

1 SENATE BILL NO. 411
2 INTRODUCED BY B. USHER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; REVISING
5 DEFINITIONS; REVISING LAWS RELATED TO DEALER DATA; REVISING LAWS RELATED TO
6 PROHIBITED ACTIONS; REVISING LAWS RELATED TO RESPONSIBILITIES AND RESTRICTIONS;
7 REVISING LAWS RELATED TO PROHIBITED ACTS RELATING TO A MOTOR VEHICLE FRANCHISEE;
8 REVISING MOTOR VEHICLE LICENSING REQUIREMENTS; AMENDING SECTIONS 30-11-717, 30-11-718,
9 30-11-719, 61-4-201, 61-4-202, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
10 AND AN APPLICABILITY DATE."

11
12 WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally
13 affect the general economy of the state, the public interest, and the public welfare; and

14 WHEREAS, to promote the public interest and the public welfare and in the exercise of the state's
15 police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor
16 representatives and to regulate dealers of motor vehicles doing business in this state to prevent frauds,
17 impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of
18 the citizens of this state.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **Section 1.** Section 30-11-717, MCA, is amended to read:

23 **"30-11-717. Definitions.** As used in 30-11-718, 30-11-719, [section 4], and this section, the following
24 definitions apply:

25 (1) "Authorized integrator" means any third party with whom a dealer has entered into a
26 contractual relationship to perform a specific function for the dealer that permits the third party to access
27 protected dealer data or to write data to a dealer data system, or both, to carry out the specified function.

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1 (13) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale
2 regardless of the mileage of the vehicle.

3 (14) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts
4 to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor
5 vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in
6 trade on new motor vehicles.

7 (15) (a) "Retail sale" means the sale of a new motor vehicle.

8 (b) "Retail sale" does not mean a sale:

9 (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale;

10 or

11 (ii) that is the result of a transfer between two licensed new motor vehicle dealers.

12 (16) "Transferee" means a person or entity that:

13 (a) is in possession or control of a new motor vehicle dealer;

14 (b) holds an ownership or signed contract interest in a new motor vehicle dealer;

15 (c) is acting in a fiduciary capacity for a new motor vehicle dealer; or

16 (d) is an heir, devisee, personal representative, beneficiary, successor, or assign of a new motor
17 vehicle dealer."

18

19 **Section 6.** Section 61-4-202, MCA, is amended to read:

20 **"61-4-202. License requirements.** (1) A new motor vehicle dealer, manufacturer, distributor, factory
21 branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance
22 with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the
23 discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to
24 financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle.
25 The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors,
26 factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle
27 dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor

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1 vehicles as defined by this part.

2 (2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor
3 transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new
4 motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall
5 issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the
6 information required in this section.

7 (3) The following information, if applicable, must be submitted by an applicant upon forms supplied
8 by the department:

9 (a) the name and address of the applicant;

10 (b) the make and model of each new motor vehicle to be franchised;

11 (c) the name and address of each of the applicant's franchisees within the state; ~~and~~

12 (d) the name and address of each factory branch, distributor branch, agent, or representative
13 within the state; and

14 (e) a statement affirming that the relationship between the applicant and the new motor vehicle
15 dealer is subject to the terms and conditions of a standard written franchise agreement applicable to all its new
16 motor vehicle dealers in this state. A copy of the standard written franchise agreement, including all standard
17 terms and conditions applicable to all franchised dealers or distributors in this state must be filed with the
18 application unless the standard written franchise agreement is already on file with the department. Any revision
19 of or additions to the standard basic franchise agreement must be filed with the department within 30 days of
20 dissemination to the new motor vehicle dealers in this state.

21 (4) A license may be renewed each year if the applicant is in compliance with the provisions of this
22 part, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information
23 previously supplied.

24 (5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct
25 dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct
26 dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as
27 provided in this part.

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1 (b) Notwithstanding any other licensing provision contained in Montana law, every new motor
2 vehicle dealer shall obtain a license under part 1 of this chapter.

3 (c) The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes
4 that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state
5 regulating new motor vehicle dealers, manufacturers, importers, and distributors.

