

CHAPTER.....

AN ACT relating to vehicles; extending under certain circumstances the coverage of provisions relating to franchises for motor vehicles to include recreational vehicles designed to be mounted upon or drawn by a motor vehicle; revising the provision regarding the compensation owed to a dealer upon the termination or discontinuance of a franchise; requiring the Director of the Department of Motor Vehicles under certain circumstances to award attorney's fees and costs to dealers; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *“Distributor” means a person, other than a manufacturer, who is engaged in the business of selling new vehicles to dealers.*

**Sec. 3.** *“Vehicle” means a motor vehicle or a recreational vehicle. The term includes a recreational vehicle designed to be mounted upon or drawn by a motor vehicle.*

**Sec. 4.** NRS 482.028 is hereby amended to read as follows:  
482.028 ~~["Distributor"]~~ *Except as otherwise provided in section 2 of this act, “distributor”* means a person, other than a manufacturer, who is engaged in the business of selling new motor vehicles to dealers.

**Sec. 5.** NRS 482.043 is hereby amended to read as follows:  
482.043 “Franchise” means a written agreement between a manufacturer or distributor and a dealer by which:

1. A commercial relationship of definite duration or continuing indefinite duration is established.

2. The dealer is granted the right to offer and sell at retail new ~~motor~~ vehicles, other than mopeds, farm tractors or special mobile equipment.

3. The dealer constitutes a component of a distribution system for new ~~motor~~ vehicles.

4. The operation of the dealer's business is substantially associated with the trademark, trade name, advertising or other commercial symbol designating a manufacturer or distributor.

5. The operation of a portion of the dealer's business is substantially reliant on the manufacturer or distributor for a continued supply of new ~~motor~~ vehicles, parts and accessories.

**Sec. 6.** NRS 482.135 is hereby amended to read as follows:

482.135 1. ~~["Vehicle"]~~ *Except as otherwise provided in section 3 of this act, "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.*

2. The term does not include mobile homes or commercial coaches as defined in chapter 489 of NRS.

**Sec. 7.** NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.36319 to 482.36345, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

**Sec. 8.** NRS 482.36319 is hereby amended to read as follows:

482.36319 "Distributor branch" means a branch office maintained by a distributor for the sale of new ~~motor~~ vehicles to dealers or which is maintained for directing and supervising distributor branch representatives.

**Sec. 9.** NRS 482.3632 is hereby amended to read as follows:

482.3632 "Factory branch" means a branch office maintained by a manufacturer for the sale of new ~~motor~~ vehicles to distributors or dealers or which is maintained for directing and supervising manufacturers' representatives.

**Sec. 10.** NRS 482.36345 is hereby amended to read as follows:

482.36345 "Representative" means any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer's or distributor's new ~~motor~~ vehicles to dealers or for regularly supervising or communicating with dealers or prospective dealers in this state for any purpose.

**Sec. 11.** NRS 482.363521 is hereby amended to read as follows:

482.363521 1. Upon the termination or refusal to continue a franchise, the manufacturer or distributor shall compensate the dealer for:

(a) The dealer's inventory of new vehicles, including new vehicles not of the current model year ~~[ ]~~ *if delivered to the dealer during the 18-month period immediately preceding the effective date of the termination or refusal to continue the franchise.* As used in this paragraph, a "new vehicle" is one which has not been damaged, ~~[or]~~ materially altered ~~[and registers 50 miles or less on its odometer.]~~ *or registered with the Department or with the appropriate agency of authority of any other state, the District of*

*Columbia, any territory or possession of the United States or any foreign state, province or country.*

(b) The dealer's inventory of parts and accessories which:

(1) Have been purchased by the dealer from the manufacturer or distributor; and

(2) Are listed in a current parts catalog of the manufacturer or distributor.

(c) Any special tools purchased by the dealer from the manufacturer or distributor, less a reasonable allowance for depreciation.

(d) Any equipment, furnishings or signs purchased by the dealer from the manufacturer or distributor, less a reasonable allowance for depreciation.

