

SENATE BILL NO. 372—SENATOR TOWNSEND

MARCH 11, 1999

Referred to Committee on Transportation

SUMMARY—Revises provisions governing franchises for dealers in new motor vehicles.
(BDR 43-156)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to motor vehicles; revising the rights of dealers in new vehicles as against manufacturers, importers and distributors; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 482 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 8, inclusive, of this act.
- 3 **Sec. 2. 1.** *In addition to other criteria provided for determining*
4 *whether good cause exists for terminating, refusing to continue,*
5 *modifying or replacing a franchise, or for establishing an additional*
6 *dealership or relocating an existing dealership, the director shall*
7 *consider the lasting nature of each affected dealer's investment. The*
8 *investment includes commitments of the owner to the dealership, the*
9 *value of time and effort devoted to building the business, and any real*
10 *property of the owner used by the dealership whether or not held in the*
11 *name of the dealership.*
- 12 **2.** *The sole fact that a manufacturer or distributor desires further*
13 *penetration of the market does not constitute good cause to take any of*
14 *the actions described in subsection 1.*
- 15 **Sec. 3.** *The director shall adopt regulations for the conduct of*
16 *discovery preliminary to each hearing required pursuant to NRS*
17 *482.36352, 482.36354 or 482.36357. The practice so established must*
18 *conform insofar as practicable to the practice established for use in the*
19 *district courts pursuant to N.R.C.P. 26 to 37, inclusive.*

1 **Sec. 4.** *A manufacturer or distributor, or an agent, officer, parent,*
2 *subsidiary or enterprise under common control with a manufacturer or*
3 *distributor shall not own or operate a facility for the repair or*
4 *maintenance of motor vehicles except:*

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

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

9 **Sec. 5.** *It is an unfair act or practice for a manufacturer or*
10 *distributor to:*

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

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

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

28 **Sec. 6.** *A manufacturer, importer or distributor shall not:*

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

37 2. *Refuse or fail to deliver, in reasonable quantities and within a*
38 *reasonable time after receipt of an order, to a dealer holding a franchise*
39 *for a line or make of motor vehicle sold or distributed by the*
40 *manufacturer, importer or distributor any new vehicle sold under the*
41 *same name, trade-mark, service mark or brand, or parts or accessories*
42 *for the new vehicle, if the vehicle, parts or accessories are being delivered*
43 *to others or advertised as available for delivery, or require a dealer to*

1 *purchase unreasonable advertising displays or other materials, or require*
2 *a dealer to remodel or renovate his existing facilities as a prerequisite to*
3 *receiving a model or series of vehicles. Compliance with this subsection*
4 *is excused if prevented by an act of God, strike or labor dispute, embargo*
5 *or other cause beyond the control of the manufacturer, importer or*
6 *distributor.*

7 **Sec. 7. 1.** *Except as otherwise provided in NRS 482.36396 to*
8 *482.36414, inclusive, if a transfer of the entire, or substantially the*
9 *entire, ownership or of all, or substantially all, the assets of a dealership*
10 *is proposed, a manufacturer or distributor may exercise a contractual*
11 *right of first refusal only if all the following requirements are met:*

12 *(a) The transfer is not to the dealer's spouse, a member of his family,*
13 *a qualified manager, or a trust or artificial person controlled by any of*
14 *them.*

15 *(b) The manufacturer or distributor notifies the dealer in writing,*
16 *within 60 days after receipt of the completed form and information*
17 *customarily used to review such transfers and a copy of all relevant*
18 *agreements, of its intent to exercise the right of first refusal or its*
19 *rejection of the proposed transfer. If the manufacturer or distributor fails*
20 *to notify the dealer within the 60-day period, the effect is to approve the*
21 *proposed transfer.*

22 *(c) The exercise of the right of first refusal provides to the dealer the*
23 *same compensation as or greater compensation than he had negotiated*
24 *to receive from the proposed transferee.*

25 *(d) The manufacturer or distributor agrees to pay the reasonable*
26 *expenses, including attorney's fees that do not exceed the usual and*
27 *reasonable fees charged to other clients for similar work, incurred by the*
28 *proposed transferee before the exercise of the right of first refusal in*
29 *negotiating and putting into effect the proposed transfer.*

30 **2.** *A manufacturer or distributor shall not utilize a right of first*
31 *refusal to influence terms offered by a third person, or to influence a*
32 *third person to refrain from negotiating, for the acquisition of a*
33 *dealership.*

34 **Sec. 8.** *A manufacturer shall not require a dealer to disclose*
35 *information concerning a customer to the manufacturer or a third party*
36 *if the customer objects or the disclosure is otherwise unlawful.*