6 (6) When an objection to a proposal to terminate or not continue a franchise or a proposal to enter
7 into a franchise establishing an additional new motor vehicle dealership of the same line-make is made
8 pursuant to 61-4-206, a replacement license or new license may not be issued under this section to any
9 replacement dealer or new dealer until adjudication by the department of the written objection filed pursuant to
10 61-4-206 and the exhaustion of all appellate remedies available to the objector."
11

12 **Section 7.** Section 61-4-208, MCA, is amended to read:

13 **"61-4-208. Prohibited acts -- rights of franchisees.** (1) A manufacturer, a factory branch, a
14 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of
15 the persons or entities listed may not:

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

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

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

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

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

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1 (v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other
2 agreement providing otherwise, purchase or utilize goods or services, including electronic services such as
3 websites, data management or storage systems, digital retail platforms, software, or other digital services or
4 platforms, from a vendor, or contract with or engage any ~~from~~ a vendor identified, selected, or designated by a
5 manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or
6 entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services
7 of like kind, quality, and design from a vendor that the franchisee chooses ~~-,~~ so long as the goods or services
8 comply with the franchisor's reasonable standards or requirements. It is a violation of this section for a
9 manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or
10 entities listed to coerce a franchisee to purchase or utilize certain goods or services by the withholding of any
11 benefit, including monetary incentives and vehicle allocation; ~~the dealer is otherwise eligible to receive. Nothing~~
12 in this provision prohibits a manufacturer, factory branch, distributor, distributor branch, or affiliate of the
13 persons or entities listed from establishing any program discount, credit, rebate, or incentive that is conditioned
14 on a new motor vehicle dealer's purchase or use of such goods or services.

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

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

27 (viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,

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1 importer, or any representative of any of these persons or entities or do any other act unfair to the new motor
2 vehicle dealer or transferee of a new motor vehicle dealer by:

3 (A) withholding or threatening to withhold any incentive payments in whole or in part or denying or
4 threatening to deny the dealer the right to participate in an incentive program in which more than one dealer of
5 the line-make in this state is eligible to participate and on the same terms. Nothing contained in this subsection
6 (1)(a)(viii)(A) requires that a dealer be qualified by a manufacturer or distributor for incentive payments or the
7 right to payments or benefits from an incentive program and a manufacturer, factory branch, distributor,
8 distributor branch, or importer may not be prohibited from informing a dealer of this, unless the dealer meets the
9 qualifications, requirements, and standards for payment or benefits reasonably established by the
10 manufacturer, factory branch, distributor, distributor branch, or importer. ~~A~~-If the new motor vehicle dealer has
11 otherwise submitted a claim substantially complying with the qualifications, requirements, and standards of the
12 manufacturer, factory brand, distributor, distributor branch, or importer, a manufacturer, factory branch,
13 distributor, distributor branch, or importer may not deny an incentive payment or benefit claim based solely on a
14 dealer's incidental failure to comply with a specific processing requirement, such as a clerical error or other
15 administrative technicality that does not put into question the legitimacy of the claim. ~~If a claim is rejected for~~
16 such an incidental requirement, the new motor vehicle dealer may correct or complete and resubmit a
17 previously submitted incentive claim for a period of up to 60 days following the new motor vehicle dealer's
18 receipt of first notice of the failure. A manufacturer, factory branch, distributor, distributor branch, or importer is
19 not required to approve any such incentive claim if all material claim processing requirements are not
20 substantially complied with by the new motor vehicle dealer within the time periods prescribed by this section.

