

SENATE BILL NO. 411

INTRODUCED BY B. USHER

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; REVISING DEFINITIONS; REVISING LAWS RELATED TO DEALER DATA; REVISING LAWS RELATED TO PROHIBITED ACTIONS; REVISING LAWS RELATED TO RESPONSIBILITIES AND RESTRICTIONS; REVISING LAWS RELATED TO PROHIBITED ACTS RELATING TO A MOTOR VEHICLE FRANCHISEE; REVISING MOTOR VEHICLE LICENSING REQUIREMENTS; AMENDING SECTIONS 30-11-717, 30-11-718, 30-11-719, 61-4-201, 61-4-202, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

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

Section 1. Section 30-11-717, MCA, is amended to read:

"30-11-717. Definitions. As used in 30-11-718, 30-11-719, [section 4], and this section, the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer data or to write data to a dealer data system, or both, to carry out the specified function.

(2) "Cyber ransom" means to encrypt, restrict, or prohibit or threaten or attempt to encrypt, restrict,

1 or prohibit a dealer's or a dealer's authorized integrator's access to protected dealer data for monetary gain.

2 ~~(2)(3)~~ "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and
3 includes any authorized dealer personnel acting on behalf of the dealer owner-operator.

4 ~~(3)(4)~~ "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or
5 controlled by a dealer and used by the dealer in its business operations or licensed by a dealer that includes a
6 system of web-based applications, computer software, or computer hardware, whether located at the motor
7 vehicle dealership or hosted remotely, and that stores or provides access to protected dealer data and includes
8 dealership management systems and consumer relations management systems.

9 ~~(4)(5)~~ "Dealer data vendor" means any dealer management system provider, ~~or customer consumer~~
10 relationship management system provider, or other vendor providing similar services, ~~other than a motor~~
11 ~~vehicle manufacturer or distributor or a subsidiary or affiliate of a manufacturer or distributor,~~ that permissibly
12 stores protected dealer data pursuant to a contract with a dealer.

13 ~~(5)(6)~~ "Fees" means charges for allowing access to protected dealer data in excess of any direct
14 costs incurred by the dealer data vendor in providing protected dealer data access to an authorized integrator
15 or allowing an authorized integrator to write data to a dealer data system. ~~Fees must be disclosed to the dealer~~
16 ~~prior to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.~~

17 ~~(7)~~ "Prior express written consent" means the dealer's express written consent that is contained in
18 a document separate from any other consent, contract, franchise agreement, or other writing and that contains:

19 (a) the dealer's consent to the data sharing and identification of all parties with whom the data may
20 be shared;

21 (b) all details that the dealer requires relating to the scope and nature of the data to be shared,
22 including the data fields and the duration for which the sharing is authorized; and

23 (c) provisions and restrictions that are required under federal law to allow the sharing.

24 ~~(6)(8)~~ "Protected dealer data" means any:

25 ~~(a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to~~
26 ~~a consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the~~
27 ~~dealer's dealer data system; or~~

28 (a) personal, financial, or other data relating to a consumer that a consumer provides to a dealer or

1 that a dealer otherwise obtains and that is stored in the dealer's data system;

2 (b) ~~any~~-other data regarding a dealer's business operations that is stored in the dealer's dealer
3 data system; or

4 (c) motor vehicle diagnostic data that is stored in a dealer data system. This subsection (8)(c) does
5 not give a dealer any ownership rights to share or use the motor vehicle diagnostic data beyond what is
6 necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to a consumer.

