

SENATE BILL NO. 108

INTRODUCED BY G. VANCE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ENFORCEMENT OF A RIGHT OF FIRST REFUSAL IN NEW MOTOR VEHICLE FRANCHISE CONTRACTS; AMENDING SECTIONS 30-14-2502, 61-4-131, AND 61-4-208, MCA; REPEALING SECTION 61-4-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 30-14-2502, MCA, is amended to read:

"30-14-2502. (Temporary) Unfair trade practices -- relationship between motorsports manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer may not:

(a) discriminate between motorsports dealers by:

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

(ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

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

(iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a

1 reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered
2 to other motorsports dealers;

3 (ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or
4 (iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving
5 a model or series of motorsports vehicles;

6 (c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the
7 capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a
8 motorsports dealership in this state;

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

14 (e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete
15 with the motorsports dealer without the prior written consent of the motorsports dealer;

16 (f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

17 (i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not
18 voluntarily ordered or requested;

19 (ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports
20 vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

21 (iii) enter into any agreement that violates this chapter; or
22 (iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not
23 included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items
24 that:

25 (A) have been voluntarily requested or ordered by the motorsports dealer; or
26 (B) are required by law;

27 (g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable
28 changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at
29 all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports
30 manufacturer;

- 1 (h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and
2 costs incurred by a motorsports dealer, arising from:
- 3 (i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory
4 if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or
5 performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the
6 motorsports dealer;
- 7 (ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;
- 8 (iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports
9 vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or
- 10 (iv) any other act performed by the motorsports manufacturer;
- 11 (i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation
12 for the value of motorsports products;
- 13 (j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment
14 agreed to be made by the motorsports manufacturer;
- 15 (k) deny a motorsports dealer the right of free association with any other motorsports dealer for any
16 lawful purpose;
- 17 (l) charge increased prices without having given written notice to the motorsports dealer at least 15 days
18 before the effective date of the price increases;
- 19 (m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories
20 by persons other than its motorsports dealers;
- 21 (n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract
22 or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a
23 promissory note and a security agreement given in connection with the sale of a motorsports vehicle, or a policy
24 of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon
25 the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance
26 companies;
- 27 (o) ~~except as provided in 61-4-141,~~ require or coerce a motorsports dealer to grant the motorsports
28 manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place
29 of business, or both;
- 30 (p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to

1 customers who reside in another country;

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

4 (r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period
5 of 90 days;

6 (s) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments
7 or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program,
8 or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest
9 based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the
10 dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports
11 vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did
12 not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country
13 if the motorsports vehicle is titled in the United States.

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

16 (2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or
17 local governmental agency if:

18 (a) the motorsports vehicle will be sold or donated for use in a program of driver's education;

19 (b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

20 (c) the sale is made under a volume discount program that is uniformly available to all the motorsports
21 dealers of a motorsports manufacturer. (Terminates on occurrence of contingency--sec. 6(3), Ch. 240, L. 2009.)

22 **30-14-2502. (Effective on occurrence of contingency) Unfair trade practices -- relationship**
23 **between motorsports manufacturers and motorsports dealers.** (1) In addition to the prohibited practices
24 provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports
25 manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other
26 person controlled by or under common control with a motorsports manufacturer may not:

27 (a) discriminate between motorsports dealers by:

28 (i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price
29 than the actual price offered to another motorsports dealer for the same model similarly equipped;

30 (ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than

1 the actual price offered to another motorsports dealer;

2 (iii) using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar
3 device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one
4 motorsports dealer over another motorsports dealer; or

5 (iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or
6 accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a
7 motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports
8 vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the
9 same line or make of vehicles.

10 (b) give preferential treatment to some motorsports dealers over others by:

11 (i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a
12 reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered
13 to other motorsports dealers;

14 (ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

15 (iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving
16 a model or series of motorsports vehicles;

17 (c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the
18 capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a
19 motorsports dealership in this state;

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

25 (e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete
26 with the motorsports dealer without the prior written consent of the motorsports dealer;

27 (f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

28 (i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not
29 voluntarily ordered or requested;

30 (ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports

- 1 vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;
- 2 (iii) enter into any agreement that violates this chapter; or
- 3 (iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not
- 4 included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items
- 5 that:
- 6 (A) have been voluntarily requested or ordered by the motorsports dealer; or
- 7 (B) are required by law;
- 8 (g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable
- 9 changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at
- 10 all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports
- 11 manufacturer;
- 12 (h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and
- 13 costs incurred by a motorsports dealer, arising from:
- 14 (i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory
- 15 if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or
- 16 performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the
- 17 motorsports dealer;
- 18 (ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;
- 19 (iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports
- 20 vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or
- 21 (iv) any other act performed by the motorsports manufacturer;
- 22 (i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation
- 23 for the value of motorsports products;
- 24 (j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment
- 25 agreed to be made by the motorsports manufacturer;
- 26 (k) deny a motorsports dealer the right of free association with any other motorsports dealer for any
- 27 lawful purpose;
- 28 (l) charge increased prices without having given written notice to the motorsports dealer at least 15 days
- 29 before the effective date of the price increases;
- 30 (m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories

1 by persons other than its motorsports dealers;

2 (n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract
3 or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a
4 promissory note and a security agreement given in connection with the sale of a motorsports vehicle or a policy
5 of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon
6 the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance
7 companies;

8 (o) ~~except as provided in 61-4-141~~, require or coerce a motorsports dealer to grant the motorsports
9 manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place
10 of business, or both;

11 (p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to
12 customers who reside in another country;

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

15 (r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period
16 of 90 days;

17 (s) require that any arbitration proceedings or legal action between the parties take place in a venue
18 other than the state of Montana;

19 (t) (i) offer a program where a Montana motorsports dealer would be eligible for a benefit or advantage
20 that lowers the actual price of a motorsports vehicle, part, or accessory only if the motorsports dealer purchases
21 from the motorsports manufacturer a quantity of motorsports vehicles, parts, or accessories as determined by
22 the motorsports manufacturer unless:

23 (A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories
24 to be purchased as determined by the motorsports manufacturer; or

25 (B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable,
26 fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the
27 motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts,
28 and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought
29 to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection
30 (1)(t) applies, the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement

1 in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's
 2 Montana motorsports dealers, identifying each factor that was considered in determining each Montana
 3 motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in
 4 determining the sales goal or objective for each Montana motorsports dealer.

