

## 30-11-701, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)***

### 30-11-701 Definitions.

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As used in this part, the following definitions apply:

- (1)** “Cancellation” or “canceled” means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.
- (2)** “Current net price” means:
  - (a)** with respect to a dealership contract, the price listed in the wholesaler’s, manufacturer’s, or distributor’s price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and
  - (b)** with respect to a distribution contract, the price listed in the manufacturer’s or distributor’s price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.
- (3)** “Dealership contract” means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.
- (4)** “Distribution contract” means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.
- (5)** “Inventory” means:
  - (a)** farm implements, machinery, attachments, and repair parts;
  - (b)** industrial and construction equipment and repair parts;
  - (c)** new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;
  - (d)** motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;
  - (e)** snowmobiles, as defined in 23-2-601, and repair parts;
  - (f)** off-highway vehicles, as defined in 23-2-801, and repair parts; and
  - (g)** vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.
- (6)** “Net cost” means:

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(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(7) “Retailer” or “retail dealer” means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(8) “Wholesaler” means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

## History

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En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989; amd. Sec. 37, Ch. 542, L. 2005; amd. Sec. 1, Ch. 168, L. 2009; § 5, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2019 amendment by ch. 283 added (1); redesignated the former introductory language of (1) as the introductory language of (2); and redesignated former (2) through (7) as (3) through (8).

### Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### Separability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Research References & Practice Aids

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Hierarchy Notes:

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 2019 Amendment:

Chapter 283 inserted definition of cancellation or canceled; and made minor changes in style. Amendment effective May 3, 2019.

#### Preamble:

The preamble attached to Ch. 283, L. 2019, provided: "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

#### Severability:

Section 19, Ch. 283, L. 2019, was a severability clause.

#### 2009 Amendment:

Chapter 168 in definition of inventory in (c) at beginning substituted "new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers" for "automobiles, trucks" and before "dealer" deleted "an automobile or truck"; and made minor changes in style. Amendment effective April 6, 2009.

#### Applicability:

Section 3, Ch. 168, L. 2009, provided: "[This act] applies to dealership contracts entered into or renewed on or after [the effective date of this act]." Effective April 6, 2009.

#### 2005 Amendment:

Chapter 542 in definition of inventory in (c) at end substituted reference to 61-1-101 for reference to 61-1-314 and in (d) substituted reference to 61-1-101 for reference to Title 61, chapter 1, part 1. Amendment effective January 1, 2006.

#### 1989 Amendment:

In (4) added motorcycles, motor-driven cycles, recreational vehicles, quadricycles, snowmobiles, off-highway vehicles, vessels, detachable vessel motors or engines, and repair parts to definition of inventory; and made minor changes in form. Amendment effective March 7, 1989.

#### Saving Clause:

Section 2, Ch. 51, L. 1989, was a saving clause.

**1985 Amendment:**

At beginning of (1)(a) inserted "with respect to a dealership contract"; inserted definitions of current net price with respect to a distribution contract and a dealership contract; at beginning of (5)(a) inserted "with respect to a dealership contract"; and inserted definition of net cost with respect to a distribution contract and definition of wholesaler.

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## 30-11-702, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)*

### **30-11-702 Repurchase of inventory items upon cancellation of dealership or distribution contract.**

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**(1)** Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

**(a)** 100% of the net cost of all new, undamaged, and complete inventory items held by the dealer at the time of cancellation, including vehicles with less than 1,000 miles on the odometer, plus cost of freight to return the inventory; and

**(b)** 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

**(2)** Upon cancellation of a written distribution contract entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

**(a)** 100% of the net cost of all new, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation, including vehicles with less than 1,000 miles on the odometer; and

**(b)** 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

**(3)** Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the retailer's or wholesaler's repurchase request. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

**(4)** A manufacturer or distributor has 30 days from the date of the repurchase request to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts.

### **History**

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En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991; § 6, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2019 amendment by ch. 283 substituted “Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer” for “If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer” in the introductory language of (1); in (1)(a), deleted “unused” preceding “undamaged” and added “including vehicles with less than 1,000 miles on the odometer”; substituted “Upon cancellation of a written distribution contract entered into between a wholesaler and a manufacturer or distributor” for “If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract” in the introductory language of (2); in (2)(a), deleted “unused” preceding “undamaged” and added “including vehicles with less than 1,000 miles on the odometer”; substituted “retailer’s or wholesaler’s repurchase request” for “return of the inventory items to the wholesaler, manufacturer, or distributor” in the first sentence of (3); and added (4).

### Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### Separability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 2019 Amendment:

Chapter 283 in (1) at beginning substituted "Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall" for "If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall"; in (1)(a) near beginning after "cost of all new" deleted "unused" and near middle inserted "including vehicles with less than 1,000 miles on the odometer"; in (2) at beginning substituted "Upon cancellation of a written distribution contract entered into between a wholesaler and a manufacturer or distributor" for "If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract"; in (2)(a) near beginning after "cost of all new" deleted "unused" and at end inserted "including vehicles with less than 1,000 miles on the odometer"; in (3) at end of first sentence substituted "retailer's or wholesaler's repurchase request" for "return of the inventory items to the wholesaler, manufacturer, or distributor"; and inserted (4) regarding 30 days to complete an inventory, evaluation, and analysis. Amendment effective May 3, 2019.

#### Preamble:

The preamble attached to Ch. 283, L. 2019, provided: "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

#### Severability:

Section 19, Ch. 283, L. 2019, was a severability clause.

#### 1991 Amendment:

In (1)(a), after "items", deleted "except repair parts" and after "cancellation" inserted "plus cost of freight to return the inventory"; in (1)(b) and (2)(b) increased percentage from 85% to 100% and after "catalog" inserted "or the last catalog or price list in which the repair part was listed as"; in (1)(b), after "cancellation", inserted "plus cost of freight to return the repair parts"; and in (3), before "return", substituted "within 60 days of the" for "upon". Amendment effective April 22, 1991.

#### Severability:

Section 9, Ch. 522, L. 1991, was a severability clause.

#### 1985 Amendment:

Near beginning of (1) after "dealership contract", deleted "evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement"; inserted (2) stating manufacturer's and distributor's duties relating to inventory repurchase upon cancellation of distribution contract; and in first sentence of (3) substituted "retailer's or wholesaler's account" for "retailer's account" and substituted "subsection (1) or (2)" for "subsection (1)".

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## 30-11-703, MCA

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### **30-11-703 Excepted inventory.**

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The following inventory is not subject to the repurchase requirements of 30-11-702:

- (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;
- (2) any repair part that is in a broken or damaged package;
- (3) any single repair part that is priced as a set of two or more items;
- (4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;
- (6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;
- (7) any inventory item other than a repair part that is not in essentially new, undamaged, and complete condition;
- (8) any repair part that is not in new, unused, or undamaged condition;
- (9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;
- (10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and
- (11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702.

### **History**

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En. Sec. 3, Ch. 338, L. 1983; amd. Sec. 940, Ch. 56, L. 2009; § 7, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### **Notes**

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Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### **Amendment Notes**

The 2019 amendment by ch. 283 deleted “unused” preceding “undamaged” in (7); and added the second sentence of (11).

### **Preambles**

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### **Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## **State Notes**

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## **Notes**

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### **Compiler's Comments**

#### **2019 Amendment:**

Chapter 283 in (7) after “essentially new” deleted “unused”; in (11) inserted second sentence regarding inventory acquired by trade between or among dealers in the ordinary course of business; and made minor changes in style. Amendment effective May 3, 2019.

#### **Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

#### **Severability:**

30-11-703, MCA

Section 19, Ch. 283, L. 2019, was a severability clause.

**2009 Amendment:**

Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

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### **30-11-704 Repurchase of inventory of deceased retailer or wholesaler.**

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If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702.

### **History**

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En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

### **State Notes**

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### **Notes**

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#### **Compiler's Comments**

##### **1985 Amendment:**

Near beginning of sentence substituted "retailer, wholesaler, or majority stockholder" for "retailer or majority stockholder" and after "operating as a retailer" inserted "or wholesaler".

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## 30-11-705, MCA

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*LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)*

### **30-11-705 Reimbursement for or repurchase of signs, special equipment, and special tools.**

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Upon the cancellation of a dealership contract, a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

- (1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;
- (2)
  - (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or
  - (b) if a sign, item of special equipment, or special tool has a service agreement or if the sign, item of special equipment, or special tool is leased by the retailer, the amounts required to be paid upon termination of the service agreement or the lease under the terms of the service or lease agreement; and
- (3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools.

### **History**

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En. Sec. 1, Ch. 177, L. 2001; § 8, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### **Notes**

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#### **Effective Dates**

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

#### **Amendment Notes**

## 30-11-705, MCA

The 2019 amendment by ch. 283 rewrote the introductory language, which formerly read: "Upon the termination, cancellation, nonrenewal, or refusal to continue a dealership contract by a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall pay the retailer"; substituted "acquired from any source, because" for "if the acquisition of" in (1); substituted "a sign, item of special equipment, or special tool has a service agreement or if the sign, item of special equipment, or special tool is leased by the retailer, the amounts required to be paid upon termination of the service" for "the special equipment has a service agreement or the special tools are leased by the retailer, the amounts that are required to terminate the service" in (2)(b); and added "removing, repairing damage caused by removal" in (3).

