

Amendments to House Bill No. 409
3rd Reading Copy

Requested by Senator Joe Balyeat

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 15, 2007 (12:56pm)

1. Page 1.

Following: line 20

Insert: "(3) "Line-make" means a type of motorsports vehicle
produced by a manufacturer."

Renumber: subsequent subsections

2. Page 2, line 2.

Strike: "(1)"

3. Page 2, line 7.

Strike: "(a)"

Insert: "(1)"

Renumber: subsequent subsections

4. Page 2, line 25.

Strike: "subsection (2)"

Insert: "61-4-208(3) (b) or (3) (c)"

5. Page 3, line 3.

Strike: "(1) (h)"

6. Page 3, line 28.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsection

7. Page 4, line 2.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsections

8. Page 5, line 5 through page 6, line 6.

Strike: subsection (2) in its entirety

- END -

Explanation - This version removes section 2(2) in which there is a conflict with franchise law and similar sections. The committee can choose this more extensive amendment or the simpler HB040901.

Comparison of HB 409 with existing Franchise Law in Title 61, chapter 4, part 2

Summary:

Conflicts exist in the ownership section, specifically on the amount of time allowed for transitioning between owners (1 year in existing statutes and 2 years in HB 409).

Licensing provisions of Title 61, chapter 4, part 2 regarding motorsports vehicle manufacturers, etc., are confusing. Some provisions apply to franchisors. Dealers appear not to need to be licensed.

61-4-202(1) says the provisions of "this part regulating and licensing" manufacturers, etc., apply to dealers, franchisors, etc., of "motor vehicles" as defined by this part (part 2), which includes motorsport vehicles.

61-4-202(2) says manufacturers, etc., must be licensed. But under (2)(b) motorsport vehicle dealers, etc. don't have to pay fee – and 61-4-202(5) raises questions about licensing.

61-4-202(4)(b) says a manufacturer, etc., of motorsports vehicles is required to annually apply to renew its license on a form provided by the department but not required to pay a fee.

61-4-202(5)(d) says the provisions of 5(b) -- "Notwithstanding any other licensing provision contained in Montana law..." and requiring every new motor vehicle **dealer** to obtain a license under part 1 -- do not apply to **dealers** of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23 – however these vehicles no longer are licensed under Title 23, just registered once.

Options:

- Remove references to motorsport vehicles in Title 61. This would cause problems with dealers.
- Remove conflicting language in HB 409. [amend Section 2(2)(a)] **Amendment HB040901**
- Remove all of Section 2(2) because part is included under 61-4-208 and the rest is broader. Renumber subsections **HB40902**

HB 409	Existing Franchise Law	
Section 1. Definitions (3) Motorsports vehicle – personal watercraft as defined in 23-2-502 (same as 61-1-101), snowmobile as defined in 23-2-601 (essentially same as in 61-1-101), motorcycle, motor-driven cycle, or quadricycle – all as defined in 61-1-101	61-1-101 defines motor vehicle 61-4-201 (re: franchise) defines "motor vehicle" to include personal watercraft, snowmobile, off-highway vehicle	S A M E ?
Section 2. (1) Notwithstanding the terms of a franchise agreement.	61-4-208(2) Notwithstanding the terms, provisions, or conditions or an agreement or franchise, the following do not constitute a good cause for the termination or noncontinuance of a franchise:...	S A M E
(1)(a) discriminate between dealers... lower price for vehicle	61-4-205(2) Franchisor may not enter into franchise in any community with same line or make of vehicle unless good cause* for new dealership and it is in the public interest. Assumes dealers not competing re: 1(a) through 1(c) in opposite column.	
(1)(b) discriminate between dealers... lower price for parts, accessories		
(1)(c) discriminate between dealers re: promotion, marketing, allocation, flooring assistance plans...		

