

Montana Code Annotated 2023

TITLE 61. MOTOR VEHICLES

CHAPTER 4. SALES AND DISTRIBUTION OF MOTOR VEHICLES

Part 2. Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers -- Disputes -- Standing

Prohibited Acts -- Rights Of Franchisees

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 or utilize goods or services, including electronic services such as websites, data management or storage systems, digital retail platforms, software, or other digital services or platforms, from a vendor, or contract with or engage any 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, so long as the goods or services comply with the franchisor's reasonable standards or requirements. It is a violation of this section for a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed to coerce a franchisee to purchase or utilize certain goods or services by the withholding of any benefit, including monetary incentives and vehicle allocation the dealer is otherwise eligible to receive. Nothing in this provision prohibits a manufacturer, factory branch, distributor, distributor branch, or affiliate of the persons or entities listed from establishing any program discount, credit, rebate, or incentive that is conditioned on a new motor vehicle dealer's purchase or use of such goods or services.

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

(B) 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

(C) 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 or offer to deliver new motor vehicles or new vehicle parts in a reasonable time and in a reasonable quantity taking into consideration the number of new motor vehicles or parts reasonably available for allocation and considering the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities, the dealer's historical selling pattern, and the dealer's sales potential in the dealer's relevant market area after accepting an order for any new vehicles or parts as are covered by the franchise from a new motor vehicle dealer having a franchise for the retail sale of any new vehicle or parts covered by the franchise if the new motor vehicle or part is publicly advertised as being available for immediate delivery or actually being delivered by the manufacturer, factory branch, distributor, distributor branch, or importer provided the new motor vehicle dealer meets any reasonable standards or requirements established by the manufacturer, factory branch, distributor, distributor branch, or importer related to the new motor vehicle or part. This

subsection (1)(b) is not violated if the failure is caused by a force majeure beyond the control of the manufacturer, factory branch, distributor, distributor branch, or importer, provided that a manufacturer, factory branch, distributor, distributor branch, or importer may not establish a minimum sales requirement for determining a new motor vehicle dealer's compliance with the franchise that fails to take into consideration the number of new motor vehicles or parts delivered or offered to be delivered to the dealer in the applicable time period.

(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;

(d) whether by agreement or otherwise amend or attempt to amend its franchise agreement or similar agreement governing the sales and leasing of new motor vehicles or establish or implement a franchise agreement for the sales and leasing of new motor vehicles, under which the manufacturer, factory branch, distributor, distributor branch, or importer:

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

(ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyer or lessee. However, a manufacturer, factory branch, distributor, distributor branch, or importer may maintain a common supply of new vehicles of which it maintains ownership until vehicles are sold to dealers from which more than one dealer may buy vehicles provided that the manufacturer, factory branch, distributor, distributor branch, or importer may not use the common supply of new vehicles to engage in the negotiation of binding terms of sales or leases directly with a retail buyer or lessee.

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

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

(v) reserves the right to offer or negotiate directly with the retail buyer or lessee at the time of sale in connection with the sale of a new motor vehicle sale of a service contract, vehicle maintenance agreement, guaranteed asset protection agreement or waiver, or any other vehicle-related products and services.

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

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

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

(d) (i) In making a determination of whether there is good cause for permitting a proposed modification of a dealer franchise agreement, including but not limited to a dealer's relevant market area, the burden of proof is on the manufacturer, factory branch, distributor, distributor branch or importer, except that the burden of proof with regard to the factor set forth in subsection (2)(d)(i)(C) is on the dealer. The department shall consider any relevant factor including:

- (A) the reasons for the proposed modification;
- (B) whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;

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

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

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

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

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

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

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

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

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

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

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

(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. This prohibition includes any dealership of a new line-make established by a manufacturer, factory branch, distributor, distributor branch, or importer or a subsidiary or a company affiliated through ownership of the manufacturer, factory branch, distributor, distributor branch, or importer of at least 25% of the equity of the company.

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

History: En. 51-606 by Sec. 6, Ch. 380, L. 1977; R.C.M. 1947, 51-606; amd. Sec. 1, Ch. 202, L. 1991; amd. Sec. 12, Ch. 221, L. 1997; amd. Sec. 3, Ch. 313, L. 1999; amd. Sec. 173, Ch. 542, L. 2005; amd. Sec. 6, Ch. 308, L. 2009; amd. Sec. 3, Ch. 273, L. 2013; amd. Sec. 3, Ch. 93, L. 2017; amd. Sec. 7, Ch. 362, L. 2023.