**Preambles**

The preamble attached to Ch. 283, L. 2019, provided: "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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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."

**Separability**

Section 19, Ch. 283, L. 2019 provided: "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."

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

**State Notes**

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**Notes**

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**Compiler's Comments****2019 Amendment:**

Chapter 283 substituted current introductory clause for former introductory clause that read: "Upon the termination, cancellation, nonrenewal, or refusal to continue a dealership contract by a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall pay the retailer"; in (1) near middle substituted "acquired from any source, because the sign" for "if the acquisition of the sign"; in (2)(b) at beginning substituted "if a sign, item of special equipment, or special tool has" for "if the special equipment has", near middle substituted "if the sign, item of special equipment, or special tool is leased" for "the special tools are leased", and after "amounts" substituted "required to be paid upon termination of" for "that are required to terminate"; in (3) near beginning inserted

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“removing, repairing damage caused by removal”; and made minor changes in style. Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**Saving Clause:**

Section 4, Ch. 177, L. 2001, was a saving clause.

**Effective Date:**

Section 5, Ch. 177, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

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**30-11-706 through 30-11-710 reserved.**

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Annotations

**Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

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# 30-11-711, MCA

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## 30-11-711 Rights not affected.

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(1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

## History

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En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 1985 Amendment:

In (1) near middle of subsection, substituted "retailer's or wholesaler's account" for "retailer's account" and near end of subsection, substituted "retailer's or wholesaler's purchase" for "retailer's purchase"; and at end of (2) after "retailer", inserted "or wholesaler".

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## 30-11-712, MCA

Current through the 2021 Session of the Montana Legislature.

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### **30-11-712 Civil liability.**

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If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for:

- (1) all sums required under this part;
- (2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;
- (3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at a rate calculated pursuant to 25-9-205 until paid; and
- (4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses.

### **History**

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En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985; § 9, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### **Notes**

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#### **Effective Dates**

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

#### **Amendment Notes**

The 2019 amendment by ch. 283 rewrote the section, which formerly read: "If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs."

#### **Preambles**

The preamble attached to Ch. 283, L. 2019, provided: "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, 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 motor vehicle manufacturers, distributors, and factory or

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distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

**Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

**State Notes**

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**Notes**

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**Compiler’s Comments****2019 Amendment:**

Chapter 283 in introductory clause in first sentence near middle inserted “or reimburse a wholesaler for” and “or a retailer for any inventory, signs, special equipment, or special tools” and at end deleted “100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer’s or wholesaler’s attorney fees, and court costs”; inserted (1) regarding sums required under this part; inserted (2) regarding storage charges for warehouse storage plus inventory financing charges; inserted (3) regarding interest on sums due from the date of the request until paid; inserted (4) regarding attorney fees, court costs, and litigation expenses; and made minor changes in style. Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**1985 Amendment:**

After “freight charges paid by the retailer”, inserted “or wholesaler” and substituted “retailer’s or wholesaler’s attorney fees” for “retailer’s attorney fees”.

30-11-712, MCA

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# 30-11-713, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)*

## 30-11-713 Remedy as supplemental.

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- (1) The provisions of this part are supplemental to any agreement between:
- (a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special equipment, or special tools; or
  - (b) the wholesaler and manufacturer or distributor governing the inventory.
- (2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in this part with regard to any inventory, parts, signs, special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage.

## History

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En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985; amd. Sec. 941, Ch. 56, L. 2009; § 10, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2019 amendment by ch. 283 added “signs, special equipment, or special tools” in (1)(a); and, in (2), substituted “this part” for “30-11-702” in the first sentence and “this part with regard to any inventory, parts, signs, special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage” for “30-11-702 with regard to any inventory not covered by contract” in the second sentence.

### Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or

## 30-11-713, MCA

distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

**Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

**State Notes**

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**Notes**

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**Compiler’s Comments****2019 Amendment:**

Chapter 283 in (1)(a) at end inserted “signs, special equipment, or special tools”; and in (2) at end of first sentence and near middle of second sentence substituted “this part” for “30-11-702” and near middle of second sentence after “any inventory” substituted current text regarding parts, signs, special equipment, or special tools not included in contract remedies and one time limit on claim of loss or damage for “not covered by contract”. Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2009 Amendment:**

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**1985 Amendment:**



30-11-713, MCA

Inserted (1)(b) providing remedy supplemental to any agreement between the wholesaler and manufacturer or distributor; and in (2) in first sentence, substituted “retailer or wholesaler may elect” for “retailer may elect” and in second sentence, substituted “retailer’s or wholesaler’s right” for “retailer’s right”.

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## 30-11-717, MCA

Current through the 2021 Session of the Montana Legislature.

**LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)**

### 30-11-717 Definitions.

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As used in 30-11-718, 30-11-719, 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 to carry out the specified function.
- (2) “Dealer” has the same meaning as “new motor vehicle dealer” provided in 61-4-201 and includes any authorized dealer personnel acting on behalf of the dealer owner-operator.
- (3) “Dealer data system” means any software, hardware, or firmware owned, leased, rented, or controlled by a dealer and used by the dealer in its business operations.
- (4) “Dealer data vendor” means any dealer management system provider or customer relationship management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer data pursuant to a contract with a dealer.
- (5) “Fees” means charges for access to protected dealer data. Fees must be disclosed to the dealer prior to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.
- (6) “Protected dealer data” means:
  - (a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer’s dealer data system; or
  - (b) any other data regarding a dealer’s business operations that is stored in the dealer’s dealer data system.
- (7) “Third party” includes service providers, vendors, dealer data vendors, authorized integrators, and any other individual or entity other than the dealer. The term does not include any government entity acting pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the privacy of protected dealer data.

### History

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§ 1, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Codification

Section 18, Ch. 283, L. 2019 provided: “(1) 30-11-717 through 30-11-719 are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to 30-11-717 through 30-11-719 .

(2) 61-4-213 is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to 61-4-213.”

### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Severability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## State Notes

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## Notes

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### Compiler’s Comments

#### Effective Date:

Section 20, Ch. 283, L. 2019, provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

#### Preamble:

The preamble attached to Ch. 283, L. 2019, provided: “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

#### Severability:

Section 19, Ch. 283, L. 2019, was a severability clause.

30-11-717, MCA

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## 30-11-718, MCA

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**LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)**

### **30-11-718 Prohibited actions.**

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(1) A third party may not:

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

(b) take any action by contract, by technical means, or by any other means that would prohibit or limit a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited to:

(i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or sharing of protected dealer data or for writing data to a dealer data system;

(ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating into that dealer's dealer data system, or placing unreasonable restrictions on integration by any such authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of restrictions include but are not limited to:

(A) restrictions on the scope or nature of the data shared with an authorized integrator;

(B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

(C) restrictions or conditions on a third party accessing or sharing protected dealer data or writing data to a dealer data system; and

(D) requiring access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

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

(d) permit access to or access protected dealer data without the express written consent of the dealer.

(2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

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

(4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from

## 30-11-718, MCA

meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data vendor or authorized integrator.

## History

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§ 2, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Codification

Section 18, Ch. 283, L. 2019 provided: “(1) 30-11-717 through 30-11-719 are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to 30-11-717 through 30-11-719 .

(2) 61-4-213 is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to 61-4-213.”

### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Severability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### Effective Date:

Section 20, Ch. 283, L. 2019, provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

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# 30-11-719, MCA

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**LexisNexis® Montana Code Annotated > Title 30 Trade and Commerce (Chs. 1 — 22) > Chapter 11 Sales (Pts. 1 — 9) > Part 7 Canceled Dealership Contracts Repurchase Requirements (§§ 30-11-701 — 30-11-719)**

## 30-11-719 Other responsibilities and restrictions.

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All dealer data vendors and authorized integrators:

- (1) may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;
- (2) shall make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable upon no more than 90 days' notice from the dealer;
- (3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including but not limited to:
  - (a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can access and use; and
  - (b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;
- (4) shall provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or with whom it has allowed access to protected dealer data; and
- (5) shall allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

## History

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§ 3, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Codification

Section 18, Ch. 283, L. 2019 provided: "(1) 30-11-717 through 30-11-719 are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to 30-11-717 through 30-11-719 .

(2) 61-4-213 is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to 61-4-213."

### Editor's Notes



## 30-11-719, MCA

In 2020, the Code Commissioner clarified language in subsection (2), (4), and (5).

**Effective Dates**

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

**Severability**

Section 19, Ch. 283, L. 2019 provided: “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.”