HB 409	Existing Franchise Law	
(1)(d) discriminate between dealers re: allocation, scheduling or delivery methods	61-4-208(1)(a) (vi)(A)&(B) coerce or require to enter agreement to do any act unfair to the dealer by threatening to cancel or not renew franchise, withhold, delay or disrupt the receipt of new vehicles, supplies, etc.,	
(1)(e) give preferential treatment in delivery, quantities, timing of delivery		
Also (1)(o) coerce to accept delivery with special features unless requested by dealer or required by law		
(1)(f) compete – except as provided in subsection (2)	61-4-208(1)(c) restrictions on noncompetition (among other things)	
(1)(g) compete for repair/maintenance See also – (1)(u) – permit factory authorized warranty by persons other than franchised dealers		
(1)(h) use confidential/proprietary info to compete unfairly		
(1)(i) and (j) coerce, threaten...to accept, buy, or order motorsports vehicle, part, accessory...	61-4-208(1)(a) coerce to accept delivery of vehicle, part, accessory not ordered	? ? ?
(1)(k) or (l) require change in capital structure, means of financing, or prevent change in capital structure, etc.	61-4-208(1)(a)(v) – somewhat related -- regarding participation in the management of, investment in... if dealer maintains a reasonable line of credit and in compliance with reasonable capital standards/facility requirements	
(1)(m)(n) unreasonably require location change. Manufacturer to agree to supply dealer with quantity to meet sales/overhead.	61-4-208(1)(a)(iii) coerce change in locale	x x ?
(1)(p) hold harmless/indemnify dealer against losses, including court costs, for lawsuits re: manufacture/performance, damages in transit, failure to jointly defend product liability lawsuits, or any other act of the manufacturer	(2) No violation of (1)(a)(iii) or (1)(b) if failure is beyond control of the listed persons or entities. (not same – but different approach) 61-4-204(4) manufacturer to file delivery and preparation obligations with DOT. These obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer	
(1)(q) prevent dealer from receiving reasonable compensation		
(1)(r) fail to pay dealer for agreed claim related to prior year's model in inventory		
(1)(s) deny dealer right of association with another dealer	61-4-208(1)(a)(iv) establish or maintain exclusive facilities, personnel or display space	
(1)(t) charge increased prices w/o written notice 15 days before price increase		

HB 409	Existing Franchise Law	
(1)(v) require/coerce a dealer to sell, assign or transfer a retail sales installment contract or act as agent for a manufacturer in securing a promissory note, security agreement or policy of insurance for vehicle.		
(1)(w) require/coerce a dealer to grant manufacturer right of first refusal or other preference to purchase dealer's franchise, or place of business or both.		
(1)(x) deny right to sell in another country		
(1)(y) require dealer to accept delivery of a # or percentage of vehicles in a specific period	61-4-208(1)(a) coerce participation in contests, giveaways, other sales devices. 61-4-204(5)(e) gives franchisor right to audit paid claims/chargebacks for dealer incentives	
(1)(z) use allocation formula not based on local area sales or market data		
(1)(aa) require inventory in excess of needed inventory for 90 days		
(1)(bb) require arbitration or legal action in venue other than Montana	61-4-209 – Cease and desist order if not licensed. Court in Lewis and Clark County.	
<p>(2) Manufacturer may own or operate dealership – not in violation of (1)(f):</p> <p>(a) for up to 2 years in ownership transition</p> <p>(b) with independent person to broaden diversity of dealer body for persons part of underrepresented group or person lacks resources if the independent person has invested and the investment is subject to loss, has an ownership interest, and operates under a written agreement</p> <p>(c) with independent person if independent person has invested and the investment is subject to loss, has ownership interest, and operates under a written agreement</p> <p>(d) if trading exclusively in a single line of a vehicle make and if the manufacturer does not own directly or indirectly in aggregate more than 45% of the total ownership interest, and all of the franchise agreements confer rights on the dealer to develop and operate within a defined area as many dealership facilities as the dealer and manufacturer agree are appropriate, and the manufacturer had no more than 4 new dealers of that line of vehicle make in</p>	<p>61-4-208(3)(a) Prohibits manufacturer from owning or operating directly or indirectly a dealership under a franchise agreement unless:</p> <p>(b) no independent person is available to own and operate, in which case manufacturer may own and operate for a period up to 1 year during the transition from one owner to another.</p> <p>(c) or – manufacturer may own interest in dealership but not operate unless with an independent person who is not a franchisor or franchisor's agent or affiliate and who has invested and the investment is subject to loss and who "expects to acquire full ownership of the dealership".</p>	C o n f l i c t

Montana and at least half of the dealers owned and operated two or more dealership facilities in the geographic area covered by their franchise agreements.		
HB 409	Existing Franchise Law	
Section 3(1) injunctive relief (2) recovery of 3 times actual damages plus attorney fees and costs of suit (3) Court in Lewis and Clark County	61-4-209 – Cease and desist order if not licensed. Court in Lewis and Clark County. 61-4-210 - Fines, penalties of franchise section are misdemeanors but each day is separate violation. (Fine not less than \$500 or more than \$1,000). Damages for pecuniary loss may be three times the loss along with costs that include attorney fees.	
Codification – Title 30, Unfair Trade Practices Act	Title 61, Motor vehicles	

*Good cause for expanding franchises include under 61-4-207:

- determination of amount of business transacted by franchisee
- investment made and obligations incurred by franchisee
- permanency of investment
- public welfare
- adequate facilities, parts, equipment, management, sales and service personnel
- whether warranties honored
- compliance with terms of franchise

**Franchise statutes – predicated on licensing, but license terms for motorsports vehicle dealers vague.