



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

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

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

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

(d) compete with a motorsports 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 motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports 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 motorsports manufacturer.

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

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

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

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

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at

all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports manufacturer;

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

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

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

(iv) any other act performed by the motorsports manufacturer;

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

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer;

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

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

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

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

(o) ~~except as provided in 61-4-141,~~ require or coerce a motorsports dealer to grant the motorsports

manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place of business, or both;

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

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

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

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

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

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

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

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

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

30-14-2502. (Effective on occurrence of contingency) 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 reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers;

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

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

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

(d) compete with a motorsports 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 motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports 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 motorsports manufacturer.

(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete

with the motorsports dealer without the prior written consent of the motorsports dealer;

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

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

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

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

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

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

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

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

(iv) any other act performed by the motorsports manufacturer;

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

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment

agreed to be made by the motorsports manufacturer;

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

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

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

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

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

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

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

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

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

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

(A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories

to be purchased as determined by the motorsports manufacturer; or

(B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection (1)(t) applies, the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.

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

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

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

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

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

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

(b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports

dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t)."

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

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

(1) "Broker" means a person:

(a) who engages in the business of offering to procure or procuring a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle on behalf of another; or

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

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

(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 to a new motor vehicle dealer as defined in 61-4-201.

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

(i) in the case of a deceased dealer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"61-4-208. Prohibited acts -- rights of franchisees. (1) A manufacturer, a factory branch, a distributor,

a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

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

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

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

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

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

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

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

(vii) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer

maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

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

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

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

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

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

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

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

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

(iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle

dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

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

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

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

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

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

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

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

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

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

(c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory branch, a

distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 4. Repealer. The following section of the Montana Code Annotated is repealed:
61-4-141. Manufacturer's right of first refusal.

Section 5. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0108, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2017.

SENATE BILL NO. 108

INTRODUCED BY G. VANCE

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.