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

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

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1 (b) delay, refuse, or fail to deliver or offer to deliver new motor vehicles or new vehicle parts or
2 accessories in a reasonable time and in a ~~reasonable quantity relative to~~ sufficiently reasonable quantity to
3 permit the dealer to meet the manufacturer, factory branch, distributor, distributor branch, or importer minimum
4 sales requirements, and considering reasonable quantity taking into consideration the number of new motor
5 vehicles or parts reasonably available for allocation and considering the new motor vehicle dealer's or
6 transferee of a new motor vehicle dealer's facilities, ~~and the dealer's historical selling pattern, and the dealer's~~
7 sales potential in the dealer's relevant market area after accepting an order for any new vehicle ~~vehicles or,~~
8 parts, or accessories as are covered by the franchise from a new motor vehicle dealer having a franchise for
9 the retail sale of any new vehicle, or parts, or accessories covered by the franchise ~~or transferee of a new~~
10 ~~motor vehicle dealer~~ if the new motor vehicles are vehicle, or part, or accessory is publicly advertised as being
11 available for immediate delivery or actually being delivered by the manufacturer, factory branch, distributor,
12 distributor branch, or importer. ~~provided the new motor vehicle dealer meets any reasonable standards or~~
13 requirements established by the manufacturer, factory branch, distributor, distributor branch, or importer related
14 to the new motor vehicle or part. This subsection (1)(b) is not violated if the failure is caused by a force majeure
15 beyond the control of the manufacturer, factory branch, distributor, distributor branch, or importer, provided that
16 a manufacturer, factory branch, distributor, distributor branch, or importer ~~who does may not comply with this~~
17 subsection (1)(b) may not assert failure of the dealer to meet establish a minimum sales requirements
18 established by the manufacturer, factory branch, distributor, distributor branch, or importer as good cause under
19 61-4-205, 61-4-206, or 61-4-207 whatever the reason for the manufacturer, factory branch, distributor,
20 distributor branch, or importer's noncompliance; requirement for determining a new motor vehicle dealer's
21 compliance with the franchise that fails to take into consideration the number of new motor vehicles or parts
22 delivered or offered to be delivered to the dealer in the applicable time period.

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

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1 (d) whether by agreement, ~~program, incentive provision, or provision for loss of incentive payments~~
2 ~~or other benefits, or otherwise~~ amend or attempt to amend its franchise agreement or similar agreement
3 governing the sales and leasing of new motor vehicles or establish or implement a franchise agreement for the
4 sales and leasing of new motor vehicles, under which the manufacturer, factory branch, distributor, distributor
5 branch, or importer:

6 (i) maintains a website or other electronic or digital means of communication for negotiating
7 binding terms of sale or leasing of new motor vehicles directly with the retail buyer or lessee on prices or other
8 substantive terms of sale or leasing of new vehicles; ~~provided that a manufacturer or distributor may maintain a~~
9 ~~website or other electronic or digital means of communication that does not involve negotiating binding terms of~~
10 ~~sale or leasing of new motor vehicles directly with the retail buyer or lessee on prices or other substantive terms~~
11 ~~of sale or leasing of new vehicles;~~

12 (ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyer or
13 lessee. However, a manufacturer, factory branch, distributor, distributor branch, or importer may maintain a
14 common supply of new vehicles of which it maintains ownership until vehicles are sold to dealers from which
15 more than one dealer may buy vehicles provided that the manufacturer, factory branch, distributor, distributor
16 branch, or importer may not use the common supply of new vehicles to engage in the negotiation of binding
17 terms of sales or leases directly with a retail buyer or lessee ~~and a dealer may buy vehicles from the common~~
18 ~~supply for the dealer's inventory without having reached agreement with a retail buyer or lessee for sale or~~
19 ~~lease of the new vehicle.~~

20 (iii) except for the sale or lease of a vehicle to a bona fide employee of a manufacturer, factory
21 branch, distributor, distributor branch, or importer or in connection with a replacement or buyback, consigns
22 new motor vehicles to dealers for dealer inventory or for sale or lease to a retail buyer or lessee;

23 (iv) reserves the right to negotiate binding terms of sale directly with retail buyers or lessees of new
24 motor vehicles. ~~Displaying on a website or other electronic or digital means of communication aggregate or~~
25 ~~average prices set by Montana dealers, lists of other costs, available financing sources provided by Montana~~
26 ~~dealers, or a conditional aggregate or average trade-in value set by Montana dealers~~ are not considered
27 negotiating.