7 (9) "Required manufacturer data" means:

8 (a) data required to be obtained by the manufacturer under federal or state law or to complete or
9 verify a transaction between the dealer and the manufacturer; and

10 (b) information that is reasonably necessary for any of the following:

11 (i) a safety, recall, or other legal notice obligation;

12 (ii) the sale and delivery of a new motor vehicle or a certified used motor vehicle to a consumer;

13 (iii) the validation and payment of consumer or dealer incentives;

14 (iv) claims for dealer-supplied services relating to warranty parts or repairs;

15 (v) the evaluation of dealer performance, including but not limited to the evaluation of the dealer's
16 monthly financial statements and sales or service, consumer satisfaction with the dealer through direct
17 consumer contact, or consumer surveys;

18 (vi) dealer and market analytics;

19 (vii) the identification of the dealer that sold or leased a specific motor vehicle and the time of the
20 transaction;

21 (viii) marketing purposes designed for the benefit of or to direct leads to dealers, not including a
22 consumer's financial information on the consumer's credit application or a dealer's individualized notes about a
23 consumer that are not related to a transaction;

24 (ix) motor diagnostic data; or

25 (x) the development, evaluation, or improvement of the manufacturer's products or services.

26 (10) "STAR standards" means the current, applicable security standards published by the standards
27 for technology in automotive retail.

28 ~~(7)~~(11) (a) "Third party" includes service providers, vendors, dealer data vendors, authorized

1 integrators, and any other ~~individual or entity~~ person other than the dealer.

2 (b) ~~_____~~ The term does not include ~~any a~~ government entity acting pursuant to federal, state, or local
3 law, ~~any entity a third party~~ acting pursuant to a valid court order, ~~or a manufacturer, a motor vehicle~~
4 ~~manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity~~
5 ~~acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the~~
6 ~~privacy of protected dealer data."~~

7

8 **Section 2.** Section 30-11-718, MCA, is amended to read:

9 **"30-11-718. Prohibited actions.** (1) A third party may not do any of the following:

10 (a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system
11 without the prior express written consent of the dealer;

12 (b) take any action by contract, ~~by technical means, or by any other means that would otherwise to~~
13 prohibit or limit a dealer's ability to protect, store, copy, share, or use ~~any~~ protected dealer data. ~~This includes~~
14 ~~but is not limited to~~; including all of the following:

15 (i) imposing any ~~fees~~ fee or other ~~restrictions~~ restriction on the dealer or ~~any an~~ authorized
16 integrator for ~~access to~~ accessing or sharing of protected dealer data or for writing data to a dealer data
17 system, including any fee on a dealer that chooses to submit or push data or information to the third party as
18 prescribed in this section. A third party shall disclose a charge to the dealer and justify the charge by
19 documentary evidence of the costs associated with access or the charge is a fee pursuant to this subsection
20 (1)(b)(i);

21 (ii) prohibiting ~~any a~~ third party that has satisfied or is compliant with the STAR standards or other
22 generally accepted standards that are at least as comprehensive as the STAR standards and that the dealer
23 has identified as one of its authorized integrators from integrating into ~~the~~ the dealer's dealer data system or
24 placing an unreasonable ~~restrictions~~ restriction on integration by any such an authorized integrator or other third
25 party that the dealer wishes to be an authorized integrator. ~~Examples of restrictions include but are not limited~~
26 to For the purposes of this subsection (1)(b)(ii), "unreasonable restriction" includes:

27 (A) ~~restrictions~~ an unreasonable limitation or condition on the scope or nature of the data that is
28 shared with an authorized integrator;

1 (B) ~~restrictions~~ an unreasonable limitation on the ability of the authorized integrator to write data to
2 a dealer data system;

3 (C) ~~restrictions~~ an unreasonable limitation or conditions ~~condition~~ on a third party ~~accessing that~~
4 ~~accesses or sharing~~ shares protected dealer data or ~~writing that writes~~ data to a dealer data system; and

5 (D) requiring unreasonable access to a third party's sensitive, competitive, or other confidential
6 business information ~~of a third party~~ as a condition for ~~access to~~ accessing protected dealer data or sharing
7 protected dealer data with an authorized integrator.

8 (c) prohibit or limit a dealer's ability to store, copy, or ~~securely share,~~ or use protected dealer data
9 outside of the dealer data system in any manner ~~or~~ and for any reason; ~~or~~

10 (d) ~~permit~~ allow access to or access protected dealer data without ~~the~~ prior express written
11 consent ~~of the dealer;~~ or

12 (e) engage in any act of cyber ransom.

