

HOUSE BILL NO. 542
INTRODUCED BY G. VANCE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MOTORSPORTS MANUFACTURER UNFAIR TRADE PRACTICES LAW; REVISING DEFINITIONS; REVISING WHAT CONSTITUTES UNFAIR TRADE PRACTICES WITH RESPECT TO THE RELATIONSHIP BETWEEN MOTORSPORTS MANUFACTURERS AND MOTORSPORTS DEALERS; CLARIFYING INJUNCTION AND DAMAGES PROVISIONS AND ELIMINATING THE VENUE REQUIREMENT WITH RESPECT TO THE PROPER PLACE TO BRING A CLAIM FOR AN UNFAIR TRADE PRACTICE BY A MOTORSPORTS MANUFACTURER; AMENDING SECTIONS 30-14-2501, 30-14-2502, AND 30-14-2503, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the Legislature finds and declares that the distribution and sale of motorsports vehicles in this state affects the general economy of the state and the public interest, safety, and welfare and that the maintenance of strong and sound motorsports dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state; and

WHEREAS, the Legislature finds that there can be a substantial disparity in bargaining power between motorsports manufacturers and their motorsports dealers and that in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate the relationship between motorsports manufacturers and motorsports dealers doing business in this state, not only for the protection of motorsports dealers but also for the benefit of the public in ensuring the continued availability and servicing of motorsports vehicles sold to the public; and

WHEREAS, the Legislature recognizes it is in the best interest of motorsports manufacturers and motorsports dealers to conduct business with each other in a fair, efficient, and competitive manner, and the Legislature has determined that the public interest is best served by motorsports dealers being assured of the ability to manage their business enterprises without unreasonable interference by motorsports manufacturers.

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

Section 1. Section 30-14-2501, MCA, is amended to read:

"30-14-2501. Definitions. As used in this part, the following definitions apply:

(1) "Actual price" means the price ~~to be paid by the~~ a motorsports dealer to a motorsports manufacturer for a motorsports product less any ~~incentive paid~~ pecuniary benefit relating to a motorsports product paid or credited by the motorsports manufacturer, whether paid to the motorsports dealer or the ultimate purchaser of the motorsports vehicle product.

(2) "Confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

~~(2)~~(3) "Control" or "controlling" means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, ~~except as expressly provided under the franchise agreement.~~

(4) "Department" means the department of justice created in 2-15-2001.

(5) "Fleet" means a group of 15 or more new motorsports vehicles that are sold or leased by a motorsports dealer at one time under a single purchase or lease agreement for use as part of a fleet.

~~(3)~~ "Line-make" means a type of motorsports vehicle produced by a manufacturer.

(6) "Motorsports dealer" means a new motor vehicle dealer, as defined in 61-4-201, who sells motorsports vehicles.

(7) "Motorsports manufacturer" means a manufacturer, distributor, distributor branch, factory branch, or importer, as those terms are defined in 61-4-201, who sells motorsports vehicles to motorsports dealers within this state.

~~(4)~~(8) "Motorsports vehicle" means a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, AN OFF-HIGHWAY VEHICLE AS DEFINED IN 61-1-101, or a quadricycle as defined in 61-1-101.

~~(5)~~(9) "Operate" means to manage a motorsports dealership, whether directly or indirectly.

~~(6)~~(10) "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity interest in a motorsports dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the

ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

~~(7)~~(11) "Person" has the meaning provided in 30-14-102."