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1 (v) reserves the right to offer or negotiate directly with the retail buyer or lessee at the time of sale
2 in connection with the sale of a new motor vehicle sale of a service contract, vehicle maintenance agreement,
3 guaranteed asset protection agreement or waiver, or any other vehicle-related products and services.; ~~A~~
4 ~~manufacturer, factory branch, distributor, distributor branch, or importer may engage in fleet sales with a fleet~~
5 ~~customer that has a designation as such by the manufacturer, factory branch, distributor, distributor branch, or~~
6 ~~importer because it has purchased or has committed to purchase five or more vehicles under the fleet program.~~
7 ~~Nothing in this section limits a manufacturer, factory branch, distributor, distributor branch, or importer from~~
8 ~~setting or advertising a manufacturer's suggested retail price.~~

9 ~~(e) include in any franchise or similar agreement governing the sales, leasing, or service of new~~
10 ~~motor vehicles, or to enforce or seek to enforce, a right in any franchise agreement for the manufacturer,~~
11 ~~factory branch, distributor, distributor branch, or importer to unilaterally amend or modify the franchise~~
12 ~~agreement;~~

13 ~~(f)(e) amend or modify or attempt to amend or modify any dealer sales and service franchise~~
14 ~~agreement including but not limited to the dealer's relevant market area if the amendment or modification~~
15 ~~substantially and adversely affects the dealer's rights, obligations, investment, or return on investment, without~~
16 ~~giving a 60-day advance written notice of the proposed amendment or modification to the dealer.;~~ ~~Any term or~~
17 ~~provision in the franchise agreement that purports to give the manufacturer, factory branch, distributor,~~
18 ~~distributor branch, or importer the right to unilaterally amend or modify the agreement is void.~~

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

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

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

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

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

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

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

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

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

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

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

18 (B) special tools or training required by the franchisor, provided however, subsections (1)(a)(v) and
19 (2)(b) do not apply to any special tool acquired by a new motor vehicle dealer from an alternate source that is of
20 the same kind, quality, design, and function as required by the franchisor and complies with the franchisor's
21 reasonable standards.

22 (c) Within the 60-day notice period provided for in subsection (1)(f) the dealer may pursue
23 remedies under 61-4-215 and 61-4-216 and file with the department and serve upon the respondent a petition
24 to determine whether good cause exists for permitting the proposed modification. Multiple complaints pertaining
25 to the same proposed modification may be consolidated for hearing. The proposed modification may not take
26 effect pending the determination of any protest filed by a dealer.

27 (d) (i) In making a determination of whether there is good cause for permitting a proposed

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1 modification of a dealer ~~sales and service~~franchise agreement, including but not limited to a dealer's relevant
2 market area, the burden of proof is on the manufacturer, factory branch, distributor, distributor branch or
3 importer, except that the burden of proof with regard to the factor set forth in subsection (2)(d)(i)(C) is on the
4 dealer. The department shall consider any relevant factor including:

5 (A) the reasons for the proposed modification;

6 (B) whether the proposed modification is applied to or affects all motor vehicle dealers in a
7 nondiscriminatory manner;

8 (C) the degree to which the proposed modification will have substantial and adverse effects on the
9 dealer's rights, obligations, investment, or return on investment; and

10 (D) whether the proposed modification is in the public interest.

11 (ii) With respect to a proposed modification of a dealer's relevant market area, the department
12 shall also consider:

13 (A) the traffic patterns between consumers and the same line-make franchised dealers of the
14 affected manufacturer, factory branch, distributor, distributor branch, or importer who are located within the
15 market as a whole;

16 (B) the pattern of new vehicle sales and registrations of the affected manufacturer, factory branch,
17 distributor, distributor branch, or importer within various portions of the relevant market area and within the
18 market as a whole;

19 (C) the growth or decline in population, density of population, and new car registrations in the
20 relevant market area and the market as a whole;

21 (D) the presence or absence of natural geographical obstacles or boundaries;

22 (E) the proximity of census tracts or other geographic units used by the affected manufacturer,
23 factory branch, distributor, distributor branch, or importer in determining the same line-make dealers' respective
24 relevant market area; and

25 (F) the reasonableness of the change or proposed change to the dealer's relevant market area,
26 considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the
27 manufacturer, factory branch, distributor, distributor branch, or importer.

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1 (e) Notwithstanding the provisions of subsection (1)(d), a manufacturer, factory branch, distributor,
2 distributor branch, or importer may engage in fleet sales with a fleet customer that has a designation as such by
3 the manufacturer, factory branch, distributor, distributor branch, or importer because it has purchased or has
4 committed to purchase five or more vehicles under the fleet program.

5 (f) Nothing in subsection (1)(d) limits a manufacturer, factory branch, distributor, distributor
6 branch, or importer from setting or advertising a manufacturer's suggested retail price.