13 (2) Prior express written consent may:

14 (a) be unilaterally revoked or amended by the dealer with 30 days' notice without cause and
15 immediately for cause;

16 (b) not be sought or required as a condition of or factor for consideration or eligibility for any
17 manufacturer program, standard, or policy, including those that offer or relate to a bonus, incentive, rebate, or
18 other payment or benefit to a dealer, except that if the bonus, incentive, rebate, or other payment program
19 requires the delivery of the information that is protected dealer data to qualify for the program and receive the
20 program benefits, a dealer shall supply the information to participate in the program.

21 (2)(3) ~~Nothing in this section prevents any dealer~~ This section does not prevent a dealer,
22 manufacturer, or third party from discharging its obligations as a service provider or otherwise under federal,
23 state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

24 (3)(4) A dealer data vendor or an authorized integrator is not responsible for any action taken directly
25 by the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following
26 the written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation
27 regarding the protection of protected dealer data or results in any liability as a consequence of such actions by
28 the dealer.

1 ~~(4)~~(5) A dealer is not responsible for any action taken directly by any of its dealer data vendors or
 2 authorized integrators, or for any action the dealer takes directly in appropriately following the written
 3 instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it
 4 from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a
 5 consequence of such actions by the dealer data vendor or authorized integrator."

6

7 **Section 3.** Section 30-11-719, MCA, is amended to read:

8 **"30-11-719. Other responsibilities and restrictions.** (1) All dealer data vendors and authorized
 9 integrators:

10 ~~(4)~~(a) may access, use, store, or share protected dealer data only to the extent permitted in the
 11 contract with the dealer;

12 ~~(2)~~(b) shall make any agreement regarding access to, sharing or selling of, copying, using, or
 13 transmitting protected dealer data terminable upon no more than 90 days' notice from the dealer;

14 ~~(3)~~(c) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of
 15 consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor
 16 dealer data vendor or authorized integrator, including but not limited to:

17 ~~(a)~~(i) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other
 18 data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator
 19 can access and use; and

20 ~~(b)~~(ii) deleting or returning to the dealer all protected dealer data prior to termination of the contract
 21 pursuant to any written directions of the dealer;

22 ~~(4)~~(d) shall provide a dealer, on request, with a listing of all entities with whom it is sharing dealer
 23 data or with whom it has allowed access to protected dealer data; and

24 ~~(5)~~(e) shall allow a dealer to audit the dealer data vendor's or authorized integrator's access to and
 25 use of any protected dealer data.

26 (2) Unless a dealer gives prior express written consent, a manufacturer may not access, share,
 27 sell, copy, use, or transmit or require a dealer to share or provide access to protected dealer data beyond the
 28 required manufacturer data and may use any required manufacturer data obtained from a dealer data system

1 for the purposes described in subsection (5).

2 (3) A manufacturer may not engage in an act of cyber ransom or take an action by contract,
3 technical means, or otherwise to prohibit or limit a dealer's ability to protect, store, copy, share, or use protected
4 dealer data, including actions described in subsection (3)(b)(ii). A manufacturer or a manufacturer's selected
5 third party may not require a dealer to pay a fee for the sharing of required manufacturer data if the
6 manufacturer both:

7 (a) requires a dealer to provide required manufacturer data through a specific third party that the
8 manufacturer selects; and

9 (b) does not allow the dealer to submit the data using the dealer's choice of a third-party vendor
10 and both of the following apply:

11 (i) the data is in a format that is compatible with the file format required by the manufacturer; and

12 (ii) the third-party vendor satisfies or is in compliance with the STAR standards or other generally
13 accepted standards that are at least as comprehensive as the STAR standards.

14 (4) A manufacturer shall indemnify a dealer for any third-party claims asserted against or damages
15 incurred by the dealer to the extent caused by access to, use of, or disclosure of protected dealer data in
16 violation of this section by the manufacturer or a third party acting on behalf of a manufacturer to whom the
17 manufacturer has provided the protected dealer data. A dealer bringing a cause of action against a
18 manufacturer for a violation of this section has the burden of proof.