Section 2. Section 30-14-2502, MCA, is amended to read:

"30-14-2502. Unfair trade practices -- relationship between motorsports vehicle manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer, ~~distributor, factory branch, or factory representative~~ or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer, ~~distributor, factory branch, or factory representative~~ may not:

~~(1)~~(a) discriminate between motorsports dealers by:

(i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;

~~(2)~~(ii) ~~discriminate between dealers by~~ selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

~~(3)~~(iii) ~~discriminate between dealers by~~ using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or

~~(4)~~(iv) ~~discriminate between dealers by adopting using~~ a method or changing an existing method for the allocation of allocating, scheduling, or delivery of delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing ~~to the dealer~~ the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

~~(5)~~(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, 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 motorsports vehicles sold or distributed by the manufacturer a new~~ any motorsports vehicle, parts, or accessories, ~~if the motorsports vehicle, parts, or accessories that~~ are being delivered to other motorsports dealers; ~~or require~~

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

~~(iii) unreasonably require~~ requiring a motorsports dealer to remodel or renovate existing facilities as a

prerequisite to receiving a model or series of motorsports vehicles;

~~(6)(c)~~ except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;

~~(7)(d)~~ compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

~~(8)(e)~~ use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer; ~~For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.~~

~~(9)(f)~~ coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

~~(i)~~ accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested; ~~or to~~

~~(ii)~~ buy, order, or pay anything of value other than the purchase price ~~for the items~~ in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

~~(10)(iii)~~ ~~coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter; or~~

~~(iv)~~ order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

~~(A)~~ have been voluntarily requested or ordered by the motorsports dealer; or

~~(B)~~ are required by law;

~~(11)~~ ~~require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;~~

~~(12)(g)~~ require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed of financing for a motorsports dealership if the motorsports dealer at all times meets the reasonable, written, and uniformly

applied capital requirements standards determined by the motorsports manufacturer;

~~(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;~~

~~—— (14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.~~

~~—— (15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:~~

~~—— (a) that have been voluntarily requested or ordered by the dealer; and~~

~~—— (b) required by law;~~

~~(16)(h) fail to hold harmless and indemnify a motorsports dealer against losses, including lawsuits and court attorney fees and costs incurred by a motorsports dealer, arising from:~~

~~(a)(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer ~~on relating to~~ the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of ~~without~~ negligence on the part of the motorsports dealer;~~

~~(b)(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;~~

~~(c)(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning the a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer;~~

or

~~(d)(iv) any other act performed by the motorsports manufacturer;~~

~~(17)(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of a motorsports vehicle products;~~

~~(18)(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer ~~on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles;~~~~

~~(19)(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any~~

lawful purpose;

~~(20)(l)~~ charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

~~(21)(m)~~ permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its ~~franchised~~ motorsports dealers;

~~(22)(n)~~ require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for a the motorsports manufacturer in the securing of a promissory note; and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. ~~The manufacturer may not~~ or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies.;

~~(23)(o)~~ except as provided in 61-4-141, require or coerce a motorsports dealer to grant a the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's ~~franchise~~ dealership or place of business, or both;

~~(24)(p)~~ deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

~~(25)(q)~~ require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

~~(26)~~ use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;

~~(27)(r)~~ require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; ~~or~~

(S) REFUSE TO ALLOCATE, SELL, OR DELIVER MOTORSPORTS VEHICLES, MAY NOT CHARGE BACK OR WITHHOLD PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE MOTORSPORTS DEALER IS OTHERWISE ELIGIBLE UNDER A SALES PROMOTION, PROGRAM, OR CONTEST, AND MAY NOT PREVENT THE MOTORSPORTS DEALER FROM PARTICIPATING IN ANY PROMOTION, PROGRAM, OR CONTEST BASED ON THE MOTORSPORTS DEALER'S SELLING OF A MOTORSPORTS VEHICLE TO A CUSTOMER WHO WAS PRESENT AT THE DEALERSHIP IF THE MOTORSPORTS DEALER DID NOT KNOW OR COULD NOT HAVE REASONABLY KNOWN THAT THE MOTORSPORTS VEHICLE WOULD BE SHIPPED TO A FOREIGN COUNTRY. THERE IS A REBUTTABLE PRESUMPTION THAT THE MOTORSPORTS DEALER DID NOT KNOW OR COULD NOT HAVE REASONABLY KNOWN THAT THE MOTORSPORTS VEHICLE WOULD BE SHIPPED TO A FOREIGN COUNTRY IF THE MOTORSPORTS VEHICLE IS TITLED IN THE UNITED STATES.