(e) Except as otherwise provided in subsection 4, the fair rental value for 90 days, and any additional period allowed by the Director after considering the difficulty of finding a new tenant for the dealer's premises affected, after the effective date of the termination or refusal to continue of the portion of the dealer's place of business that was used by the dealer to sell or service ~~motor~~ vehicles or other products of the manufacturer or distributor.

2. Compensation paid pursuant to paragraphs (a) to (d), inclusive, of subsection 1 must be paid in an amount at least equal to the greater of:

(a) The amount actually paid by the dealer for the vehicles, parts, tools and equipment; or

(b) The amount currently paid by other dealers in this state for the vehicles, parts, tools and equipment.

3. If compensation is paid pursuant to paragraph (e) of subsection 1, the dealer shall allow the manufacturer or distributor paying the compensation the use and possession of the premises affected.

4. The manufacturer or distributor is not required to pay compensation pursuant to paragraph (e) of subsection 1 if the dealer has been convicted of a crime involving fraud in connection with his application for or operation of the franchise.

5. This section does not relieve a dealer of his obligation to mitigate damages resulting from the termination or refusal to continue the franchise.

**Sec. 12.** NRS 482.363523 is hereby amended to read as follows:

482.363523 Upon the termination or refusal to continue a franchise, the dealer:

1. May not require reimbursement by the manufacturer or distributor for any parts or services furnished by the dealer, after the effective date of the termination or refusal to continue, to customers pursuant to any warranties of the manufacturer or distributor;

2. Shall deliver to the manufacturer or distributor any invoices and money deposited by customers for ~~{motor}~~ vehicles or other products of the manufacturer or distributor that were not delivered to the customers before the effective date of the termination or refusal to continue; and

3. Shall furnish the manufacturer or distributor with copies of all of his records concerning the servicing of any ~~{motor}~~ vehicle or other product of the manufacturer or distributor. The manufacturer or distributor shall reimburse the dealer for the reasonable cost of compiling and copying the records and delivering the copies.

**Sec. 13.** NRS 482.36358 is hereby amended to read as follows:

482.36358 In determining whether good cause has been established for preventing a manufacturer or distributor from establishing an additional dealership or relocating an existing dealership within the relevant market area of another dealer in the same line and make of vehicles, the Director shall consider, without limitation:

1. The effect of the intended action on the business of selling new ~~{motor}~~ vehicles at retail in the relevant market area.

2. Whether the establishment of an additional dealership or the relocation of an existing dealership for ~~{motor}~~ vehicles of the particular line and make would be injurious to the welfare of the public.

3. Whether the dealers franchised to sell new ~~{motor}~~ vehicles of the particular line and make in the relevant market area are providing adequate competition, convenient customer service and adequate personnel and facilities for sales of the vehicles to persons in the area, as well as adequate equipment, spare parts and qualified mechanics and other service personnel for repair and maintenance of the vehicles.

4. Whether the establishment of an additional dealership or the relocation of an existing dealership would increase constructive competition and therefore be in the public interest.

5. Any other fact which the Director regards as relevant to the decision required of him.

**Sec. 14.** NRS 482.36366 is hereby amended to read as follows:

482.36366 1. Each witness, other than an officer or employee of the State or of a political subdivision of the State ~~{,}~~ *or an expert witness*, who appears by order of the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act*, is entitled to receive for his attendance the same fees allowed by law to witnesses in civil cases. ~~{The}~~ *Except as otherwise provided in subsection 2, the* amount must be paid by the party at whose request the witness is ordered to appear.

2. The Director may assess other costs against the parties as he deems appropriate. *After any hearing on a protest filed pursuant to NRS 482.36352, 482.36354 or 482.36357, if the Director determines that the manufacturer or distributor has failed to establish that there is good cause to terminate, refuse to continue, modify or replace a franchise, or to establish an additional dealership or relocate an existing dealership, the Director shall award to the dealer his attorney's fees and costs.*

3. *For the purposes of this section, "costs" includes:*

*(a) Except as otherwise provided in paragraph (b), any applicable cost set forth in NRS 18.005; and*

*(b) The actual amount of any fees paid by a dealer to an expert witness in connection with the hearing.*

**Sec. 15.** NRS 482.3638 is hereby amended to read as follows:

482.3638 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law.