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 30, Ch. 11, MCA

Title 30, Ch. 11, Pt. 7, MCA

**State Notes**

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**Notes**

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**Compiler’s Comments****Effective Date:**

Section 20, Ch. 283, L. 2019, provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**Part Case Notes**

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**Consignment and Sales Agreement Subject to MFIDA — Damage Award Proper:**

The parties entered a consignment and sales agreement for the sale of farm equipment, under which plaintiff would consign and sell certain equipment to defendant for sale to defendant’s customers. Plaintiff subsequently filed an action to declare the agreement void. The District Court denied plaintiff’s motion and entered judgment for

30-11-719, MCA

defendant, holding that plaintiff changed the competitive circumstances of the agreement, and awarded damages to defendant. Defendant appealed on grounds that damages were underestimated. Plaintiff cross-appealed on grounds that the court erred in finding that the agreement was subject to the Montana Farm Implements Dealership Act (MFIDA), that the damage award was improper, and that the court erred by concluding that defendant did not waive the MFIDA by agreeing to a termination provision in the agreement that allowed plaintiff to cancel the agreement within 30 days of notice to defendant. The Supreme Court affirmed on all issues. The MFIDA was enacted for a public purpose and defendant did not waive the protective provisions of the MFIDA by entering the agreement, so the agreement was subject to the MFIDA. Additionally, there was substantial evidence in the record, including testimony from numerous experts, to support the damage award. Although several methods were proposed to calculate damages, the District Court was in the best position to judge the credibility of the witnesses and to resolve the conflicting methods, and the Supreme Court declined to disturb the District Court's findings based on the record. *Tractor & Equip. Co. v. Zerbe Bros.*, 2008 MT 449, 348 M 30, 199 P3d 222 (2008).

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## 61-4-131, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### 61-4-131 Definitions.

---

As used in this part, the following definitions apply:

(1) “Broker” means a person:

(a) who engages in the business of offering to procure or procuring a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle on behalf of another; or

(b) who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle by negotiating purchases, contracts, sales, or exchanges on behalf of another and who does not store, display, or take ownership of a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.

(2)

(a) “Dealer”, except as provided in subsection (2)(b), includes a new dealer or a used dealer licensed under this part.

(b) For purposes of 61-4-132 through 61-4-135, 61-4-137, 61-4-141, and 61-4-150, the term is limited to a new motor vehicle dealer as defined in 61-4-201.

(3)

(a) “Designated family member” means the spouse, child, grandchild, parent, brother, or sister of a new motor vehicle dealer, as defined in 61-4-201, who:

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer’s ownership interest in the dealership under the terms of the dealer’s will or under the laws of intestate succession of this state; or

(B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer’s property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4)

(a) “Established place of business” means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a person licensed under this part. A building is actually occupied if the licensee’s books and records are kept in the building and, except for approved off-premises sales, the licensee’s business is transacted within the building.

## 61-4-131, MCA

- (b) A licensee's established place of business may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101 (6)(e) regulating the distance between display lots and the recordkeeping building are met.
- (c) The geographic location of the permanent building actually occupied by the licensee or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.
- (5) "New", when describing a motor vehicle, power sports vehicle, or trailer, means that the motor vehicle, power sports vehicle, or trailer has not been the subject of a retail sale.
- (6) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
- (7)
- (a) "Power sports vehicle" includes a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.
- (b) A motorcycle or quadricycle must be treated as an off-highway vehicle if the motorcycle or quadricycle is not originally equipped for use on a highway.
- (c) A sailboat that is 12 feet in length or longer is treated as a motorboat.
- (8)
- (a) "Trailer" has the meaning provided in 61-1-101, but does not include a trailer that has an unloaded weight of less than 500 pounds.
- (b) A travel trailer, semitrailer, or pole trailer is treated as a trailer under this part.
- (9) "Used", when describing a motor vehicle, power sports vehicle, or trailer, means that title to the motor vehicle, power sports vehicle, or trailer has been transferred because of a prior retail sale.

## History

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En. 51-609 by Sec. 1, Ch. 381, L. 1977; R.C.M. 1947, 51-609(1), (3); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 5, Ch. 221, L. 1997; amd. Sec. 1, Ch. 335, L. 2003; amd. Sec. 168, Ch. 542, L. 2005; amd. Sec. 49, Ch. 329, L. 2007; § 2, Ch. 93, L. 2017, effective March 23, 2017; § 13, Ch. 323, L. 2017, effective January 1, 2018.

Annotations

## Notes

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### Notification to tribal governments

Section 28, Ch. 323, L. 2017, provided: "The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe."

### Effective Dates

Section 5, Ch. 93, L. 2017, provided: "This act is effective on passage and approval." Approved March 23, 2017.

Section 29, Ch. 323, L. 2017, provided: "(1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2017.

(2) [Sections 1, 2, 6, 14 through 20, 22, 24, and this section] are effective on passage and approval.

## 61-4-131, MCA

(3) [Sections 7 through 13] are effective January 1, 2018." Approved May 4, 2017.

**Amendment Notes**

The 2017 amendment by ch. 323 substituted "requirements of 61-4-101(6)(e)" for "requirements of 61-4-101(5)(e)" in (4)(b).

The 2017 amendment by ch. 93 deleted "61-4-141" following "61-4-137" in (2)(b).

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

**State Notes**

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**Notes**

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**Compiler's Comments****2017 Amendments — Composite Section:**

Chapter 93 in (2)(b) deleted reference to 61-4-141. Amendment effective March 23, 2017.

**2007 Amendment:**

Chapter 329 in definition of broker in (a) and two places in (b) inserted "a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle" and in (b) after "ownership of" deleted "any vehicles for the purpose of selling"; in definition of dealer inserted (a) concerning new dealer and used dealer and in (b) at beginning inserted "For purposes of 61-4-132 through 61-4-135, 61-4-137, 61-4-141, and 61-4-150, the term is limited to"; in definition of designated family member near end substituted "new motor vehicle dealer, as defined in 61-4-201" for "dealer"; in definition of established place of business in (a) at end of first sentence substituted "person licensed under this part" for "dealer" and in second sentence after "occupied" deleted "by a dealer" and in two places substituted "licensee's" for "dealer's", in (b) at beginning substituted "licensee's" for "dealer's" and substituted "61-4-101(5)(e)" for "61-4-101(4)(d)", and in (c) substituted "licensee" for "dealer"; inserted definitions of new, power sports vehicle, trailer, and used; deleted definition of trailer dealer that read: "Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers"; and made minor changes in style. Amendment effective January 1, 2008.

**2005 Amendment:**

Chapter 542 in introductory clause substituted "this part" for "61-4-131 through 61-4-137, 61-4-141, and 61-4-150"; inserted definitions of broker, established place of business, parking, and trailer dealer; deleted definition of motor vehicle that read: "Motor vehicle" has the same meaning as provided in 61-4-201"; deleted definition of new motor

## 61-4-131, MCA

vehicle that read: ““New motor vehicle” has the same meaning as provided in 61-4-201”; and made minor changes in style. Amendment effective January 1, 2006.

**2003 Amendment:**

Chapter 335 in introductory clause inserted reference to 61-4-141 and 61-4-150; inserted definition of dealer; in definition of designated family member at end of (a)(i)(A) inserted reference to laws of intestate succession of this state and at beginning of (a)(ii) deleted “under the laws of intestate succession of this state or who”; inserted definitions of motor vehicle and new motor vehicle; and made minor changes in style. Amendment effective October 1, 2003.

**1997 Amendment:**

Chapter 221 deleted definition of Department as Department of Commerce; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

**1981 Amendment:**

Substituted “department of commerce” for “department of business regulation” in (1).

## 61-4-132, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### **61-4-132 Right of designated family member to succeed in dealership ownership.**

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(1) Any designated family member of a retiring, deceased, or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement upon the retiring dealer or the family member of a deceased or incapacitated dealer giving the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of the intention to succeed the dealer in the ownership or operation of the dealership within 120 days prior to the dealer's expected date of retirement or within 120 days after the death or incapacity of the dealer. The manufacturer, factory branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner provided for in 61-4-133.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, on request, personal and financial data that is reasonably necessary to determine whether the succession should be honored. The designated family member must meet the manufacturer's, factory branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer. If the designated family member lacks experience required to meet those requirements, then the manufacturer shall allow the successor a reasonable amount of time to meet those requirements provided that during the period, the successor employs an individual who is qualified and experienced as a general manager to manage the day-to-day operations of the motor vehicle dealership.

### **History**

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En. 51-610 by Sec. 2, Ch. 381, L. 1977; R.C.M. 1947, 51-610; amd. Sec. 1941, Ch. 56, L. 2009; § 11, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### **Notes**

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#### **Effective Dates**

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

#### **Amendment Notes**

The 2019 amendment by ch. 283 rewrote (1), which formerly read: "Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if the family member gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of the intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor the succession on the part of the manufacturer,

factory branch, distributor, or importer”; and, in (2), substituted “on request” for “upon request” in the first sentence and added the last two sentences.

### **Preambles**

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### **Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

## **State Notes**

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## **Notes**

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### **Compiler's Comments**

#### **2019 Amendment:**

Chapter 283 in (1) near beginning of first sentence after “family member of a” inserted “retiring”, near middle inserted “retiring dealer or the”, substituted “of a deceased or incapacitated dealer giving” for “gives”, and substituted “succeed the dealer in the ownership or operation of the dealership” for “do so”, near end inserted “expected date of retirement or within 120 days after the”, and at end substituted “incapacity of the dealer” for “incapacity and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer”, and inserted second sentence regarding refusal to honor the notice of succession; in (2) inserted second sentence regarding family member meeting the written requirements to be a dealer and inserted third sentence regarding family member lack of experience, a reasonable amount of time to meet requirements, and a general manager to manage day-to-day operations; and made minor changes in style. Amendment effective May 3, 2019.