19 (5) Except as provided in subsection (2), this section does not restrict or limit a manufacturer's
20 right to obtain required manufacturer data, use required manufacturer data for the purposes prescribed by 30-
21 11-717(9), or use or control data that is proprietary to the manufacturer, or created by the manufacturer,
22 obtained from a source other than the dealer or that is public information.

23 (6) A manufacturer or a third party may not require a dealer to grant the manufacturer, the third
24 party, or any person acting on behalf of the manufacturer or third party direct or indirect access to the dealer's
25 dealer data system. Instead of providing a manufacturer or third party with access to the dealer's data system, a
26 dealer may submit or push data or information to a manufacturer or third party through any widely acceptable
27 electronic file format or protocol that complies with the STAR standards or other generally accepted standards
28 that are at least as comprehensive as the STAR standards."

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2 NEW SECTION. **Section 4. Dealer data vendors -- authorized integrators -- requirements.** (1) A

3 dealer data vendor shall:

4 (a) adopt and make available a standardized framework for the exchange, integration, and sharing
5 of data from dealer data systems with authorized integrators and the retrieval of data by authorized integrators
6 using the STAR standards or a standard that is compatible with the STAR standards; and7 (b) provide access to open application programming interfaces to authorized integrators. If the
8 application programming interfaces are not the reasonable commercial or technical standard for secure data
9 integration, the dealer data vendor may provide a similar open access integration method if that method
10 provides the same or better access to authorized integrators as an application programming interface and uses
11 the required standardized framework.

12 (2) A dealer data vendor and authorized integrator:

13 (a) may access, use, store, or share protected dealer data or any other data from a dealer data
14 system only to the extent allowed in the written agreement with the dealer;15 (b) shall make any agreement relating to access to, sharing or selling of, copying, using, or
16 transmitting protected dealer data terminable on 90-day notice from the dealer;17 (c) on notice of the dealer's intent to terminate the agreement, in order to prevent any risk of
18 consumer harm or inconvenience, shall work to ensure a secure transition of all protected dealer data to a
19 successor dealer data vendor or authorized integrator, including:20 (i) providing access to or an electronic copy of all protected dealer data and all other data stored
21 in the dealer data system in a commercially reasonable time and format that a successor dealer data vendor or
22 authorized integrator can access and use; and23 (ii) deleting or returning to the dealer all protected dealer data before the contract terminates
24 pursuant to the dealer's written directions;25 (d) on a dealer's request, shall provide the dealer with a listing of all entities with whom it is sharing
26 protected dealer data or whom it has allowed access to protected dealer data; and27 (e) shall allow a dealer to audit the dealer data vendor or authorized integrator's access to and use
28 of any protected dealer data.

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Section 5. Section 61-4-201, MCA, is amended to read:

"61-4-201. Definitions. As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distribute" means to sell new motor vehicles other than at retail or to enter into a franchise agreement authorizing a dealer to buy new motor vehicles for resale or to service motor vehicles under a manufacturer's or distributor's warranty.

(3) "Distributor" or "wholesaler" means a person who sells or distributes a line-make of new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(4) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of a line-make of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of a line-make of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(6) "Franchise" means a contract and any agreed-to amendments between or among two or more persons when all of the following conditions are included:

- (a) a commercial relationship of definite duration or continuing indefinite duration is involved;
- (b) the franchisee is granted the right to:
 - (i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or
 - (ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;
- (c) the franchisee, as an independent and separate business, constitutes a component of the franchisor's distribution system; and
- (d) the operation of the franchisee's business is substantially reliant on the franchisor for the

1 continued supply of new motor vehicles, parts, and accessories.

2 (7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a
3 franchise and who offers, sells, and services the new motor vehicles to and for the general public.

4 (8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles
5 and who may enter into a franchise.

6 (9) "Importer" means a person who transports or arranges for the transportation of a foreign
7 manufactured new motor vehicle into the United States for sale in this state.

8 (10) "Line-make" means vehicles that are offered for sale, lease, or distribution under a common
9 name, trademark, or service mark.