7 (3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer, a factory branch, a
8 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of
9 any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in
10 Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in
11 Montana. This prohibition includes any dealership of a new line-make established by a manufacturer, factory
12 branch, distributor, distributor branch, or importer or a subsidiary or a company affiliated through ownership of
13 the manufacturer, factory branch, distributor, distributor branch, or importer of at least 25% of the equity of the
14 company.

15 (b) This subsection (3) does not prohibit the operation by a manufacturer, factory branch,
16 distributor, distributor branch, importer, or a field representative, an officer, an agent, or any representative of
17 any of these persons or entities of a dealership for a temporary period, not to exceed 1 year, during the
18 transition from one owner or operator to another or the ownership or control of a dealership by a manufacturer,
19 factory branch, distributor, distributor branch, or importer while the dealership is being sold under a bona fide
20 contract or purchase option to the operator of the dealership. Approval of the sale may not be unreasonably
21 withheld by the manufacturer.

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

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1 (c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field
2 representative, an officer, an agent, or any representative of any of these persons or entities may own an
3 interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory
4 branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any
5 representative of any of these persons or entities has a bona fide business relationship with an independent
6 person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to
7 loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable
8 terms and conditions.

9 ~~(d) A manufacturer, factory branch, distributor, distributor branch, or importer or any representative~~
10 ~~of any of these entities may sell or activate for a fee a permanent or temporary motor vehicle accessory, option,~~
11 ~~add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or~~
12 ~~distributed by the manufacturer, factory branch, distributor, distributor branch, or importer and registered in~~
13 ~~Montana only if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the~~
14 ~~motor vehicle through remote electronic transmission. If the motor vehicle was sold or leased as new by a~~
15 ~~Montana franchised motor vehicle dealer within the 3-year period preceding the remote electronic transmission,~~
16 ~~then the manufacturer, factory branch, distributor, distributor branch, or importer shall pay the Montana~~
17 ~~franchised motor vehicle dealer a minimum of 10% of the gross revenue received by the manufacturer, factory~~
18 ~~branch, distributor, distributor branch, or importer for the sale or activation and renewals during the 3-year~~
19 ~~period. The manufacturer, factory branch, distributor, distributor branch, or importer shall provide each of its~~
20 ~~franchised dealers with a quarterly statement of the revenue received by the manufacturer, factory branch,~~
21 ~~distributor, distributor branch, or importer during that quarter for such sales or activations and renewals relating~~
22 ~~to those vehicles sold or leased by the dealer during the preceding 3 years.~~

23 ~~(e) When providing a new motor vehicle to a dealer for sale or lease to which the provisions of~~
24 ~~subsection (3)(d) may apply, the manufacturer, factory branch, distributor, distributor branch, or importer shall~~
25 ~~provide to the dealer a written disclosure that may be provided to a potential retail buyer or lessee of the new~~
26 ~~motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or~~
27 ~~maintained by the manufacturer or distributor through over-the-air or remote means and the charge to the~~

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Business, Labor, and Economic Affairs

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Drafter: Erin Sullivan, 406-444-3594

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1 ~~customer at the time of the new motor vehicle sale or lease for such initiation, update, change, or maintenance.~~
2 ~~A manufacturer or distributor may comply with this subsection (3)(e) by notifying the dealer that the information~~
3 ~~is available on a website or by other digital means."~~
4

5 NEW SECTION. Section 8. Codification instruction. [Section 4] is intended to be codified as an
6 integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [section 4].
7

8 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.
9

10 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
12 the part remains in effect in all valid applications that are severable from the invalid applications.
13

14 NEW SECTION. Section 11. Applicability. (1) [This act] applies to all presently existing or hereafter
15 established systems of distribution of motor vehicles in this state, including all existing agreements between a
16 manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the
17 extent that such application would impair valid contractual agreements in violation of the state or federal
18 constitution.

19 (2) [This act] does not:

20 (a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that
21 is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

22 (b) authorize a dealer or third party to use data that is obtained from a person in a manner that is
23 inconsistent with either:

24 (i) an agreement with the person; or

25 (ii) the purposes for which the person provided the data to the dealer or third party.

26 - END -