37 **Sec. 9.** *NRS 482.36311 is hereby amended to read as follows:*

38 *482.36311 As used in NRS 482.36311 to 482.36425, inclusive, **and***
39 ***sections 2 to 8, inclusive, of this act,** unless the context otherwise requires,*
40 *the words and terms defined in NRS 482.36319 to 482.36345, inclusive,*
41 *have the meanings ascribed to them in those sections.*

1 **Sec. 10.** NRS 482.36352 is hereby amended to read as follows:

2 482.36352 1. Notwithstanding the terms of any franchise, a
3 manufacturer or distributor shall not terminate or refuse to continue any
4 franchise unless it has received the written consent of the dealer or:

5 (a) It has given written notice of its intention to the dealer and the
6 director; and

7 (b) Either of the following conditions occurs:

8 (1) The dealer does not file a protest with the director within the time
9 allowed by this section; or

10 (2) After the dealer has filed a protest and the director has conducted
11 a hearing on the matter, the director issues an order authorizing the
12 manufacturer or distributor to terminate the franchise or permit it to lapse.

13 2. The notice required by this section must be given to the dealer and
14 the director:

15 (a) At least 15 days before the effective date of the intended termination
16 or the date on which the existing franchise is to expire if the grounds for the
17 termination or refusal include any of the following:

18 (1) Except as otherwise provided in NRS 482.36396 to 482.36414,
19 inclusive, transfer of any ownership or interest in the franchised dealership
20 without the consent of the manufacturer or distributor unless that consent
21 has been withheld without good cause;

22 (2) Material misrepresentation by the dealer in applying for the
23 franchise;

24 (3) Insolvency of the dealer or the filing of any petition by or against
25 the dealer under any **law governing** bankruptcy or receivership ; ~~law;~~

26 (4) Any unfair business practice by the dealer after the manufacturer
27 or distributor has issued a written warning to the dealer to desist from that
28 practice;

29 (5) Revocation of a dealer's license under this chapter;

30 (6) Conviction of the dealer for a felony; and

31 (7) Closure by the dealer for a period longer than 14 days, unless the
32 closure was caused by a force beyond the control of the dealer.

33 (b) At least 60 days before the effective date of the intended termination
34 or the date on which the existing franchise is to expire if the grounds for the
35 termination or refusal do not include one or more of those set forth in
36 paragraph (a).

37 The notice required by this section must include a statement of the
38 particular grounds for the intended termination or refusal to continue a
39 franchise.

40 3. A dealer who has received a notice pursuant to this section may file
41 a protest with the director:

42 (a) Within 10 days after receiving the notice if it states one or more of
43 the grounds specified in paragraph (a) of subsection 2; ~~or~~

(b) Within 30 days after receiving the notice if it does not state one of the grounds specified in that paragraph ~~[-]~~; or

(c) In either case, within 30 days after the end of any appellate procedure provided by the manufacturer or distributor.

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. 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.

(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 ~~such~~ the compensation the use and possession of the ~~place of business~~ *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.

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

3 **Sec. 12.** NRS 482.36355 is hereby amended to read as follows:

4 482.36355 In determining whether good cause has been established for
5 permitting a manufacturer or distributor to terminate, refuse to continue,
6 modify or replace a franchise, the director shall consider, without
7 limitation:

8 1. The amount of business transacted by the dealer, as compared to the
9 business available to the dealer, but only if there was merchandise available
10 to the dealer in sufficient quantities of models to match competitive makes
11 and models available in the relevant marketing area. All transactions and all
12 registrations must be taken into account within the area covered by the
13 franchise.

14 2. The investment necessarily made and obligations incurred by the
15 dealer to perform its part of the franchise.

16 3. ~~{The permanency of the dealer's investment.~~

17 ~~—4.~~ Whether the proposed action would be injurious or beneficial to the
18 public welfare.

19 ~~{5.}~~ 4. Whether the dealer has adequate new facilities for sales and
20 service, equipment, vehicle parts and qualified personnel to provide
21 reasonably for the needs of the customers for the new vehicles handled by
22 the dealer, and whether he has been and is rendering adequate services to
23 the public.

24 ~~{6.}~~ 5. Whether the dealer fails to fulfill warranty obligations of the
25 manufacturer or distributor to be performed by the dealer.

26 ~~{7.}~~ 6. The extent of the dealer's failure, if any, to comply with the
27 terms of the franchise.

28 ~~{8.}~~ 7. Whether the dealer, his successor in interest or the manufacturer
29 or distributor has complied with the provisions of NRS 482.36396 to
30 482.36414, inclusive.

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

32 482.36358 In determining whether good cause has been established for
33 preventing a manufacturer or distributor from establishing an additional
34 dealership or relocating an existing dealership within the relevant market
35 area of another dealer in the same line and make of vehicles, the director
36 shall consider, without limitation:

37 1. ~~{The permanency of the investment of each affected dealer.~~

38 ~~—2.~~ The effect of the intended action on the business of selling new
39 motor vehicles at retail in the relevant market area.