10 (11) "Manufacturer" means a person who manufactures or assembles a line-make of new motor
11 vehicles and distributes them directly or indirectly through one or more distributors to one or more new motor
12 vehicle dealers in this state or who manufactures or installs on previously assembled truck chassis special
13 bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a
14 major manufacturing alteration, but does not include a person who installs a camper on a pickup truck. The
15 term includes a central or principal sales corporation or other entity through which, by contractual agreement or
16 otherwise, a manufacturer distributes its products.

17 (12) "Motor vehicle" includes a motorboat and a personal watercraft as defined in 23-2-502, a
18 snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

19 (13) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale
20 regardless of the mileage of the vehicle.

21 (14) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts
22 to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor
23 vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in
24 trade on new motor vehicles.

25 (15) (a) "Retail sale" means the sale of a new motor vehicle.

26 (b) "Retail sale" does not mean a sale:

27 (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale;

28 or

- 1 (ii) that is the result of a transfer between two licensed new motor vehicle dealers.
- 2 (16) "Transferee" means a person or entity that:
- 3 (a) is in possession or control of a new motor vehicle dealer;
- 4 (b) holds an ownership or signed contract interest in a new motor vehicle dealer;
- 5 (c) is acting in a fiduciary capacity for a new motor vehicle dealer; or
- 6 (d) is an heir, devisee, personal representative, beneficiary, successor, or assign of a new motor
- 7 vehicle dealer."

8

9 **Section 6.** Section 61-4-202, MCA, is amended to read:

10 **"61-4-202. License requirements.** (1) A new motor vehicle dealer, manufacturer, distributor, factory

11 branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance

12 with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the

13 discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to

14 financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle.

15 The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors,

16 factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle

17 dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor

18 vehicles as defined by this part.

19 (2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor

20 transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new

21 motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall

22 issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the

23 information required in this section.

24 (3) The following information, if applicable, must be submitted by an applicant upon forms supplied

25 by the department:

- 26 (a) the name and address of the applicant;
- 27 (b) the make and model of each new motor vehicle to be franchised;
- 28 (c) the name and address of each of the applicant's franchisees within the state; ~~and~~

1 (d) the name and address of each factory branch, distributor branch, agent, or representative
2 within the state; and

3 (e) a statement affirming that the relationship between the applicant and the new motor vehicle
4 dealer is subject to the terms and conditions of a standard written agreement applicable to all its new motor
5 vehicle dealers in this state. A copy of the standard written agreement, including all standard terms and
6 conditions applicable to all franchised dealers or distributors in this state must be filed with the application
7 unless the standard written agreement is already on file with the department. Any revision of or additions to the
8 standard basic agreement must be filed with the department within 30 days of dissemination to the new motor
9 vehicle dealers in this state.

10 (4) A license may be renewed each year if the applicant is in compliance with the provisions of this
11 part, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information
12 previously supplied.

13 (5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct
14 dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct
15 dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as
16 provided in this part.

17 (b) Notwithstanding any other licensing provision contained in Montana law, every new motor
18 vehicle dealer shall obtain a license under part 1 of this chapter.

19 (c) The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes
20 that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state
21 regulating new motor vehicle dealers, manufacturers, importers, and distributors.

22 (6) When an objection to a proposal to terminate or not continue a franchise or a proposal to enter
23 into a franchise establishing an additional new motor vehicle dealership of the same line-make is made
24 pursuant to 61-4-206, a replacement license or new license may not be issued under this section to any
25 replacement dealer or new dealer until adjudication by the department of the written objection filed pursuant to
26 61-4-206 and the exhaustion of all appellate remedies available to the objector."