#### **Preamble:**



61-4-132, MCA

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2009 Amendment:**

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

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End of Document

## 61-4-133, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### **61-4-133 Refusal to honor succession to ownership — notice required.**

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- (1)** If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member under the existing franchise agreement as provided for in this part, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.
- (2)** The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.
- (3)** If notice of refusal and discontinuance is not timely served upon the designated family member and the department or if the department rules in favor of the designated family member in a hearing held pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.
- (4)** In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family member's succession to the ownership and operation of the dealership without complying with this part, the designated family member may commence a proceeding before the department for declaratory judgment against the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a manufacturer, factory branch, distributor, or importer.

### **History**

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En. 51-611 by Sec. 3, Ch. 381, L. 1977; R.C.M. 1947, 51-611; amd. Sec. 6, Ch. 221, L. 1997; § 12, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### **Notes**

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#### **Effective Dates**

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

#### **Amendment Notes**

The 2019 amendment by ch. 283 substituted “designated family member under the existing franchise agreement as provided for in this part” for “family member of a deceased or incapacitated dealer under the existing franchise agreement” in (1); in (3), added “designated” following “served upon the” and substituted “designated family member” for “complainant”; and added (4).

### **Preambles**

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### **Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

## **State Notes**

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## **Notes**

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### **Compiler's Comments**

#### **2019 Amendment:**

Chapter 283 in (1) near middle substituted “by a designated family member under” for “by a family member of a deceased or incapacitated dealer under” and after “existing franchise agreement” inserted “as provided for in this part”; in (3) near beginning after “served upon the” inserted “designated” and near middle after “in favor of the” substituted “designated family member” for “complainant”; and inserted (4) regarding refusal to honor the family member's succession to the ownership, a proceeding for declaratory judgment, an order that the right to succession be recognized, and burden of proof, rights, and remedies in the action. Amendment effective May 3, 2019.

#### **Preamble:**

## 61-4-133, MCA

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**1997 Amendment:**

Chapter 221 near end of (1) and (2) extended effective date of notice of intent to dishonor transfer of dealership from 60 days to 90 days from date of service; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

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## 61-4-134, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)*

### 61-4-134 Procedure to determine right to succeed.

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- (1) Any designated family member who receives notice of the manufacturer's, factory branch's, distributor's, or importer's refusal to honor the family member's succession to the ownership and operation of the dealership may, within the 90-day period, file a written complaint with the department for a hearing and determination by the department as to whether good cause exists for refusal to honor the designated family member's succession to the operation and ownership of the dealership.
- (2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the designated family member failed to comply with the provisions of 61-4-132(2) or that the succession would be detrimental to the public interest.
- (3) The franchise agreement must continue in effect until the final adjudication by the department on the v written complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during adjudication by the department and the appeals process.
- (4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the designated family member 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.

### History

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En. 51-612 by Sec. 4, Ch. 381, L. 1977; R.C.M. 1947, 51-612; amd. Sec. 7, Ch. 221, L. 1997; § 13, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

### Notes

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#### Effective Dates

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

#### Amendment Notes

The 2019 amendment by ch. 283, in (1), substituted "factory branch's" for "factory branch" and "file a written complaint with the department for a hearing and determination by the department as to whether good cause exists for refusal to honor the designated family member's succession to the operation and ownership of the dealership" for "file with the department a verified complaint for a hearing and determination by the department on whether

## 61-4-134, MCA

good cause exists for refusal and discontinuance”; in (2), added “the designated family member failed to comply with the provisions of 61-4-132(2) or that” and deleted “or to the representation of the manufacturer, factory branch, distributor, or importer” at the end; in (3), substituted “written complaint” for “verified complaint” in the first sentence and added “adjudication by the department and” in the second sentence; and substituted “designated family member” for “complainant” in (4).

**Preambles**

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

**Separability**

Section 19, Ch. 283, L. 2019 provided: “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.”

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

**State Notes**

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**Notes**

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**Compiler's Comments****2019 Amendment:**

Chapter 283 in (1) at end after “90-day period” substituted current text regarding a written complaint as to whether good cause exists for refusal to honor the designated family member's succession for “file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance”; in (2) near middle inserted “the designated family member failed to comply with the provisions of 61-4-132(2) or that” and at end deleted “or to the representation of the manufacturer, factory branch, distributor, or importer”; in (3) near middle of first sentence substituted “written complaint” for “verified complaint” and near end of second sentence inserted “adjudication by the department and”; in (4) in middle after “affording the” substituted “designated family member” for “complainant”; and made minor changes in style. Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: “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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**1997 Amendment:**

Chapter 221 in (1), near middle, increased time for filing verified complaint from 60 days to 90 days; in (3), in first sentence after “until the final”, substituted current language requiring adjudication and exhaustion of remedies for “determination of the issues raised in the complaint” and inserted second sentence requiring compliance with franchise agreement and laws; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

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## 61-4-135, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### **61-4-135 Written designation of succession unaffected.**

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Sections 61-4-132 through 61-4-137 do not preclude a new dealer from designating any person as the new dealer's successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

### **History**

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En. 51-613 by Sec. 5, Ch. 381, L. 1977; R.C.M. 1947, 51-613; amd. Sec. 50, Ch. 329, L. 2007.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

### **State Notes**

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### **Notes**

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#### **Compiler's Comments**

##### **2007 Amendment:**

Chapter 329 at beginning deleted reference to 61-4-131 and before "dealer" inserted "new"; and made minor changes in style. Amendment effective January 1, 2008.



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End of Document

## 61-4-136, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### 61-4-136 Violation — penalty.

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Any person violating the provisions of 61-4-132 through 61-4-137 shall upon conviction be fined no more than \$ 5,000.

### History

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En. 51-614 by Sec. 6, Ch. 381, L. 1977; R.C.M. 1947, 51-614; amd. Sec. 51, Ch. 329, L. 2007.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

### State Notes

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### Notes

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#### Compiler's Comments

##### 2007 Amendment:

Chapter 329 near middle deleted reference to 61-4-131. Amendment effective January 1, 2008.

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## 61-4-137, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### 61-4-137 Civil damages.

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Any new dealer suffering pecuniary loss because of a violation of 61-4-132 through 61-4-136, upon prevailing in a civil action for a violation, is entitled to damages equal to three times the pecuniary loss, together with court costs and reasonable attorney fees.

### History

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En. 51-615 by Sec. 7, Ch. 381, L. 1977; R.C.M. 1947, 51-615; amd. Sec. 52, Ch. 329, L. 2007.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

### State Notes

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### Notes

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#### Compiler's Comments

##### 2007 Amendment:

Chapter 329 at beginning before "dealer" inserted "new" and near middle deleted reference to 61-4-131 and 61-4-137; and made minor changes in style. Amendment effective January 1, 2008.

##### Severability Clause:

Section 9, Ch. 381, L. 1977, was a severability clause.

61-4-137, MCA

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## 61-4-150, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 1 Dealers (§§ 61-4-101 — 61-4-150)***

### **61-4-150 Sale, transfer, or exchange of dealership — notice — response to notice.**

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(1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed in this subsection may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state who meets the state's statutory requirements for appointment as a dealer.

(2)

(a) A manufacturer or distributor shall respond to a dealer in writing within 60 days of receipt of the dealer's request, delivered by certified mail to the manufacturer or distributor, for consent to the sale, transfer, or exchange of the dealer's franchise submitted by the dealer to the manufacturer or distributor pursuant to the provisions of subsection (1).

(b) The manufacturer shall acknowledge, in writing delivered by certified mail to the dealer and the buyer designated in the dealer's request for consent, receipt of the request. Failure to respond within the 60-day period established in subsection (2)(a) is approval of the request.

(c) If the manufacturer or distributor requires additional information to complete its review, the manufacturer or distributor shall notify the buyer in writing delivered by certified mail within 15 business days of receipt of the dealer's request. If the manufacturer or distributor requests additional information, the 60-day time period for approval runs from the time of the receipt of the requested supplemental information. The manufacturer or dealer may request additional information only one time.

### **History**

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En. Sec. 2, Ch. 177, L. 2001.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 1, MCA

### **State Notes**

## Notes

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### Compiler's Comments

#### Saving Clause:

Section 4, Ch. 177, L. 2001, was a saving clause.

#### Effective Date:

Section 5, Ch. 177, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

### Part Compiler's Comments

#### Functions Transferred in 1985 — Name Change:

Section 1, Ch. 503, L. 1985, substituted references to Department of Justice for references to Division of Motor Vehicles.

#### Functions Transferred in 1981— Name Change:

Section 2, Ch. 431, L. 1981, provided: "The functions of the department of business regulation contained in Title 61, chapter 4, part 2, are transferred to the division of motor vehicles. Unless inconsistent with this act, wherever the term "department", meaning department of business regulation, appears in Title 61, chapter 4, part 2, it is changed to "division", meaning division of motor vehicles. The code commissioner is authorized and instructed to change the word "department" to "division" in Title 61, chapter 4, part 2, in accordance with this act."

#### Severability Clause:

Section 10, Ch. 380, L. 1977, was a severability clause.

