

HOUSE BILL NO. 409

INTRODUCED BY SINRUD, THOMAS, KOTTEL, MCCHESENEY, ERICKSON, BLACK, JOPEK, CORDIER,
WILMER, KEANE, MALCOLM, WILSON

ABILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CERTAIN UNFAIR PRACTICES BY MOTORSPORTS
VEHICLE ~~DEALERS~~ MANUFACTURERS; DEFINING "MOTORSPORTS VEHICLE"; AND PROVIDING FOR
INJUNCTIVE RELIEF AND DAMAGES."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions
apply:

(1) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer,
whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

(2) "Control" or "controlling" means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether
directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management
or policies of a person, whether through the ownership of voting securities, through director control, by contract,
or otherwise, except as expressly provided under the franchise agreement.

(3) "Motorsports vehicle" means a personal watercraft as defined in 23-2-502, a snowmobile as defined
in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, or a quadricycle
as defined in 61-1-101.

(4) "Operate" means to manage a dealership, whether directly or indirectly.

(5) "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity
interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member,
or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership
interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(6) "Person" has the meaning provided in 30-14-102.

NEW SECTION. **Section 2. Unfair trade practices -- relationship between motorsports vehicle**

manufacturers and dealers. (1) In addition to the prohibited practices provided for in 61-4-208 and notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative may not:

(a) discriminate between dealers by selling or offering to sell a like motorsports vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) discriminate between dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) discriminate between dealers by using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) discriminate between dealers by adopting a method or changing an existing method for the allocation, scheduling, or delivery of new motorsports vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles.

(e) give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new vehicle, parts, or accessories, if the motorsports vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) except as provided in subsection (2), compete with a dealer by acting in the capacity of a dealer or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state;

(g) compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty. However, a manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer.

(h) use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer

without the prior written consent of the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

(i) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested or to buy, order, or pay anything of value for the items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(j) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(k) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(l) prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(m) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(n) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.

(o) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:

(i) that have been voluntarily requested or ordered by the dealer; and

(ii) required by law;

(p) fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from:

(i) the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without

negligence on the part of the dealer;

(ii) damage to merchandise in transit where the manufacturer specifies the carrier;

(iii) the manufacturer's failure to jointly defend product liability suits concerning the motorsports vehicle, part, or accessory provided to the dealer; or

(iv) any other act performed by the manufacturer;

(q) unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(r) fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(s) deny a dealer the right of free association with any other dealer for any lawful purpose;

(t) charge increased prices without having given written notice to the dealer at least 15 days before the effective date of the price increases;

(u) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(v) require or coerce a dealer to sell, assign, or transfer a retail sales installment contract or require the dealer to act as an agent for a manufacturer in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies.

(w) require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both;

(x) deny a dealer the right of lawfully selling or offering to sell motorsports vehicles in another country;

(y) require a dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(z) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;

(aa) require a dealer to maintain an inventory in excess of the inventory needed for period of 90 days;

or

(bb) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

(2) A manufacturer may own or operate a dealership under the following conditions, which do not constitute a violation of subsection (1)(f):

(a) A manufacturer may own or operate a dealership for a temporary period, not to exceed 2 years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price.

(b) A manufacturer may own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body or other qualified persons who lack the resources to purchase a dealership outright and where the independent person:

(i) has made a significant, bona fide capital investment in the dealership that is subject to loss;

(ii) has an ownership interest in the dealership; and

(iii) operates the dealership under a written agreement with the manufacturer, distributor, factory branch, or factory representative under which the person will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions.

(c) A manufacturer may own or operate a dealership in conjunction with an independent person in a business relationship where the independent person:

(i) has made a significant capital investment in the dealership that is subject to loss;

(ii) has an ownership interest in the dealership; and

(iii) operates the dealership under a written agreement with the manufacturer under which the person will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions.

(d) A manufacturer may own, operate, or control a dealership trading exclusively in a single line-make of the manufacturer if:

(i) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of 45% of the total ownership interest in the dealership;

(ii) all of the manufacturer's franchise agreements confer rights on the dealer of that line-make to develop and operate within a defined geographic territory or area as many dealership facilities as the dealer and the manufacturer agree are appropriate; and

(iii) the manufacturer had no more than four new motorsports vehicle dealers of that manufacturer's line-make in this state, and at least half of those dealers owned and operated two or more dealership facilities

in the geographic territory or area covered by their franchise agreements with the manufacturer.

NEW SECTION. Section 3. Injunction -- damages -- venue. (1) A person who is injured by a violation of [section 2] may maintain an action to enjoin a continuance of an act in violation of [section 2] and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of [section 2], shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) The proper place for trial of an action based on a claim of a violation of [section 2] is the district court for Lewis and Clark County or the county in which the alleged violation occurred.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 3].

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