2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a controversy arising under the provisions of the franchise agreement may or may not be submitted for resolution, or prohibit a dealer from bringing an action in any forum allowed by Nevada law.

3. Require a dealer to waive a trial by jury in actions involving the manufacturer, distributor or factory branch.

4. Increase prices of new ~~{motor}~~ vehicles which the dealer had ordered for private retail consumers before his receipt of the written official notification of a price increase. A sales contract signed by a retail consumer constitutes evidence of each order. Price changes applicable to new ~~{model}~~ *models* or series ~~{motor}~~ *of* vehicles at the time of the introduction of *the* new models or series shall not be deemed a price increase. Price changes caused by:

(a) The addition to a ~~{motor}~~ vehicle of equipment formerly optional as standard or required equipment pursuant to state or federal law;

(b) Revaluation of the United States dollar in the case of foreign-made vehicles; or

(c) Transportation cost increases,  
are not subject to this subsection.

5. Deny the principal owner the opportunity to designate his spouse, a member of his family, a qualified manager, or a trust or other artificial person controlled by any of them as entitled to participate in the ownership of:

(a) The franchised dealership;

(b) A successor franchised dealership for 2 years or a longer reasonable time after the incapacity of the principal owner; or

(c) A successor franchised dealership after the death of the principal in accordance with NRS 482.36396 to 482.36414, inclusive.

6. Modify unilaterally, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of law.

7. Terminate or refuse to approve a transfer of a franchise for a dealership, or honor the right of succession set forth in a franchise agreement or refuse to approve the transfer of a controlling interest in a dealership because the dealer has, before October 1, 1997, established an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership.

8. Prevent a dealer from establishing, on or after October 1, 1997, an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership if the dealer:

(a) Submits a written request for approval of the additional franchise to the manufacturer, distributor or factory branch of the existing dealership;

(b) Complies with the reasonable requirements for approval set forth in the franchise of the existing dealership; and

(c) Obtains the approval of the manufacturer, distributor or factory branch of the existing dealership.

The manufacturer, distributor or factory branch shall notify the dealer in writing of its decision to approve or deny the request within 90 days after receipt of the request. The manufacturer, distributor or factory branch shall not unreasonably withhold its approval. If the request is denied, the material reasons for the denial must be stated. Failure to approve or deny the request, in writing, within 90 days has the effect of approval.

**Sec. 16.** NRS 482.36385 is hereby amended to read as follows:

482.36385 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Compete with a dealer. A manufacturer or distributor shall not be deemed to be competing when operating a previously existing dealership temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified person at a fair and reasonable price, or in a bona fide relationship in which a

person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

2. Discriminate unfairly among its dealers, or fail without good cause to comply with franchise agreements, with respect to warranty reimbursement or authority granted to its dealers to make warranty adjustments with retail customers.

3. Fail to compensate a dealer fairly for the work and services which he is required to perform in connection with the delivery and preparation obligations under any franchise, or fail to compensate a dealer fairly for labor, parts and other expenses incurred by him under the manufacturer's warranty agreements. The manufacturer shall set forth in writing the respective obligations of a dealer and the manufacturer in the preparation of a vehicle for delivery, and as between them a dealer's liability for a defective product is limited to his obligation so set forth. Fair compensation includes diagnosis and reasonable administrative and clerical costs. The dealer's compensation for parts and labor to satisfy a warranty must not be less than the amount of money charged to its various retail customers for parts and labor that are not covered by a warranty. If parts are supplied by the manufacturer, including exchanged parts and assembled components, the dealer is entitled with respect to each part to an amount not less than his normal retail markup for the part. This subsection does not apply to compensation for any part, system, fixture, appliance, furnishing, accessory or feature of a motor home or recreational vehicle that is designed, used and maintained primarily for nonvehicular, residential purposes.