## Part Case Notes

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### Sale of Automobile Franchise — Error in Failure to Resolve Mootness as Threshold Issue Before Underlying Dispute Addressed:

Ford Motor Company (Ford) notified franchisee Shamrock Motors (Shamrock) that it intended to terminate Shamrock's automobile dealer franchise because Shamrock had sold 80% of its stock without Ford's knowledge or consent, which violated their franchise agreement. The Motor Vehicle Division of the Department of Justice issued a ruling that Ford had good cause, so Shamrock filed for judicial review in the District Court. Ford then removed to federal court, where the ruling was reversed, so Ford appealed to the Ninth Circuit Court. Shamrock then sold the dealership, and the decision was vacated because of lack of jurisdiction. The case was remanded to state court, where Ford moved to dismiss for mootness. The District Court denied the motion without discussion and ruled for Shamrock, concluding that the franchise could not be terminated as a result of the sale of 80% of the franchise stock. Reversing on appeal, the Supreme Court cited *Adkins v. Livingston*, 121 M 528, 194 P2d 238 (1948), in holding that mootness is a threshold issue that must be dealt with before the underlying dispute may be addressed.

61-4-150, MCA

A matter is moot when, because of an event or happening, the issue has ceased to exist and no longer presents an actual controversy. A question is moot when a court cannot grant effective relief. If the parties cannot be restored to their original position, an appeal becomes moot. When Shamrock chose to sell the franchise during the appellate process, the question of whether Ford had good cause to terminate the franchise in the first instance became academic and thus moot. The District Court erred when it did not resolve the issue of mootness before addressing the merits of the claim, not recognizing that once Shamrock sold the dealership and was no longer the franchisee, there was no effective relief that the court could fashion under this part, so the appeal from the Motor Vehicle Division's ruling should have been dismissed as moot. *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, 293 M 188, 974 P2d 1150, 56 St. Rep. 99 (1999), followed in *Shamrock Motors, Inc. v. Chrysler Corp.*, 1999 MT 39, 293 M 317, 974 P2d 1154, 56 St. Rep. 164 (1999).

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## 61-4-201, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### 61-4-201 Definitions.

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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 continued supply of new motor vehicles, parts, and accessories.
- (7) “Franchisee” means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services the new motor vehicles to and for the general public.
- (8) “Franchisor” means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.
- (9) “Importer” means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.



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

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

**(12)** “Motor vehicle” includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

**(13)** “New motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

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

**(15)**

**(a)** “Retail sale” means the sale of a new motor vehicle.

**(b)** “Retail sale” does not mean a sale:

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

**(ii)** that is the result of a transfer between two licensed new motor vehicle dealers.

**(16)** “Transferee” means a person or entity that:

**(a)** is in possession or control of a new motor vehicle dealer;

**(b)** holds an ownership or signed contract interest in a new motor vehicle dealer;

**(c)** is acting in a fiduciary capacity for a new motor vehicle dealer; or

**(d)** is an heir, devisee, personal representative, beneficiary, successor, or assign of a new motor vehicle dealer.”

## History

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En. 51-601 by Sec. 1, Ch. 380, L. 1977; R.C.M. 1947, 51-601(1) thru (9), (11), (12); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 8, Ch. 221, L. 1997; amd. Sec. 1, Ch. 313, L. 1999; amd. Sec. 4, Ch. 384, L. 1999; amd. Sec. 1, Ch. 308, L. 2009; § 15, Ch. 389, L. 2021, effective April 29, 2021.

Annotations

## Notes

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### Amendment Notes

The 2021 amendment by ch. 389 added (16).

## Preambles

The preamble attached to Ch. 389, L. 2021 provided: “WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.”

## Notes to Decisions

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### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

In analyzing whether a business was “substantially reliant” on the company for purposes of Mont. Code Ann. § 61-4-201(5)(d), the trial court applied an unnecessarily restrictive standard, which failed to address other non-revenue based circumstances that might have impacted the “substantially reliant” issue. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

Notice requirements in Mont. Code Ann. § 61-4-205 clearly apply only to franchisors, and when the Montana legislature intends provisions of the motor vehicle sale and distribution statutes to apply to more than one entity, it makes that intention clear; the term “franchisor” as defined in Mont. Code Ann. § 61-4-201(7) is defined separately from other terms such as manufacturer, distributor, and importer. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

Purpose of the statutory scheme in Mont. Code Ann. § 61-4-201 et seq., is to maintain the status quo (i.e., to continue the existence of the franchise agreement) until such time as a franchisee has had prior notice and an opportunity to be heard on the question of good cause. *Shamrock Motors, Inc. v. Chrysler Corp.*, 1999 MT 39, 293 Mont. 317, 974 P.2d 1154, 56 Mont. St. Rep. 164, 1999 Mont. LEXIS 41 (Mont. 1999).

## Research References & Practice Aids

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 2009 Amendment:

Chapter 308 inserted definitions of distribute and line-make; in definitions of distributor or wholesaler, distributor branch, factory branch, and manufacturer before "new motor vehicles" inserted "a line-make of"; in definition of franchise near beginning after "contract" inserted "and any agreed-to amendments"; in definition of manufacturer near beginning of first sentence after "vehicles" inserted "and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state" and inserted second sentence concerning central or principal sales corporation; and made minor changes in style. Amendment effective April 18, 2009.

#### Severability:

Section 10, Ch. 308, L. 2009, was a severability clause.

#### 1999 Amendments — Composite Section:

Chapter 313 in definition of franchise inserted (b)(ii) expanding franchise condition to include service motor vehicles under terms of franchise and manufacturer's warranty and in (c) substituted "an independent and separate business" for "a separate business"; and made minor changes in style. Amendment effective April 15, 1999.

#### Saving Clause:

Section 4, Ch. 313, L. 1999, was a saving clause.

#### 1997 Amendment:

Chapter 221 deleted former definition of Department as Department of Justice; inserted definitions of new motor vehicle and retail sale; in definition of new motor vehicle dealer inserted reference to franchise with manufacturer of new motor vehicles; and made minor changes in style. Amendment effective April 8, 1997.

#### Saving Clause:

Section 15, Ch. 221, L. 1997, was a saving clause.

#### 1985 Amendment:

In (2) substituted references to department of justice for references to division of motor vehicles.

#### 1981 Amendments — Composite:

Chapter 274 substituted "department of commerce" for "department of business regulation" in (2).

## Case Notes

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**Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed:**

On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in this section, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing *Kans. City Trailer Sales v. Holiday Rambler Corp.*, 1994 WL 49932 (W. Dist. Mo. 1994).

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End of Document

## 61-4-202, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-202 License requirements.**

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- (1)** A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.
- (2)** A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of \$ 15 accompanied by the information required in this section.
- (3)** The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

  - (a)** the name and address of the applicant;
  - (b)** the make and model of each new motor vehicle to be franchised;
  - (c)** the name and address of each of the applicant's franchisees within the state; and
  - (d)** the name and address of each factory branch, distributor branch, agent, or representative within the state.
- (4)** A license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of \$ 15, and notifies the department of any changes in the information previously supplied.
- (5)**

  - (a)** A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.
  - (b)** Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.
  - (c)** The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

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

## History

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En. 51-602 by Sec. 2, Ch. 380, L. 1977; R.C.M. 1947, 51-602; amd. Sec. 1, Ch. 557, L. 1979; amd. Secs. 2, 3, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 384, L. 1999; amd. Sec. 171, Ch. 542, L. 2005; amd. Sec. 53, Ch. 329, L. 2007; amd. Sec. 2, Ch. 308, L. 2009.

Annotations

## Notes to Decisions

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### **Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Enforcement**

Notice requirements in Mont. Code Ann. § 61-4-205 clearly apply only to franchisors, and when the legislature intends provisions of the motor vehicle sale and distribution statutes to apply to more than one entity, it makes that intention clear, as in Mont. Code Ann. §§ 61-4-202(2)(a), 61-4-208. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

## Research References & Practice Aids

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### **Compiler's Comments**

#### **2009 Amendment:**

Chapter 308 inserted (6) pertaining to delaying the issuance of licenses when objections have been lodged relative to a franchise agreement. Amendment effective April 18, 2009.

#### **Severability:**

Section 10, Ch. 308, L. 2009, was a severability clause.

**2007 Amendment:**

Chapter 329 deleted former (2)(b) that read: “(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the \$15 fee required in subsection (2)(a)”; in (4) at beginning deleted “Except as provided in subsection (4)(b)”; deleted former (4)(b) that read: “(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the \$15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department”; deleted former (5)(d) that read: “(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23”; and made minor changes in style. Amendment effective January 1, 2008.

**2005 Amendment:**

Chapter 542 in (1) near end of second sentence before “vehicle” inserted “motor”; in (2)(b) and (4)(b) after “watercraft” deleted “as defined in 23-2-502”, after “snowmobile” deleted “as defined in 23-2-601”, and after “off-highway vehicle” deleted “as defined in 23-2-801”; and in (5)(a) in three places before “vehicles” inserted “motor”. Amendment effective January 1, 2006.

**1999 Amendment:**

Chapter 384 in (1) near middle of first sentence inserted “importer, or franchiser” and in last sentence in two places inserted reference to importers; inserted (2)(b) exempting certain persons from license fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) exempting certain persons from renewal fee and requiring annual renewal of the persons; inserted (5)(d) exempting certain dealers from licensing requirements of subsection (5)(b); and made minor changes in style. Amendment effective October 1, 1999.

**1985 Amendment:**

In (2) through (4) substituted references to department of justice for references to division of motor vehicles.

**1981 Amendment:**

Deleted “new motor vehicle dealer or a” after “A” at the beginning of (2); substituted “part 1 of this chapter” for “this part” and added “or Title 61, chapter 4, part 1” near the middle of (5) to remove the duplicate licensing of new motor vehicle dealers; substituted “division” for “department” throughout the section; and made minor changes in phraseology.

