

## 1 SENATE BILL NO. 182

2 INTRODUCED BY J. SONJU

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA AUTOMOBILE DEALER  
 5 FRANCHISE LAW; CLARIFYING WHICH PARTIES ARE ENTITLED TO PROTEST ADDITIONAL FRANCHISE  
 6 LOCATIONS; CLARIFYING THAT A DESIRE FOR FEWER FRANCHISE LOCATIONS IS NOT GOOD CAUSE  
 7 FOR TERMINATION OF A FRANCHISE; ALLOWING FRANCHISEES TO PURCHASE CERTAIN GOODS AND  
 8 SERVICES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 61-4-206, 61-4-207, AND 61-4-208,  
 9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12  
 13 **Section 1.** Section 61-4-206, MCA, is amended to read:

14 **"61-4-206. Objections -- hearing.** (1) (a) Except as provided in subsection (1)(b), a person who  
 15 receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the  
 16 proposed action by filing a written objection with the department within 15 days from the date the notice was  
 17 received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the  
 18 notice was received, the proposed action must be approved.

19 (b) A franchisee of the same line-make established in the same community as the proposed additional  
 20 franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was  
 21 first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative  
 22 proceeding to the franchisee from whom the franchise was terminated.

23 (2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over  
 24 and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the  
 25 order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the  
 26 contested case and shall send to the parties by certified mail with return receipt requested a copy of the  
 27 scheduling conference order and the notice provided for in 61-4-205(4).

28 (3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor  
 29 has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the  
 30 franchise.

1 (4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title  
2 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between  
3 the parties.

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

8 (6) A transcript of the testimony of each witness taken at the hearing must be made and preserved.  
9 Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter  
10 a final order.

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

12 (8) The franchise agreement must continue in effect until the adjudication by the department on the  
13 verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and  
14 the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."  
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16 **Section 2.** 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 established  
18 for terminating or not continuing a franchise, the department shall take into consideration the existing  
19 circumstances, including but not limited to:

20 (a) the franchisee's sales in relation to the market;

21 (b) investment necessarily made and obligations incurred by the franchisee in the performance of the  
22 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 discontinued;

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

28 (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee  
29 if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

30 (g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the

1 written and uniformly applied requirements of the franchise that are determined by the department to be  
2 reasonable and material; and

3 (h) the enforceability of the franchise from a public policy standpoint, including issues of the  
4 reasonableness of the franchise's terms and the parties' relative bargaining power.

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

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

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 (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to  
11 the use or number of franchises or the dealership premises or facilities; or

12 (d) the desire of a franchisor or a franchisor's representative:

13 (i) for market penetration; or

14 (ii) to reduce the number of the franchisor's or franchisor's representative's franchises or dealer locations.

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

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

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

21 (c) whether the franchisees of the same line-make in that community are providing adequate consumer  
22 care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and  
23 qualified management, sales, and service personnel, for the new motor vehicle products of the line-make."  
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25 **Section 3.** Section 61-4-208, MCA, is amended to read:

26 **"61-4-208. Prohibited acts -- rights of franchisees.** (1) A manufacturer ~~of new motor vehicles~~, a  
27 factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any  
28 representative of the persons or entities listed may not:

29 (a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle  
30 dealer to:

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

4 (ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to  
 5 contribute to contests, giveaways, or other sales devices;

6 (iii) change location of the dealership or to make substantial alterations to the use or number of franchises  
 7 or the dealership premises or facilities;

8 (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing  
 9 franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or to  
 10 participate in any program discount, credit, rebate, or sales incentive;

11 (v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other  
 12 agreement providing otherwise, purchase goods or services from a vendor identified, selected, or designated by  
 13 a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or  
 14 entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services  
 15 of like kind and design from a vendor that the franchisee chooses;

16 ~~(v)~~(vi) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor  
 17 vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other  
 18 line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a  
 19 new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle  
 20 dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities  
 21 requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle  
 22 dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display  
 23 space.

24 ~~(vi)~~(vii) refrain from participation in the management of, investment in, or acquisition of any other line of  
 25 new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer  
 26 maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with  
 27 any reasonable capital standards and facility requirements of the manufacturer; or

28 ~~(vii)~~(viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,  
 29 importer, or any representative of the listed any of these persons or entities or do any other act unfair to the new  
 30 motor vehicle dealer or transferee of a new motor vehicle dealer by:

1 (A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch,  
2 distributor, distributor branch, importer, or any representative of ~~the listed~~ any of these persons or entities and  
3 the new motor vehicle dealer or transferee of a new motor vehicle dealer; or

4 (B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts  
5 or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the  
6 manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of ~~the listed~~  
7 any of these persons or entities;

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

12 (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor  
13 vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or transferee  
14 of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline; noncompetition  
15 covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with  
16 subjective standards; or

17 (d) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider  
18 the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of  
19 new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the  
20 sale of new motor vehicles, parts, or service contracts in determining:

21 (i) eligibility to purchase program, certified, or other used motor vehicles;

22 (ii) the volume, type, or model of program, certified, or other used motor vehicles that the new motor  
23 vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

24 (iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle  
25 dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

26 (iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle  
27 dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified,  
28 or other used motor vehicles.

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

1           (b) (i) Subsection (1)(a)(v) does not apply to goods or services specifically eligible for reimbursement  
2 of over one-half the cost of the goods or services pursuant to a franchisor or distributor program or incentive  
3 granted to the franchisee on reasonable, written terms.

4           (ii) For the purposes of subsection (1)(a) and this subsection (2)(b), "goods" do not include:

5           (A) moveable displays, brochures, or promotional materials containing material subject to the intellectual  
6 property rights of a franchisor or parts to be used in repairs under warranty obligations of a franchisor; or

7           (B) special tools or training required by the franchisor.

8           (3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer ~~of new motor vehicles~~, a factory  
9 branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any  
10 representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle  
11 dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle  
12 dealer in Montana.

13           (b) If there is no independent person available to own and operate a motor vehicle dealership in a  
14 manner that is consistent with the public interest, a manufacturer ~~of new motor vehicles~~, a factory branch, a  
15 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of  
16 any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to  
17 exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not  
18 be unreasonably withheld by the manufacturer.

19           (c) A manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an  
20 importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may  
21 own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer ~~of new~~  
22 ~~motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer,  
23 an agent, or any representative of any of these persons or entities has a bona fide business relationship with an  
24 independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that  
25 is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on  
26 reasonable terms and conditions."  
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28           NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that matured,  
29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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