27

28 **Section 7.** Section 61-4-208, MCA, is amended to read:

1 **"61-4-208. Prohibited acts -- rights of franchisees.** (1) A manufacturer, a factory branch, a
2 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of
3 the persons or entities listed may not:

4 (a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor
5 vehicle dealer to:

6 (i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any
7 other commodity that has not been ordered by the new motor vehicle dealer or transferee of a new motor
8 vehicle dealer;

9 (ii) participate in or contribute to any local, regional, or national advertising fund or to participate in
10 or to contribute to contests, giveaways, or other sales devices;

11 (iii) change location of the dealership or to make substantial alterations to the use or number of
12 franchises or the dealership premises or facilities;

13 (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an
14 existing franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or
15 to participate in any program discount, credit, rebate, or sales incentive;

16 (v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other
17 agreement providing otherwise, purchase or utilize goods or services, including electronic services such as
18 websites, data management or storage systems, digital retail platforms, software, or other digital services or
19 platforms, from a vendor, or contract with or engage any ~~from~~ a vendor identified, selected, or designated by a
20 manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or
21 entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services
22 of like kind, quality, and design from a vendor that the franchisee chooses. It is a violation of this section for a
23 manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or
24 entities listed to coerce a franchisee to purchase or utilize certain goods or services by the withholding of any
25 benefit, including monetary incentives and vehicle allocation.;

26 (vi) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor
27 vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-
28 make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new

1 motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer
2 or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities
3 requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle
4 dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or
5 display space.

6 (vii) refrain from participation in the management of, investment in, or acquisition of any other line of
7 new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle
8 dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in
9 compliance with any reasonable capital standards and facility requirements of the manufacturer; or

10 (viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch,
11 importer, or any representative of any of these persons or entities or do any other act unfair to the new motor
12 vehicle dealer or transferee of a new motor vehicle dealer by:

13 (A) withholding or threatening to withhold any incentive payments in whole or in part or denying or
14 threatening to deny the dealer the right to participate in an incentive program in which more than one dealer of
15 the line-make in this state is eligible to participate and on the same terms. Nothing contained in this subsection
16 (1)(a)(viii)(A) requires that a dealer be qualified by a manufacturer or distributor for incentive payments or the
17 right to payments or benefits from an incentive program and a manufacturer, factory branch, distributor,
18 distributor branch, or importer may not be prohibited from informing a dealer of this, unless the dealer meets the
19 qualifications, requirements, and standards for payment or benefits reasonably established by the
20 manufacturer, factory branch, distributor, distributor branch, or importer. A manufacturer, factory branch,
21 distributor, distributor branch, or importer may not deny an incentive payment or benefit claim based solely on a
22 dealer's incidental failure to comply with a specific processing requirement, such as a clerical error or other
23 administrative technicality that does not put into question the legitimacy of the claim.

24 (B) threatening to cancel or not renew a franchise existing between the manufacturer, factory
25 branch, distributor, distributor branch, importer, or any representative of any of these persons or entities and the
26 new motor vehicle dealer or transferee of a new motor vehicle dealer; or

27 ~~(B)~~(C) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle
28 parts or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the

1 manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of any of
2 these persons or entities;

3 (b) delay, refuse, or fail to deliver new motor vehicles or new vehicle parts or accessories in a
4 reasonable time and in a reasonable quantity relative to sufficiently reasonable quantity to permit the dealer to
5 meet the manufacturer, factory branch, distributor, distributor branch, or importer minimum sales requirements,
6 and considering the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities and sales
7 potential in the dealer's relevant market area after accepting an order for any new vehicle, parts, or accessories
8 as are covered by the franchise from a new motor vehicle dealer having a franchise for the retail sale of any
9 new vehicle, parts, or accessories covered by the franchise or transferee of a new motor vehicle dealer if the
10 new motor ~~vehicles are~~ vehicle, part, or accessory is publicly advertised as being available for immediate
11 delivery or actually being delivered by the manufacturer, factory branch, distributor, distributor branch, or
12 importer. This subsection (1)(b) is not violated if the failure is caused by a force majeure beyond the control of
13 the manufacturer, factory branch, distributor, distributor branch, or importer, provided that a manufacturer,
14 factory branch, distributor, distributor branch, or importer who does not comply with this subsection (1)(b) may
15 not assert failure of the dealer to meet minimum sales requirements established by the manufacturer, factory
16 branch, distributor, distributor branch, or importer as good cause under 61-4-205, 61-4-206, or 61-4-207
17 whatever the reason for the manufacturer, factory branch, distributor, distributor branch, or importer's
18 noncompliance;

