watercraft, snowmobiles, off-highway vehicles,
29 and trailers, including house trailers, \$45; and

30 (c) wholesalers in used motor vehicles, recreational vehicles, trailers, (including semitrailers and

1 special mobile equipment}, ~~and~~ motorcycles, {including quadricycles}, personal watercraft, snowmobiles,
2 and off-highway vehicles, \$30.

3 (3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set
4 by law, the registration or license fee for the remainder of the year is one-half of the regular fee ~~above~~
5 ~~given~~.

6 (4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more
7 than one place of business or who maintains a branch establishment or establishments shall register and
8 pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only
9 from ~~his~~ a licensed place of business unless the dealer notifies the department 10 days in advance, on a
10 form prescribed by the department, of the opening date and location of an off-premises sale. Except for
11 recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the
12 dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that
13 is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business
14 days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

15 (5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay \$300 to the
16 department in addition to any other sums required by this section or other provisions of the law. An
17 applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that ~~he~~
18 the applicant has sold more than five used motor vehicles during the preceding calendar year or pay an
19 additional \$300 before ~~he~~ the applicant may be licensed.

20 (6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

21 (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

22 (i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated
23 by an individual holding a valid operator's license;

24 (ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time
25 employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts,
26 and equipment;

27 (iii) on authorized vehicles being tested for repair;

28 (iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

29 (v) on authorized vehicles being moved to or from service and repair facilities before sale;

30 (vi) on authorized vehicles being moved to or from exhibitions within the state, provided ~~any such~~

1 the exhibition does not exceed a period of 20 days.

2 (b) Mobile home and trailer dealer demonstrator plates may be used:

3 (i) on units hauled to or from the place of business of the manufacturer and the place of business
4 of the dealer or to and from places of business of the dealer;

5 (ii) on mobile homes hauled to a customer's location for setup after sale;

6 (iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle ~~provided that~~
7 if a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

8 (iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing
9 mobile home and travel trailer dealer license plates of the dealer owning ~~any such~~ the motor vehicle;

10 (v) on vehicles being moved to or from vehicle exhibitions within the state, provided ~~any such~~ the
11 exhibition does not exceed a period of 20 days."

12
13 **Section 8.** Section 61-4-201, MCA, is amended to read:

14 **"61-4-201. Definitions.** As used in this part, the following definitions apply:

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

17 (2) "Department" means the department of justice.

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

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

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

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

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

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

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

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

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

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

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

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

15 (11) "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as
16 defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

17 ~~(11)(12)~~ (12) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or
18 attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new
19 motor vehicles or used motor vehicles taken in trade on new motor vehicles."
20

21 **Section 9.** Section 61-4-402, MCA, is amended to read:

22 **"61-4-402. Definitions.** (1) "Finance company" or "finance agency" ~~shall mean any~~ means a
23 person, firm, association, corporation, or other organization engaged in the business of buying, selling,
24 assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of
25 purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either
26 secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor
27 vehicles in this state.

28 (2) The term "manufacturer" ~~shall mean any~~ means a person, firm, corporation, partnership, or
29 association engaged either directly or indirectly in the manufacture or wholesale distribution of motor
30 vehicles.

1 ~~(3)~~ (3) The term "motor vehicle", as used in this part, includes a personal watercraft as defined in
2 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

3 ~~(4)~~ (4) The terms "sell", "sold", "buy", and "purchase", as used in this part, include exchange,
4 barter, gift, and offer or contract to sell or buy.

5 ~~(4)~~ (5) The term "wholesale distributor" ~~shall mean~~ means any person, firm, association,
6 corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles
7 to agents or to dealers."

8
9 **Section 10.** Section 61-4-501, MCA, is amended to read:

10 **"61-4-501. Definitions.** For purposes of this part, the following definitions apply:

11 (1) "Collateral charge" means all governmental charges, including but not limited to sales tax,
12 property tax, license and registration fees, and fees in lieu of tax.

13 (2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that
14 has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or
15 alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of
16 an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the
17 warranty to the benefits of its provisions.

18 (3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

19 (4) "Manufacturer" has the meaning applied to that word in 61-4-201.

20 (5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as
21 defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon
22 the public highways, and sold in this state. The term also includes a personal watercraft as defined in
23 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

24 (b) The term does not include a truck with 10,000 pounds or more gross vehicle weight rating or
25 a motorcycle as defined in 61-1-105. Motor vehicle does not include components, systems, fixtures,
26 appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for
27 residential purposes.

28 (6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle
29 by the consumer and any previous consumers prior to the first written notice of the nonconformity to the
30 manufacturer or its agent and during any subsequent period when the vehicle is not out of service because

1 of nonconformity. The reasonable allowance for use ~~shall~~ must be computed by multiplying the total
2 contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator
3 the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

4 (7) "Warranty period" means the period ending 2 years after the date of the original delivery to the
5 consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

6 -END-