~~(28)(s)(T)~~ require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

(2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

- (a) the motorsports vehicle will be sold or donated for use in a program of driver's education;
- (b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or
- (c) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer."

Section 3. Section 30-14-2502, MCA, is amended to read:

"30-14-2502. Unfair trade practices -- relationship between motorsports vehicle manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer, ~~distributor, factory branch, or factory representative~~ or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer, ~~distributor, factory branch, or factory representative~~ may not:

- (4)(a) discriminate between motorsports dealers by:
 - (i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;
 - ~~(2)(ii) discriminate between dealers by~~ selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;
 - ~~(3)(iii) discriminate between dealers by~~ using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or
 - ~~(4)(iv) discriminate between dealers by adopting using a method or changing an existing method for the allocation of allocating, scheduling, or delivery of delivering~~ new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing ~~to the dealer~~ the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.
- ~~(5)(b)~~ give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, 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 motorsports vehicles sold or distributed by the manufacturer a new~~ any motorsports vehicle, parts, or accessories, ~~if the motorsports vehicle, parts, or accessories that~~ are being delivered to other motorsports dealers; ~~or require~~

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; ~~or~~

(iii) ~~unreasonably require~~ requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;

~~(6)(c)~~ except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;

~~(7)(d)~~ compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

~~(8)(e)~~ use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer; ~~For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.~~

~~(9)(f)~~ coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested; ~~or to~~

(ii) buy, order, or pay anything of value other than the purchase price ~~for the items~~ in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

~~(10)(iii)~~ ~~coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter; or~~

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

~~(11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;~~

~~(12)(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed of financing for a motorsports dealership if the motorsports dealer at all times meets the reasonable, written, and uniformly applied capital requirements standards determined by the motorsports manufacturer;~~

~~(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;~~

~~————(14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.~~

~~————(15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:~~

~~————(a) that have been voluntarily requested or ordered by the dealer; and~~

~~————(b) required by law;~~

~~(16)(h) fail to hold harmless and indemnify a motorsports dealer against losses, including lawsuits and court attorney fees and costs incurred by a motorsports dealer, arising from:~~

~~(a)(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer ~~on~~ relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of ~~without~~ negligence on the part of the motorsports dealer;~~

~~(b)(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;~~

~~(c)(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning the a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer;~~

or

~~(d)(iv) any other act performed by the motorsports manufacturer;~~

~~(17)(i)~~ unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of ~~a~~ motorsports vehicle products;

~~(18)(j)~~ fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer ~~on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles~~;

~~(19)(k)~~ deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;

~~(20)(l)~~ charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

~~(24)(m)~~ permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its ~~franchised~~ motorsports dealers;

~~(22)(n)~~ require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for ~~a~~ the motorsports manufacturer in the securing of a promissory note; and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. ~~The manufacturer may not~~ or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

~~(23)(o)~~ except as provided in 61-4-141, require or coerce a motorsports dealer to grant ~~a~~ the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's ~~franchise dealership~~ or place of business, or both;

~~(24)(p)~~ deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

~~(25)(q)~~ require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

~~(26)~~ use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;

~~(27)(r)~~ require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; ~~or~~

~~(28)(s)~~ require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana; ~~or~~

~~(t) (i) offer motorsports dealers a benefit or advantage that would reduce the actual price of a motorsports~~

~~vehicle, part, or accessory only if the motorsports dealer meets a sales goal or objective unless~~ OFFER A PROGRAM WHERE A MONTANA MOTORSPORTS DEALER WOULD BE ELIGIBLE FOR A BENEFIT OR ADVANTAGE THAT LOWERS THE ACTUAL PRICE OF A MOTORSPORTS VEHICLE, PART, OR ACCESSORY ONLY IF THE MOTORSPORTS DEALER PURCHASES FROM THE MOTORSPORTS MANUFACTURER A QUANTITY OF MOTORSPORTS VEHICLES, PARTS, OR ACCESSORIES AS DETERMINED BY THE MOTORSPORTS MANUFACTURER UNLESS:

~~(A) the motorsports dealer agrees to the sales goal or objective in writing~~ TO THE QUANTITY OF MOTORSPORTS VEHICLES, PARTS, OR ACCESSORIES TO BE PURCHASED AS DETERMINED BY THE MOTORSPORTS MANUFACTURER; OR

~~(B) the sales goal or objective~~ QUANTITY DETERMINED BY THE MOTORSPORTS MANUFACTURER for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer ~~that are relevant to whether the sales goal or objective for the motorsports dealer is fair, reasonable and equitable.~~ For each offer to which this subsection (1)(t) applies the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.