5 (ii) For the purposes of this subsection (1)(t) "community" has the meaning provided in 61-4-201.

6 (u) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments
 7 or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program,
 8 or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest
 9 based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the
 10 dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports
 11 vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did
 12 not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country
 13 if the motorsports vehicle is titled in the United States.

14 (2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state,
 15 or local governmental agency if:

16 (i) the motorsports vehicle will be sold or donated for use in a program of driver's education;

17 (ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

18 (iii) the sale is made under a volume discount program that is uniformly available to all the motorsports
 19 dealers of a motorsports manufacturer.

20 (b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports
 21 manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would
 22 reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports
 23 dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or
 24 objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements
 25 of subsection (1)(t)."

26

27 **Section 2.** Section 61-4-131, MCA, is amended to read:

28 **"61-4-131. Definitions.** As used in this part, the following definitions apply:

29 (1) "Broker" means a person:

30 (a) who engages in the business of offering to procure or procuring a motor vehicle, a trailer, a

1 semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway
2 vehicle on behalf of another; or

3 (b) who represents to the public through solicitation, advertisement, or otherwise that the person is one
4 who offers to procure or procures a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a
5 motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle by negotiating purchases, contracts,
6 sales, or exchanges on behalf of another and who does not store, display, or take ownership of a motor vehicle,
7 a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an
8 off-highway vehicle.

9 (2) (a) "Dealer", except as provided in subsection (2)(b), includes a new dealer or a used dealer licensed
10 under this part.

11 (b) For purposes of 61-4-132 through 61-4-135, 61-4-137, ~~61-4-141~~, and 61-4-150, the term is limited
12 to a new motor vehicle dealer as defined in 61-4-201.

13 (3) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a
14 new motor vehicle dealer, as defined in 61-4-201, who:

15 (i) in the case of a deceased dealer:

16 (A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's
17 will or under the laws of intestate succession of this state; or

18 (B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor
19 vehicle dealership; or

20 (ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of
21 the dealer's property.

22 (b) The term includes the appointed and qualified personal representative and the testamentary trustee
23 of a deceased dealer.

24 (4) (a) "Established place of business" means the geographic location upon which a permanent building
25 is located that is actually occupied either continuously or at regular periods by a person licensed under this part.
26 A building is actually occupied if the licensee's books and records are kept in the building and, except for
27 approved off-premises sales, the licensee's business is transacted within the building.

28 (b) A licensee's established place of business may also include the geographic location of one or more
29 physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101(5)(e) regulating
30 the distance between display lots and the recordkeeping building are met.

1 (c) The geographic location of the permanent building actually occupied by the licensee or the
2 geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street
3 address, legal description, or other reasonably identifiable description, as prescribed by the department.

4 (5) "New", when describing a motor vehicle, power sports vehicle, or trailer, means that the motor
5 vehicle, power sports vehicle, or trailer has not been the subject of a retail sale.

6 (6) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than
7 temporarily for the purpose of and while actually engaged in loading or unloading.

8 (7) (a) "Power sports vehicle" includes a motorboat, a personal watercraft, a snowmobile, or an
9 off-highway vehicle.

10 (b) A motorcycle or quadricycle must be treated as an off-highway vehicle if the motorcycle or
11 quadricycle is not originally equipped for use on a highway.

12 (c) A sailboat that is 12 feet in length or longer is treated as a motorboat.

13 (8) (a) "Trailer" has the meaning provided in 61-1-101, but does not include a trailer that has an unloaded
14 weight of less than 500 pounds.

15 (b) A travel trailer, semitrailer, or pole trailer is treated as a trailer under this part.

16 (9) "Used", when describing a motor vehicle, power sports vehicle, or trailer, means that title to the motor
17 vehicle, power sports vehicle, or trailer has been transferred because of a prior retail sale."

18

19 **Section 3.** Section 61-4-208, MCA, is amended to read:

20 **"61-4-208. Prohibited acts -- rights of franchisees.** (1) A manufacturer, a factory branch, a distributor,
21 a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons
22 or entities listed may not:

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

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

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

30 (iii) change location of the dealership or to make substantial alterations to the use or number of franchises

1 or the dealership premises or facilities;

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

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

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

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

22 (viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, importer,
23 or any representative of any of these persons or entities or do any other act unfair to the new motor vehicle dealer
24 or transferee of a new motor vehicle dealer by:

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

28 (B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts
29 or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the
30 manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of any of

1 these persons or entities;

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

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

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

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

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

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

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

23 (e) enforce a right of first refusal to acquire the new motor vehicle dealer's assets or ownership by a
24 manufacturer, distributor, or manufacturer's assignee or manufacturer's representative or to require a dealer to
25 grant a right of option to a manufacturer, distributor, or manufacturer's representative.

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

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

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

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

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

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

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

15 (c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field
16 representative, an officer, an agent, or any representative of any of these persons or entities may own an interest
17 in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory branch, a
18 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of
19 any of these persons or entities has a bona fide business relationship with an independent person who is not a
20 franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership,
21 and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."
22

23 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is
24 repealed:

25 61-4-141. Manufacturer's right of first refusal.
26

27 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.
28

- END -