## 61-4-204, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-204 Filing agreement — product liability.**

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(1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. A manufacturer may not refuse a dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere allegations of the complaint without a reasonable investigation of the facts and determination that the dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or otherwise violated a legal duty owed to the claimant or manufacturer. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations as provided in this part.



## 61-4-204, MCA

- (5) All claims made by the dealer for compensation for delivery, preparation, and recall service, including labor, parts, and other expenses, and claims made for incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, unless the claim is properly disapproved, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.
- (6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which the dealer is otherwise entitled under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.
- (7) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or charge-backs for customer or dealer incentives.
- (8) A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in 61-4-213(12)(d), regardless of whether the denial or charge-back was a direct or an indirect transaction.
- (9) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.
- (10) Notwithstanding the terms of a franchise agreement or other contract with a dealer, after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:
- (a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;
  - (b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or
  - (c) audit the records of a dealer to determine compliance with the terms of an incentive program.
- (11) Subsection (10) does not prohibit a franchisor from making charge-backs to a dealer for fraud at any time as permitted by 27-2-203.
- (12) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.
- (13) Any violation of this section constitutes a prohibited practice.

## History

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En. 51-604 by Sec. 4, Ch. 380, L. 1977; R.C.M. 1947, 51-604(1) thru (3), (5), (6); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 229, L. 1991; amd. Sec. 2, Ch. 313, L. 1999; amd. Sec. 6, Ch. 384, L. 1999; amd. Sec. 172, Ch. 542, L. 2005; amd. Sec. 54, Ch. 329, L. 2007; amd. Sec. 3, Ch. 308, L. 2009; § 14, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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## Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

## Amendment Notes

The 2019 amendment by ch. 283, in (4), added the fourth sentence and substituted “as provided in this part” for “at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work” in the last sentence; redesignated former (5)(a) as (5); in (5), deleted “pursuant to this section” preceding “for compensation,” deleted “warranty” preceding “recall service,” and added “unless the claim is properly disapproved”; deleted former (5)(b) through (5)(d); substituted “entitled” for “eligible” in the first sentence of (6); deleted former (7); redesignated former (8) through (13) as (7) through (12); substituted “[section 4(12)(d)]” for “subsection (5)(d)” in (8); deleted “and except as provided in subsection (5)(c)” following “dealer” in the introductory language of (10); in (11), substituted “Subsection (10)” for “Subsection (11)” and “27-2-203” for “subsection (5)(c)”; and added (13).

## Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

## Separability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### Compiler's Comments

**2019 Amendment:**

Chapter 283 in (4) inserted fourth sentence regarding dealer's demand for defense and indemnity of a claim alleging manufacturer's negligence, breach of warranty, or product liability based on allegations without a reasonable investigation and at end substituted "as provided in this part" for "at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work"; in (5) near beginning after "by the dealer" deleted "pursuant to this section" and after "delivery, preparation" deleted "warranty" and in middle after "claim from the dealer" inserted "unless the claim is properly disapproved"; deleted former (5)(b) that read: "(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim"; deleted former (5)(c) that read: "(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2009 Amendment:**

Chapter 308 in (3) at beginning substituted "franchisor" for "manufacturer, distributor, or importer"; in (5)(a) near middle following "expenses" inserted "and claims made for incentives"; in (5)(d) inserted second sentence concerning a manufacturer's denial of claims; inserted (6) regarding a dealer's being penalized for selling a motor vehicle that was ultimately shipped to a foreign country; inserted (7) concerning charges and surcharges imposed by the franchisor on the dealer; in (8) deleted second sentence that read: "An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit"; inserted (9) establishing a time period for the resubmission of denied claims; inserted (10) concerning a time period for the submission of incentive claims; inserted (11) regarding chargebacks for incentive programs and certain time periods; inserted (12) waiving the time period for chargebacks in cases of fraud; and made minor changes in style. Amendment effective April 18, 2009.

**Severability:**

Section 10, Ch. 308, L. 2009, was a severability clause.

**2007 Amendment:**

Chapter 329 in (1) near middle of first sentence after "provisions of" deleted "Title 23 or". Amendment effective January 1, 2008.

**2005 Amendment:**

Chapter 542 in (1) in three places before "vehicles" inserted "motor"; in (4) in fifth sentence after "recreational vehicle" deleted "as defined in 61-1-132"; in (5)(a) near end after "motor home" deleted "as defined in 61-1-130"; in (6) near middle before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

**1999 Amendments — Composite Section:**

Chapter 313 inserted (5) requiring payment of claim for delivery, preparation, warranty, and recall service compensation by manufacturer within 30 days of claim receipt, providing exception for motor home manufacturer, providing procedure when claim approved or disapproved, prohibiting manufacturer from denying claim or reducing claim amount if dealer provides sufficient documentation, and authorizing franchisor to audit dealer on validity of claims or chargebacks for incentives and limiting audit to 18-month period preceding date of audit notification; and made minor changes in style. Amendment effective April 15, 1999.

**Saving Clause:**

Section 4, Ch. 313, L. 1999, was a saving clause.

**1991 Amendment:**

in (4), in fourth sentence, inserted exception clauses relating to household appliances in recreational vehicle and to truck rated at more than 10,000 pounds, after “authorized dealer” inserted “for labor, parts, and other expenses incurred by a dealer”, substituted “same rate” for “dealer’s regular established retail rate”, after “rate” inserted language relating to time charged to retail customers, substituted “nonwarranty work of a like kind” for “similar work”, and inserted last phrase relating to the flat rate labor time guide manual; and made minor changes in style.

**1985 Amendment:**

In (1) through (4) substituted references to department of justice for references to division of motor vehicles.

**1981 Amendment:**

Changed “department” to “division” throughout the section.

## 61-4-205, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-205 Limitations on cancellation and termination.**

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- (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.
- (2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.
- (3)

  - (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.
  - (b) The notice to be filed with the department of a franchisor's intention to enter into a franchise for additional representation of the same line-make must name the proposed additional franchisee and must identify by legal description or street address the additional location in the community. A change in the identity of the proposed additional franchisee or of the additional location in the community may only be accomplished by the withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a franchise for additional representation of the same line-make in the same community may be made by a franchisor within 3 calendar years of the date of final disposition of a notice of intention.
  - (c) If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and consultant fees incurred in resisting the proceeding.
- (4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

**(5)** In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

**(6)** Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

**(7)** If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

**(8)** A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

**(a)** selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

**(b)** ceasing production of the line-make; or

**(c)** terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

**(9)**

**(a)** A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

**(i)** the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

**(ii)** the higher of the fair market value of the franchise on the following dates:

**(A)** the effective date of the termination, cancellation, or failure to renew;

**(B)** the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

**(C)** the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

**(b)** The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

**(10)** If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

**(11)** The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal.

## History

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En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(1) thru (4), (11), (12), (14); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 9, Ch. 221, L. 1997; amd. Sec. 7, Ch. 384, L. 1999; amd. Sec. 29, Ch. 409, L. 1999; amd. Sec. 4, Ch. 308, L. 2009; § 15, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2019 amendment by ch. 283 added the (3)(a) designation; and added (3)(b) and (3)(c).

### Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

## Separability

Section 19, Ch. 283, L. 2019 provided: "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."

## Notes to Decisions

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### **Administrative Law: Judicial Review: Reviewability: Final Order Requirement**

### **Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships**

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

### **Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

### **Contracts Law: Breach: Material Breach**

### **Administrative Law: Judicial Review: Reviewability: Final Order Requirement**

District court erred in dismissing a would-be motor vehicle franchisee's petition for judicial review of a decision upholding an existing franchisee's protest under Mont. Code Ann. §§ 61-4-206(7) and 2-4-702, based on its reasoning that, because the franchisor did not appeal and disavowed participation, no effective relief could be granted. *Rimrock Chrysler, Inc. v. DOJ*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392, 2016 Mont. LEXIS 475 (Mont. 2016).

### **Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

Court did not err by denying the claimant's petition for judicial review because the franchisor's testimony established that the existing franchisee was meeting or exceeding the franchisor's contractual expectations. *Rimrock Chrysler, Inc. v. State DOJ*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278, 2018 Mont. LEXIS 28 (Mont. 2018).

### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships**

District court erred in dismissing a would-be motor vehicle franchisee's petition for judicial review of a decision upholding an existing franchisee's protest under Mont. Code Ann. §§ 61-4-206(7) and 2-4-702, based on its reasoning that, because the franchisor did not appeal and disavowed participation, no effective relief could be granted. *Rimrock Chrysler, Inc. v. DOJ*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392, 2016 Mont. LEXIS 475 (Mont. 2016).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

Notice requirements in Mont. Code Ann. § 61-4-205 clearly apply only to franchisors, and when the legislature intends provisions of the motor vehicle sale and distribution statutes to apply to more than one entity, it makes that intention clear, for example, as in Mont. Code Ann. §§ 61-4-202(2)(a), 61-4-208. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).