40 ~~{3.}~~ 2. Whether the establishment of an additional dealership or the
41 relocation of an existing dealership for motor vehicles of the particular line
42 and make would be injurious to the welfare of the public.

1 ~~[4.]~~ 3. Whether the dealers franchised to sell new motor vehicles of the
2 particular line and make in the relevant market area are providing adequate
3 competition, convenient customer service and adequate personnel and
4 facilities for sales of the vehicles to persons in the area, as well as adequate
5 equipment, spare parts and qualified mechanics and other service personnel
6 for repair and maintenance of the vehicles.

7 ~~[5.]~~ 4. Whether the establishment of an additional dealership or the
8 relocation of an existing dealership would increase constructive
9 competition and therefore be in the public interest.

10 ~~[6.]~~ 5. Any other fact which the director regards as relevant to the
11 decision required of him.

12 **Sec. 14.** NRS 482.36361 is hereby amended to read as follows:

13 482.36361 1. If the director receives a written protest from a
14 ~~[franchise]~~ dealer pursuant to NRS 482.36352, 482.36354 or 482.36357,
15 the director shall ~~[schedule a hearing on the protest within 60 days after the~~
16 ~~director receives it. The director shall]~~ give notice as follows:

17 (a) To the manufacturer or distributor, that the protest has been filed ~~[~~
18 ~~the date, time, and place of the hearing on the protest,]~~ and that he may not
19 take the intended action which has given rise to the protest until the director
20 has made his findings and issued an order permitting him to do so; *and*

21 (b) ~~[To the dealer who has protested, the date, time, and place of the~~
22 ~~hearing on his protest; and~~

23 ~~—(c)]~~ To any other dealer who has requested such a notice or who may be
24 adversely affected by the intended action, ~~[the date, time and place of the~~
25 ~~hearing.]~~ *that the protest has been filed.*

26 2. A manufacturer or distributor who receives a notice pursuant to this
27 section shall not proceed with the action which has given rise to the protest
28 until the director notifies him that he has made a decision authorizing him
29 to proceed with that action.

30 3. *Upon completion of discovery by the parties, the director shall*
31 *schedule a hearing upon the protest, to be held within 60 days thereafter.*

32 4. If two or more protests are filed concerning a particular intended
33 action, the director may consolidate the hearings on the protests.

34 **Sec. 15.** NRS 482.36363 is hereby amended to read as follows:

35 482.36363 1. In any hearing on a protest filed pursuant to NRS
36 482.36352, ~~[or]~~ 482.36354 ~~[.]~~ *or 482.36357*, the manufacturer or
37 distributor has the burden of proof to establish that there is good cause to
38 terminate, refuse to continue, modify or replace a franchise ~~[.]~~, *or to*
39 *establish an additional dealership or relocate an existing dealership.*

40 2. In any hearing on a protest filed pursuant to NRS 482.36357, the
41 ~~[dealer has the burden of proof to establish that there is good cause to~~
42 ~~prevent the establishment of an additional dealership or the relocation of an~~

~~existing dealership.]~~ *director shall consider the economic effect of the proposed action upon the protesting dealer.*

Sec. 16. NRS 482.36371 is hereby amended to read as follows:

482.36371 **1.** It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

~~[1.]~~ **(a)** Prevent or require or attempt to prevent or require by contract or otherwise any change in the capital structure of a dealer or the means by which he finances his operation if at all times the dealer meets any reasonable standards for capital previously agreed to by the dealer and the manufacturer or distributor. A dealer may not change the capital structure if it causes a change in the ownership or control of the franchised dealership, or has the effect of a sale of the franchised dealership, without the consent of the manufacturer or distributor . ~~[, which]~~ **The** consent must not be unreasonably withheld.

~~[2.]~~ **(b)** Prevent or require or attempt to prevent or require a dealer to change his executive management.

~~[3.]~~ **(c)** Prevent or require or attempt to prevent or require by contract or otherwise the sale or transfer of any part of the interest of the principal owner or any officer, partner ~~[,]~~ or stockholder of any dealership to any other person. Except as otherwise provided in NRS 482.36396 to 482.36414, inclusive, a principal owner, officer, partner or stockholder may not cause a change in the control of the dealership or sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer or distributor . ~~[, which]~~ **The** consent must not be unreasonably withheld.

~~[4.]~~ **(d)** Prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised dealership as a going concern.