19 (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor
20 vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or
21 transferee of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline;
22 noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or
23 compliance with subjective standards;

24 (d) whether by agreement, program, incentive provision, or provision for loss of incentive payments
25 or other benefits, amend or attempt to amend its franchise agreement or similar agreement governing the sales
26 and leasing of new motor vehicles or establish or implement a franchise agreement for the sales and leasing of
27 new motor vehicles, under which the manufacturer, factory branch, distributor, distributor branch, or importer:

28 (i) maintains a website or other electronic or digital means of communication for negotiating

1 binding terms of sale or leasing of new motor vehicles directly with the retail buyer or lessee on prices or other
2 substantive terms of sale or leasing of new vehicles;

3 (ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyer or
4 lessee. However, a manufacturer, factory branch, distributor, distributor branch, or importer may maintain a
5 common supply of new vehicles of which it maintains ownership until vehicles are sold to dealers from which
6 more than one dealer may buy vehicles provided that the manufacturer, factory branch, distributor, distributor
7 branch, or importer may not use the common supply of new vehicles to engage in the negotiation of binding
8 terms of sales or leases directly with a retail buyer or lessee and a dealer may buy vehicles from the common
9 supply for the dealer's inventory without having reached agreement with a retail buyer or lessee for sale or
10 lease of the new vehicle.

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

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

18 (v) reserves the right to offer or negotiate directly with the retail buyer or lessee at the time of sale
19 in connection with the sale of a new motor vehicle sale of a service contract, vehicle maintenance agreement,
20 guaranteed asset protection agreement or waiver, or any other vehicle-related products and services. A
21 manufacturer, factory branch, distributor, distributor branch, or importer may engage in fleet sales with a fleet
22 customer that has a designation as such by the manufacturer, factory branch, distributor, distributor branch, or
23 importer because it has purchased or has committed to purchase five or more vehicles under the fleet program.
24 Nothing in this section limits a manufacturer, factory branch, distributor, distributor branch, or importer from
25 setting or advertising a manufacturer's suggested retail price.

26 (e) include in any franchise or similar agreement governing the sales, leasing, or service of new
27 motor vehicles, or to enforce or seek to enforce, a right in any franchise agreement for the manufacturer,
28 factory branch, distributor, distributor branch, or importer to unilaterally amend or modify the franchise

1 agreement;

2 (f) amend or modify or attempt to amend or modify any dealer sales and service agreement
 3 including but not limited to the dealer's relevant market area if the amendment or modification substantially and
 4 adversely affects the dealer's rights, obligations, investment, or return on investment, without giving a 60-day
 5 advance written notice of the proposed amendment or modification to the dealer;

6 (g) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or
 7 consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to
 8 the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility
 9 relating to the sale of new motor vehicles, parts, or service contracts in determining:

10 (i) eligibility to purchase program, certified, or other used motor vehicles;

11 (ii) the volume, type, or model of program, certified, or other used motor vehicles that the new
 12 motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

13 (iii) the price or prices of any program, certified, or other used motor vehicles that the new motor
 14 vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

15 (iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor
 16 vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program,
 17 certified, or other used motor vehicles; or

18 ~~(e)~~(h) enforce a right of first refusal to acquire the new motor vehicle dealer's assets or ownership by
 19 a manufacturer, distributor, or manufacturer's assignee or manufacturer's representative or to require a dealer
 20 to grant a right of option to a manufacturer, distributor, or manufacturer's representative.

21 (2) (a) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the
 22 manufacturer, factory branch, distributor, distributor branch, or importer is beyond the control of the listed
 23 persons or entities.

24 (b) (i) Subsection (1)(a)(v) does not apply to goods or services specifically eligible for
 25 reimbursement of over one-half the cost of the goods or services pursuant to a franchisor or distributor program
 26 or incentive granted to the franchisee on reasonable, written terms.

27 (ii) For the purposes of subsection (1)(a) and this subsection (2)(b), "goods" do not include:

28 (A) moveable displays, brochures, or promotional materials containing material subject to the

1 intellectual property rights of a franchisor or parts to be used in repairs under warranty obligations of a
2 franchisor; or

3 (B) ~~special tools or~~ training required by the franchisor.