## 61-4-205, MCA

Manufacturers, distributors, or importers are not subject to the notice requirements under Mont. Code Ann. § 61-4-205 unless they are also franchisors. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

New motor vehicle dealer who believes its dealer agreement with a manufacturer, distributor, or importer constitutes a franchise and that Mont. Code Ann. § 61-4-205 notice requirements have been violated may bring a direct action in the district court for a violation of the statute pursuant to Mont. Code Ann. § 61-4-210(3); that action is not connected to the proceeding provided for in Mont. Code Ann. §§ 61-4-205 and 61-4-206. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

Because a business alleged, in its action under Mont. Code Ann. § 61-4-210(3), that a company failed to comply with Mont. Code Ann. § 61-4-205 notice requirements concerning terminating a dealer agreement, and the company claimed that the dealer agreement did not constitute a franchise and thus the statute was inapplicable, the trial court had jurisdiction to consider whether a franchise existed. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

When a franchisee sold its automobile dealership while a dispute as to the termination of the franchise was pending, the issue of whether there was good cause to terminate became moot, and there was no effective relief for the franchisee. *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, 293 Mont. 188, 974 P.2d 1150, 56 Mont. St. Rep. 99, 1999 Mont. LEXIS 22 (Mont. 1999).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

### **Contracts Law: Breach: Material Breach**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## **State Notes**

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## **Notes**

**Compiler's Comments****2019 Amendment:**

Chapter 283 inserted (3)(b) regarding notice of intention to enter into a franchise for additional representation, a change in the identity of the proposed additional franchisee or of the additional location, and limit of one notice of intention to enter into a franchise within 3 calendar years; inserted (3)(c) regarding no finding of good cause and a franchisee's entitlement to recover attorney fees, costs, and expenses; and made minor changes in style. Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2009 Amendment:**

Chapter 308 inserted (8) concerning dealer compensation when the franchisor has created the conditions for its nonperformance of the franchise agreement; inserted (9) establishing compensatory formulas and timelines for franchisor nonperformance; inserted (10) outlining the duties of successors to the nonperforming franchisor; inserted (11) establishing obligations of a nonperforming franchisor to franchisees; inserted (12) concerning nonperforming franchisor's duty to supply replacement parts; inserted (13) providing for reduction in the amount of dealer compensation in certain circumstances; and made minor changes in style. Amendment effective April 18, 2009.

**Severability:**

Section 10, Ch. 308, L. 2009, was a severability clause.

**1999 Amendments — Composite Section:**

Chapter 384 in (7) inserted reference to Title 23; and made minor changes in style. Amendment effective October 1, 1999.

**Applicability:**

Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

**1997 Amendment:**

Chapter 221 in (3), in first sentence, extended from 30 days to 60 days time for franchisor to file notice of termination with Department; in (4), in last sentence after "consider interested persons", deleted "such copy to be in the form and substance and given in the manner the department finds appropriate"; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

**1991 Amendment — Code Commissioner Instruction:**

The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change “dealer” to “dealer and wholesaler” or “dealer or wholesaler”, as the usage requires.

**1985 Amendment:**

In (3) and (4) substituted references to department of justice for references to division of motor vehicles.

**1981 Amendment:**

Changed “department” to “division” throughout the section.

## Case Notes

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**Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary:**

In *Rimrock Chrysler, Inc. v. St.*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392 ([Rimrock I](#)), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court’s dismissal of the plaintiff’s petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. *Rimrock Chrysler, Inc. v. Dept. of Justice*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

**Appeal of Administrative Review — Franchisor Not Party to Appeal — District Court Findings of No Justiciable Controversy and Mootness Reversed:**

A car dealership filed an administrative protest against its franchisor and a competing car dealership after the franchisor agreed to award the competing dealership a franchise agreement. Following a hearing, the hearings examiner for the Motor Vehicle Division of the Department of Justice sustained the dealership’s protest. The competing dealership appealed the ruling to the District Court, but the franchisor did not. The District Court dismissed the appeal, holding that it was moot and that no justiciable controversy existed because the franchisor had not appealed the hearings examiner’s decision. The competing dealership appealed, and the Supreme Court reversed and vacated the dismissal of the appeal. The Supreme Court ruled that, in this case, the franchisor appeal was irrelevant because the competing dealership could be awarded relief on appeal. *Rimrock Chrysler, Inc. v. St.*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392.

**Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed:**

On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider

other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing *Kans. City Trailer Sales v. Holiday Rambler Corp.*, 1994 WL 49932 (W. Dist. Mo. 1994).

#### **Subject Matter Jurisdiction of District Court to Determine Whether Franchise Exists:**

Plaintiff filed an action under 61-4-210, contending that defendant failed to follow the notice provisions in this section in terminating plaintiff's dealership agreement and that defendant needed to exhaust its administrative remedies before the District Court could obtain subject matter jurisdiction. Defendant contended that the Department of Justice Motor Vehicle Division lacked jurisdiction because the dealer agreement did not constitute a franchise, so the administrative and notice provisions did not apply. The Supreme Court noted that a vehicle dealer that believes that its agreement with a manufacturer, distributor, or importer constitutes a franchise and that the notice requirements have not been complied with may bring a direct action in District Court pursuant to 61-4-210 for violation of the notice requirement. That is what plaintiff did. However, an action under 61-4-210 is not connected to the administrative contested case proceedings provided for in 61-4-206 and this section and does not require a party to initiate and exhaust administrative proceedings prior to bringing the action. Thus, the District Court had subject matter jurisdiction over the question of whether a franchise agreement existed between the parties. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005).

#### **Effect of Department Failure to Mail Termination Notice:**

The Department of Business Regulation (functions now handled by Department of Justice) must, within 5 days of the receipt of notice to terminate a franchise from the franchiser, send a copy of the notice to the franchisee and any other person entitled to notice. Once this notice is received by the franchisee, he may object to the approval of the proposed action by filing written objections with the Department. Here, the Department failed to send out such notice, so the time for filing franchisee's written objections in this case has not commenced to run. *State ex rel. Billings Chrysler-Plymouth, Inc. v. Dept. of Business Regulation*, 36 St. Rep. 151 (1979) (not reported in Montana Reports).

## 61-4-206, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### 61-4-206 Objections — hearing.

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(1)

(a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the written complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process.

### History

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En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(5) thru (9), (13), (17), (18); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 221, L. 1997; amd. Sec. 14, Ch. 299, L. 2003; amd. Sec. 1, Ch. 273, L. 2013; § 16, Ch. 283, L. 2019, effective May 3, 2019.

Annotations

## Notes

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### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2019 amendment by ch. 283 substituted “written complaint” for “verified complaint” in the first sentence of (8).

### Preambles

The preamble attached to Ch. 283, L. 2019, provided: “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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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.”

### Separability

Section 19, Ch. 283, L. 2019 provided: “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.”

## Notes to Decisions

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**Administrative Law: Judicial Review: Reviewability: Final Order Requirement**

**Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships**

**Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Enforcement**

**Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

**Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

**Constitutional Law: Supremacy Clause: Federal Preemption**

**Contracts Law: Breach: Material Breach**

**Administrative Law: Judicial Review: Reviewability: Final Order Requirement**

District court erred in dismissing a would-be motor vehicle franchisee's petition for judicial review of a decision upholding an existing franchisee's protest under Mont. Code Ann. §§ 61-4-206(7) and 2-4-702, based on its reasoning that, because the franchisor did not appeal and disavowed participation, no effective relief could be granted. *Rimrock Chrysler, Inc. v. DOJ*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392, 2016 Mont. LEXIS 475 (Mont. 2016).

### **Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

Court did not err by denying the claimant's petition for judicial review because the franchisor's testimony established that the existing franchisee was meeting or exceeding the franchisor's contractual expectations. *Rimrock Chrysler, Inc. v. State DOJ*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278, 2018 Mont. LEXIS 28 (Mont. 2018).

### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships**

District court erred in dismissing a would-be motor vehicle franchisee's petition for judicial review of a decision upholding an existing franchisee's protest under Mont. Code Ann. §§ 61-4-206(7) and 2-4-702, based on its reasoning that, because the franchisor did not appeal and disavowed participation, no effective relief could be granted. *Rimrock Chrysler, Inc. v. DOJ*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392, 2016 Mont. LEXIS 475 (Mont. 2016).

### **Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Enforcement**

New motor vehicle dealer who believes its dealer agreement with a manufacturer, distributor, or importer constitutes a franchise and that Mont. Code Ann. § 61-4-205 notice requirements have been violated may bring a direct action in the district court for a violation of the statute pursuant to Mont. Code Ann. § 61-4-210(3); that action is not connected to the proceeding provided for in Mont. Code Ann. §§ 61-4-205 and 61-4-206. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

In a dispute between an existing Chrysler-Jeep dealership and a dealership that had been terminated by the Chrysler bankruptcy in 2009 but which had a chance to be re-established after arbitration under federal law, the district court was ordered to consider whether Montana's dealership regulations were preempted by federal law. *Rimrock Chrysler, Inc. v. State DOJ*, 2015 Mont. LEXIS 652 (Mont. June 9, 2015).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

Under Mont. Code Ann. § 61-4-206(1), (2), a franchisee can file an objection to a proposed termination of a franchise, which triggers a hearing before the Montana Motor Vehicle Division to determine whether or not good cause exists to terminate the franchise. *Shamrock Motors, Inc. v. Chrysler Corp.*, 1999 MT 39, 293 Mont. 317, 974 P.2d 1154, 56 Mont. St. Rep. 164, 1999 Mont. LEXIS 41 (Mont. 1999).