4. Fail to pay all claims made by dealers for compensation for delivery and preparation work, transportation claims, special campaigns and work to satisfy warranties within 30 days after approval, or fail to approve or disapprove such claims within 30 days after receipt, or disapprove any claim without notice to the dealer in writing of the grounds for disapproval. Failure to approve or disapprove or to pay within the specified time limits in an individual case does not constitute a violation of this section if the failure is because of reasons beyond the control of the manufacturer, distributor or factory branch.

5. Sell a new ~~motor~~ vehicle to a person who is not licensed as a new ~~motor~~ vehicle dealer under the provisions of this chapter.

6. Use false, deceptive or misleading advertising or engage in deceptive acts in connection with the manufacturer's or distributor's business.

7. Perform an audit to confirm a warranty repair, sales incentive or rebate more than 12 months after the date of the transaction.

**Sec. 17.** NRS 482.36386 is hereby amended to read as follows:

482.36386 It is an unfair act or practice for a manufacturer or distributor to:

1. Sell or offer to sell a new ~~motor~~ vehicle to a dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped or to use a promotion or other device that results in a lower actual price. This subsection does not apply to a sale to a governmental unit or to a dealer for resale to a governmental unit, or to a sale to a dealer of a vehicle ultimately sold, donated or used by the dealer or in a program of driver's education.

2. Offer, sell or lease a new ~~motor~~ vehicle to any person, except a distributor, at a lower actual price than the price offered or charged a dealer for the same model similarly equipped, or use any device that results in a lower actual price.

3. Offer or sell parts or accessories to a dealer for his own use in repairing or replacing the same or a comparable part or accessory at a lower actual price than the actual price charged to another dealer for his own similar use, but a lower price may be charged to a dealer who buys as a distributor for resale to retail outlets than is charged to a dealer who does not buy for that purpose.

**Sec. 18.** NRS 482.36387 is hereby amended to read as follows:

482.36387 A manufacturer or distributor, or an agent, officer, parent, subsidiary or enterprise under common control with a manufacturer or distributor shall not own or operate a facility for the repair or maintenance of ~~motor~~ vehicles except:

1. Vehicles owned or operated by the manufacturer, distributor or a related person; or

2. Service required to comply with a statute or regulation or the order of a court.

**Sec. 19.** NRS 482.36388 is hereby amended to read as follows:

482.36388 A manufacturer, importer or distributor shall not:

1. Adopt or put into effect a method for the allocation, scheduling or delivery of new ~~motor~~ vehicles, parts or accessories to its dealers that is not fair, reasonable and equitable or change an existing method so as to be unfair, unreasonable or inequitable. Upon the request of a dealer, a manufacturer, importer or distributor shall disclose in writing to the dealer the method by which new ~~motor~~ vehicles, parts and accessories are allocated, scheduled or delivered to its dealers handling the same line or make of vehicles.

2. Refuse or fail to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of ~~motor~~ vehicle sold or distributed by



the manufacturer, importer or distributor any new vehicle sold under the same name, trademark, service mark or brand, or parts or accessories for the new vehicle, if the vehicle, parts or accessories are being delivered to others or advertised as available for delivery, or require a dealer to purchase unreasonable advertising displays or other materials, or require a dealer to remodel or renovate his existing facilities as a prerequisite to receiving a model or series of vehicles. Compliance with this subsection is excused if prevented by an act of God, strike or labor dispute, embargo or other cause beyond the control of the manufacturer, importer or distributor.

**Sec. 20.** NRS 482.36391 is hereby amended to read as follows:

482.36391 No ~~{motor-vehicle}~~ manufacturer, distributor, factory branch or representative thereof may induce by means of coercion, intimidation or discrimination any dealer to:

1. Order or accept delivery of any ~~{motor}~~ vehicle, parts or accessories therefor, or any other commodity which was not voluntarily ordered by ~~{such}~~ *the* dealer.

2. Order or accept delivery of any ~~{motor}~~ vehicle with special features, appliances, accessories or equipment not included in the list price of ~~{such}~~ *the* vehicle as publicly advertised by the manufacturer thereof.