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

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

14 (A) the reasons for the proposed modification;

15 (B) whether the proposed modification is applied to or affects all motor vehicle dealers in a
16 nondiscriminatory manner;

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

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

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

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

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

28 (C) the growth or decline in population, density of population, and new car registrations in the

1 relevant market area and the market as a whole;

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

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

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

9 (3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer, a factory branch, a
 10 distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of
 11 any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in
 12 Montana ~~that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in~~
 13 ~~Montana.~~ This prohibition includes any dealership of a new line-make established by a manufacturer, factory
 14 branch, distributor, distributor branch, or importer or a subsidiary or a company affiliated through ownership of
 15 the manufacturer, factory branch, distributor, distributor branch, or importer of at least 25% of the equity of the
 16 company.

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

24 ~~(b) If there is no independent person available to own and operate a motor vehicle dealership in a~~
 25 ~~manner that is consistent with the public interest, a manufacturer, a factory branch, a distributor, a distributor~~
 26 ~~branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons~~
 27 ~~or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during~~
 28 ~~the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably~~

1 ~~withheld by the manufacturer.~~

2 (c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field
3 representative, an officer, an agent, or any representative of any of these persons or entities may own an
4 interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory
5 branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any
6 representative of any of these persons or entities has a bona fide business relationship with an independent
7 person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to
8 loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable
9 terms and conditions.

10 (d) A manufacturer, factory branch, distributor, distributor branch, or importer or any representative
11 of any of these entities may sell or activate for a fee a permanent or temporary motor vehicle accessory, option,
12 add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or
13 distributed by the manufacturer, factory branch, distributor, distributor branch, or importer and registered in
14 Montana only if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the
15 motor vehicle through remote electronic transmission. If the motor vehicle was sold or leased as new by a
16 Montana franchised motor vehicle dealer within the 3-year period preceding the remote electronic transmission,
17 then the manufacturer, factory branch, distributor, distributor branch, or importer shall pay the Montana
18 franchised motor vehicle dealer a minimum of 10% of the gross revenue received by the manufacturer, factory
19 branch, distributor, distributor branch, or importer for the sale or activation and renewals during the 3-year
20 period. The manufacturer, factory branch, distributor, distributor branch, or importer shall provide each of its
21 franchised dealers with a quarterly statement of the revenue received by the manufacturer, factory branch,
22 distributor, distributor branch, or importer during that quarter for such sales or activations and renewals relating
23 to those vehicles sold or leased by the dealer during the preceding 3 years.

24 (e) When providing a new motor vehicle to a dealer for sale or lease to which the provisions of
25 subsection (3)(d) may apply, the manufacturer, factory branch, distributor, distributor branch, or importer shall
26 provide to the dealer a written disclosure that may be provided to a potential retail buyer or lessee of the new
27 motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or
28 maintained by the manufacturer or distributor through over-the-air or remote means and the charge to the

1 customer at the time of the new motor vehicle sale or lease for such initiation, update, change, or maintenance.
 2 A manufacturer or distributor may comply with this subsection (3)(e) by notifying the dealer that the information
 3 is available on a website or by other digital means."

4

5 NEW SECTION. Section 8. Codification instruction. [Section 4] is intended to be codified as an
 6 integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [section 4].

7

8 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

9

10 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
 11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 12 the part remains in effect in all valid applications that are severable from the invalid applications.

13

14 NEW SECTION. Section 11. Applicability. (1) [This act] applies to all presently existing or hereafter
 15 established systems of distribution of motor vehicles in this state, including all existing agreements between a
 16 manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the
 17 extent that such application would impair valid contractual agreements in violation of the state or federal
 18 constitution.

19 (2) [This act] does not:

20 (a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that
 21 is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

22 (b) authorize a dealer or third party to use data that is obtained from a person in a manner that is
 23 inconsistent with either:

24 (i) an agreement with the person; or

25 (ii) the purposes for which the person provided the data to the dealer or third party.

26 - END -