(ii) For the purposes of this subsection (1)(t) "community" has the meaning provided in 61-4-201.

~~(U) REFUSE TO ALLOCATE, SELL, OR DELIVER MOTORSPORTS VEHICLES, MAY NOT CHARGE BACK OR WITHHOLD PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE MOTORSPORTS DEALER IS OTHERWISE ELIGIBLE UNDER A SALES PROMOTION, PROGRAM, OR CONTEST, AND MAY NOT PREVENT THE MOTORSPORTS DEALER FROM PARTICIPATING IN ANY PROMOTION, PROGRAM, OR CONTEST BASED ON THE MOTORSPORTS DEALER'S SELLING OF A MOTORSPORTS VEHICLE TO A CUSTOMER WHO WAS PRESENT AT THE DEALERSHIP IF THE MOTORSPORTS DEALER DID NOT KNOW OR COULD NOT HAVE REASONABLY KNOWN THAT THE MOTORSPORTS VEHICLE WOULD BE SHIPPED TO A FOREIGN COUNTRY. THERE IS A REBUTTABLE PRESUMPTION THAT THE MOTORSPORTS DEALER DID NOT KNOW OR COULD NOT HAVE REASONABLY KNOWN THAT THE MOTORSPORTS VEHICLE WOULD BE SHIPPED TO A FOREIGN COUNTRY IF THE MOTORSPORTS VEHICLE IS TITLED IN THE UNITED STATES.~~

~~(2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state,~~

or local governmental agency if:

(i) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(iii) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer.

(b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t)."

Section 4. Section 30-14-2503, MCA, is amended to read:

"30-14-2503. Injunction -- damages --venue. (1) A person who is injured by a violation of 30-14-2502 motorsports dealer may maintain an action to enjoin a the continuance of an any act in violation of the provisions of 30-14-2502 and to recover damages. A court, upon finding that the defendant motorsports manufacturer is violating or has violated the provisions of 30-14-2502, shall enjoin the defendant motorsports manufacturer from continuing the violation. # To obtain an injunction it is not necessary for the motorsports dealer to allege or prove actual damages to the plaintiff arising from the violation.

(2) In addition to injunctive relief, the plaintiff may any motorsports dealer who incurs pecuniary loss due to a violation of 30-14-2502 by a motorsports manufacturer is entitled to recover from the defendant three times the amount of actual damages sustained plus attorney fees and pecuniary loss together with costs, of suit including attorney fees.

(3) The proper place for trial of an action based on a claim of a violation of 30-14-2502 is the district court for Lewis and Clark County or the county in which the alleged violation occurred:

(3) A violation of 30-14-2502 also constitutes a violation of 30-14-103, and the department may bring an action to restrain any unlawful act pursuant to the provisions of 30-14-111."

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Effective date -- contingent effective date -- contingent termination date. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 3] is effective contingent upon a final court ruling that [section 2(1)(a)] is invalid or unconstitutional. If [section 2(1)(a)] is found to be invalid or unconstitutional the department of justice shall notify the code commissioner when the contingency has been met.

(3) [Section 2] terminates if [section 2(1)(a)] is found to be invalid or unconstitutional as provided for in subsection (2).

NEW SECTION. Section 7. Applicability. [This act] applies to motorsports manufacturers and motorsports dealer ~~franchise agreements that are entered into or renewed~~ TRANSACTIONS THAT OCCUR on or after [the effective date of this ~~act~~ SECTION].

- END -