3. Order from any person any parts, accessories, equipment, machinery, tools, appliances or other commodity.

**Sec. 21.** NRS 482.36395 is hereby amended to read as follows:

482.36395 No ~~{motor-vehicle}~~ manufacturer, distributor, factory branch or representative thereof may:

1. Encourage, aid or abet a dealer to sell or lease ~~{motor}~~ vehicles through any false, deceptive or misleading sales or financing practice.

2. Refuse to deliver an order of a dealer within 60 days after the order is received in writing unless the inability to deliver the order is caused by shortage or curtailment of material, labor, production capacity, transportation or utility services, or to any labor or production difficulty, or to any cause beyond the reasonable control of the ~~{motor-vehicle}~~ manufacturer or distributor.

3. Coerce, compel or otherwise require any dealer to pay over or to repay any amount of money or other consideration which is in substantiation of or repayment for any advertising, promotional activity or scheme, or method of implementing the sale or lease of ~~{motor}~~ vehicles.

4. Demand or require, directly or indirectly, a dealer to pay any amount of money which is projected or proposed for the advertisement, display or promotion of any ~~{motor}~~ vehicle which is

being sold or leased pursuant to a franchise, unless the dealer has agreed thereto in writing.

5. Demand or require, directly or indirectly, a dealer to comply with standards which exceed commonly accepted business practices within the ~~{automotive}~~ *vehicle* industry relating to sales, leases or service of ~~{motor}~~ vehicles.

6. Based solely upon the results of a survey of a dealer's customers conducted by or on behalf of a ~~{motor-vehicle}~~ manufacturer which is intended or otherwise purports to measure the performance of a dealer:

(a) Discriminate, directly or indirectly, against a dealer;

(b) Take any action to terminate a dealer's franchise; or

(c) Refuse to consent to the designation of a successor, refuse to honor a right of succession set forth in a franchise or refuse to approve the transfer of a controlling interest in a dealership.

This subsection does not prohibit a ~~{motor-vehicle}~~ manufacturer, distributor, factory branch or representative thereof from conducting a contest or other award program to recognize the performance of a dealer based on reasonable criteria relating to sales, leases or service of ~~{motor}~~ vehicles.

**Sec. 22.** NRS 482.36423 is hereby amended to read as follows:

482.36423 1. Whenever it appears that a person has violated, ~~{or}~~ is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act*, any person aggrieved thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, for injunctive relief to restrain the person from continuing the violation or threat of violation.

2. In addition to any other judicial relief, any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act* may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by him, and the cost of suit, including a reasonable attorney's fee. The amount of pecuniary loss sustained by a dealer, pursuant to subsection 6 of NRS 482.3638, is the fair market value of the franchised dealership at the time of notification of termination, refusal to continue or unilateral modification of a franchise.

3. Any artificial person created and existing under the laws of any other state, territory, foreign government or the government of the United States, or any person residing outside the State, who grants a franchise to any dealer in this state may be served with any

legal process in any action for injunctive relief or civil damages in the following manner:

- (a) By delivering a copy of the process to the Director; and
- (b) By mailing to the last known address of the manufacturer or distributor, by certified mail, return receipt requested, a copy of the summons ~~and~~ *and* a copy of the complaint, together with copies of any petition or order for injunctive relief.

4. The defendant has 30 days, exclusive of the day of service, within which to answer or plead.

5. The method of service provided in this section is cumulative and may be utilized with, after or independently of all other methods of service.

**Sec. 23.** NRS 482.36425 is hereby amended to read as follows:

482.36425 1. Any manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act* is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered ~~shall~~ *must* be paid to the State of Nevada.

2. Whenever it appears that a manufacturer or distributor has violated , ~~for~~ is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act*, the Attorney General may institute a civil suit in any district court of this state for injunctive relief to restrain the violation or threat of violation ~~or~~ or , if the violation or threat is willful, for the assessment and recovery of the civil penalty, or both.

**Sec. 24.** NRS 482.36331 is hereby repealed.