2. *If the consent of a manufacturer or distributor to a change of ownership or control is requested pursuant to paragraph (a) or (c), the manufacturer or distributor shall grant or deny the request, in writing, within 60 days after receipt of the request. If the request is denied, the material reasons for the denial must be stated. Failure to grant or deny the request, in writing, within 60 days has the effect of granting the request.*

Sec. 17. 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

1 agency except as set forth in this chapter if that referral would be binding
2 on the dealer, except that this section does not prevent the parties from
3 mutually agreeing to arbitration pursuant to law.

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

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

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

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

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

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

22 5. Deny the principal owner the opportunity to designate his spouse, a
23 member of his family ~~{or other qualified designee}~~, *a qualified manager,*
24 *or a trust or other artificial person controlled by any of them* as entitled to
25 participate in the ownership of:

26 (a) The franchised dealership;

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

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

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

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

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

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

1 (b) Complies with the reasonable requirements for approval set forth in
2 the franchise ~~{agreement}~~ of the existing dealership; and

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

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

11 **Sec. 18.** NRS 482.36385 is hereby amended to read as follows:

12 482.36385 It is an unfair act or practice for any manufacturer,
13 distributor or factory branch, directly or through any representative, to:

14 1. Compete with a dealer . ~~{in the relevant market area.}~~ A
15 manufacturer or distributor shall not be deemed to be competing when
16 operating a previously existing dealership temporarily for a reasonable
17 period , ~~{of time,}~~ or in a bona fide retail operation which is for sale to any
18 qualified person at a fair and reasonable price, or in a bona fide relationship
19 in which a person has made a significant investment subject to loss in the
20 dealership and can reasonably expect to acquire full ownership of the
21 dealership on reasonable terms and conditions.

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

26 3. Fail to compensate ~~{fairly}~~ a dealer *fairly* for the work and services
27 which he is required to perform in connection with the delivery and
28 preparation obligations under any franchise, or fail to compensate ~~{fairly}~~ a
29 dealer *fairly* for labor, parts and other expenses incurred by him under the
30 manufacturer's warranty agreements. *The manufacturer shall set forth in*
31 *writing the respective obligations of a dealer and the manufacturer in the*
32 *preparation of a vehicle for delivery, and as between them a dealer's*
33 *liability for a defective product is limited to his obligation so set forth.*

34 Fair compensation includes diagnosis and reasonable administrative and
35 clerical costs. The dealer's compensation for parts and labor to satisfy a
36 warranty must not be less than the amount of money charged to its various
37 retail customers for parts and labor that are not covered by a warranty. *If*
38 *parts are supplied by the manufacturer, including exchanged parts and*
39 *assembled components, the dealer is entitled with respect to each part to*
40 *an amount not less than his normal retail markup for the part.* This

41 subsection does not apply to compensation for any part, system, fixture,

1 appliance, furnishing, accessory or feature of a motor home or recreational
2 vehicle that is designed, used and maintained primarily for nonvehicular,
3 residential purposes.

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

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

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

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

20 **Sec. 19.** NRS 482.36395 is hereby amended to read as follows:

21 482.36395 No motor vehicle manufacturer, distributor, factory branch
22 or representative thereof may:

23 1. Encourage, aid or abet a dealer to sell motor vehicles through any
24 false, deceptive or misleading sales or financing practice.

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

31 3. Coerce, compel or otherwise require any dealer to pay over or to
32 repay any amount of money or other consideration which is in
33 substantiation of or repayment for any advertising, promotion activity or
34 scheme, or method of implementing the sale of motor vehicles.

35 4. Demand or require, directly or indirectly, a dealer to pay any amount
36 of money which is projected or proposed for the advertisement, display or
37 promotion of any motor vehicle which is being sold pursuant to a franchise,
38 unless the dealer has agreed thereto in writing.

39 5. Demand or require, directly or indirectly, a dealer to comply with
40 standards which exceed commonly accepted business practices within the
41 automotive industry relating to sales 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; ~~or~~
- (b) Take any action to terminate a dealer's franchise ~~or~~; 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 or service of motor vehicles.

Sec. 20. 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, 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, may bring an action in the district court in which the dealership is located, and may recover ~~actual damages~~ *three times the pecuniary loss* sustained by him, and the cost of suit, including a reasonable attorney's fee. ~~In an action for money damages, the court or jury may award punitive damages if the defendant acted maliciously.~~ The amount of ~~damages~~ *pecuniary loss* sustained by ~~any~~ *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 ~~company, firm, partnership, corporation or association~~ *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, a copy of the complaint, together with copies of any petition or order for injunctive relief.

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

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

5 **Sec. 21.** NRS 482.36375 is hereby repealed.

TEXT OF REPEALED SECTION

**482.36375 Consent to transfer of ownership or interest not to be
unreasonably withheld.** A manufacturer or distributor shall not
unreasonably withhold consent to the transfer of any ownership or interest
in a franchised dealership.

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