

SENATE BILL NO. 74
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TERMINATION, CANCELLATION, NONRENEWAL, SUBSTANTIAL ALTERATION, OR TRANSFER OF CONSTRUCTION EQUIPMENT DEALERSHIP AGREEMENTS."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9] the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Construction equipment" means any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work.

(3) "Dealer" means a person who is a grantee of a construction equipment dealership situated in this state.

(4) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute construction equipment, in which there is a community of interest in the business of offering, selling, or distributing construction equipment.

(5) "Department" means the department of commerce established in 2-15-1801.

(6) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(7) "Designated successor" means a person designated in writing by the retiring dealer to succeed in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(8) (a) "Good cause", when used in [sections 2, 3, and 9], means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as

compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [sections 4 through 8], means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

NEW SECTION. Section 2. Cancellation and alteration of dealerships. A grantor may not, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

NEW SECTION. Section 3. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

NEW SECTION. Section 4. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated family member, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor

determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

NEW SECTION. Section 5. Refusal to honor succession to ownership -- notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of the grantor's refusal to honor the succession and of the grantor's intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [section 6], the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

NEW SECTION. Section 6. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor succession to the ownership and operation of the dealership may, within the 60-day period provided for in [section 5], file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

NEW SECTION. Section 7. Written designation of succession unaffected. [Sections 4 through 8] do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

NEW SECTION. Section 8. Civil damages. A dealer suffering pecuniary loss due to a violation of [sections 4 through 8] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

NEW SECTION. Section 9. Action for damages and injunctive relief. If any grantor violates [sections 1 through 9], a dealer may bring an action against the grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 9].

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