Under Mont. Code Ann. § 61-4-206, any party to a hearing before the Montana Motor Vehicle Division can appeal under the Montana Administrative Act, but a franchisee agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. *Shamrock Motors, Inc. v. Chrysler Corp.*, 1999 MT 39, 293 Mont. 317, 974 P.2d 1154, 56 Mont. St. Rep. 164, 1999 Mont. LEXIS 41 (Mont. 1999).

When a franchisee sold its automobile dealership while a dispute as to the termination of the franchise was pending, the issue of whether there was good cause to terminate became moot, and there was no effective relief for the franchisee. *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, 293 Mont. 188, 974 P.2d 1150, 56 Mont. St. Rep. 99, 1999 Mont. LEXIS 22 (Mont. 1999).

**Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

**Constitutional Law: Supremacy Clause: Federal Preemption**

In a dispute between an existing Chrysler-Jeep dealership and a dealership that had been terminated by the Chrysler bankruptcy in 2009 but which had a chance to be re-established after arbitration under federal law, the district court was ordered to consider whether Montana's dealership regulations were preempted by federal law. *Rimrock Chrysler, Inc. v. State DOJ*, 2015 Mont. LEXIS 652 (Mont. June 9, 2015).

**Contracts Law: Breach: Material Breach**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

**State Notes**

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**Notes**

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**Compiler's Comments****2019 Amendment:**

Chapter 283 in (8) in middle of first sentence substituted "written complaint" for "verified complaint". Amendment effective May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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



**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2013 Amendment:**

Chapter 273 in (1)(a) at beginning inserted exception clause; inserted (1)(b) regarding objection by franchisee of same line-make; and made minor changes in style. Amendment effective April 22, 2013.

**Saving Clause:**

Section 4, Ch. 273, L. 2013, was a saving clause.

**2003 Amendment:**

Chapter 299 in (2) in first sentence after "department shall" inserted "appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6" and at beginning of second sentence inserted "Within 30 days of the order of appointment, the hearings officer shall", after "time" substituted "for a scheduling conference for the contested case" for "which must be within 30 days of the date of the order, and place of a hearing on the objection", and near end after "copy of the" inserted "scheduling conference order and the"; deleted former (3) that read: "(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days"; in (4) near end after "costs" inserted "related to the contested case hearing"; in (6) in second sentence substituted "60 days" for "30 days"; and made minor changes in style. Amendment effective January 1, 2004.

**Applicability:**

Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

**1997 Amendment:**

Chapter 221 in (4), near beginning, inserted "or upon objection to the establishment of a new motor vehicle dealership", after "continue" inserted "or not establish", and deleted former last sentence that read: "When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor"; inserted (9) requiring agreement to continue in effect until remedies are exhausted and requiring franchisor to comply with agreement and law; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

**1985 Amendment:**

In (1) through (3) and (5) through (8) substituted references to department of justice for references to division of motor vehicles.

**1981 Amendment:**

Changed "department" to "division" throughout the section.

**Case Notes**

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**Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary:**

In *Rimrock Chrysler, Inc. v. St.*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392 (Rimrock I), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court's dismissal of the plaintiff's petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. *Rimrock Chrysler, Inc. v. Dept. of Justice*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

**Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed:**

On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing *Kans. City Trailer Sales v. Holiday Rambler Corp.*, 1994 WL 49932 (W. Dist. Mo. 1994).

**Improper Federal Court Jurisdiction and Review of State Agency Decision:**

Ford Motor Company sought to terminate an automobile dealer franchise, and the franchise holder sought a Montana Department of Justice administrative hearing under 61-4-206. The Department's decision in favor of Ford was appealed to a Montana District Court under 2-4-702. Ford successfully removed the case to the United States District Court, which reversed the Department's decision and rendered judgment in favor of Ford. The franchise holder appealed. The Montana procedure clearly provided for state District Court appellate review, not de novo review, of the administrative agency decision. Therefore, the federal District Court had neither original jurisdiction nor removal jurisdiction over review of the administrative agency decision. The removal to the federal District Court was error. The federal District Court's reversal of the administrative agency decision and rendering of judgment in favor of Ford were also in error. The judgment was vacated, and the case was remanded to the federal District Court for further remand by it to the state District Court. *Shamrock Motors, Inc. v. Ford Motor Co.*, 120 F3d 196 (9th Cir. 1997), overruled in *BNSF Railway Co. v. O'Dea*, 572 F3d 785 (9th Cir. 2009).

## 61-4-207, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-207 Determination of good cause.**

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(1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

- (a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types;
- (b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;
- (c) permanency of the investment;
- (d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;
- (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;
- (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;
- (g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and
- (h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

- (a) a change in ownership of the franchisee's dealership;
- (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;
- (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or
- (d) the desire of a franchisor or a franchisor's representative:
  - (i) for greater market penetration; or
  - (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.

**(3)** In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

- (a)** amount of business transacted by other existing franchisees of the same line-make in that community;
- (b)** investment necessarily made and obligations incurred by other existing franchisees of the same line-make in that community in the performance of their part of their franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee;
- (c)** whether the other existing franchisees of the same line-make in that community are substantially compliant with reasonable manufacturer requirements for providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make;
- (d)** whether the demographic characteristics, including population, of that community have changed sufficiently since the appointment of the other existing franchisees to support the economic viability of both the other existing franchisees and the additional franchisee; and
- (e)** whether the franchisor's action is in good faith.

## History

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En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(10), (15), (16); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 11, Ch. 221, L. 1997; amd. Sec. 5, Ch. 308, L. 2009; amd. Sec. 2, Ch. 273, L. 2013; § 1, Ch. 92, L. 2017, effective March 23, 2017; § 17, Ch. 283, L. 2019, effective May 3, 2019; § 16, Ch. 389, L. 2021, effective April 29, 2021.

Annotations

## Notes

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### Effective Dates

Section 2, Ch. 92, L. 2017, provided: "This act is effective on passage and approval." Approved March 23, 2017.

Section 20, Ch. 283, L. 2019 provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

### Amendment Notes

The 2017 amendment added "all" in the introductory language of (1); rewrote (1)(a), which formerly read: "the franchisee's sales in relation to the market"; added "greater" in (2)(d)(i); and substituted "to alter" for "to reduce."

The 2019 amendment by ch. 283 added "existing" in (3)(a); in (3)(b), added "existing" preceding "franchisees of the same" and substituted "franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee" for "franchises" at the end; in (3)(c), added "other existing" and "substantially compliant with reasonable manufacturer requirements for," and substituted "special and essential tools and equipment, replacement parts supply" for "equipment, parts supply"; added (3)(d); and made a related change.

The 2021 amendment by ch. 389 added (3)(e); and made related changes.

## Preambles

The preamble attached to Ch. 389, L. 2021 provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

The preamble attached to Ch. 283, L. 2019, provided: "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, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order 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."

## Separability

Section 19, Ch. 283, L. 2019 provided: "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."

## Notes to Decisions

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### **Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

### **Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

### **Contracts Law: Breach: Material Breach**

### **Business & Corporate Law: Distributorships & Franchises: Business Opportunities**

Court did not err by denying the claimant's petition for judicial review because the franchisor's testimony established that the existing franchisee was meeting or exceeding the franchisor's contractual expectations. *Rimrock Chrysler, Inc. v. State DOJ*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278, 2018 Mont. LEXIS 28 (Mont. 2018).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

Judgment of the district court denying appellant's motion to dismiss was reversed because the district court erred in not recognizing that, once respondent was no longer a franchisee, there was no effective relief under Mont. Code Ann. § 61-4-207(2)(a); thus, the appeal from the state motor vehicle division should have been dismissed as moot. *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, 293 Mont. 188, 974 P.2d 1150, 56 Mont. St. Rep. 99, 1999 Mont. LEXIS 22 (Mont. 1999).

### **Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

### **Contracts Law: Breach: Material Breach**

Court properly affirmed the final decision that approved, upon good cause, termination of the franchise agreement because the determination that the dealer's sales were deficient was supported by substantial evidence, and this was a material requirement under the agreement. *S & P Brake Supply, Inc. v. Daimler Trucks N. Am., LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264, 2018 Mont. LEXIS 29 (Mont. 2018).

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## **State Notes**

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## **Notes**

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### **Compiler's Comments**

#### **2019 Amendment:**

Chapter 283 in (3)(a) after "transacted by other" inserted "existing"; in (3)(b) near beginning after "incurred by other" inserted "existing" and at end after "part of their" substituted current text regarding franchise agreements, date of investment and obligations, and date of appointment of additional franchisee for "franchises"; in (3)(c) near beginning after "whether the" inserted "other existing" and after "community are" inserted "substantially compliant with reasonable manufacturer requirements for" and near middle after "sales and service facilities" substituted "special and essential tools and equipment, replacement parts supply" for "equipment, parts supply"; inserted (3)(d) regarding changing demographic characteristics to support the economic viability of existing and additional franchisees; and made minor changes in style. Amendment effective May 3, 2019.

#### **Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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

#### **Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.

**2017 Amendment:**

Chapter 92 in (1) after “consideration” inserted “all”; in (1)(a) substituted “Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee’s local market variations beyond adjusting for the local popularity of general vehicle types” for “market”; in (2)(d)(i) inserted “greater”; in (2)(d)(ii) near beginning substituted “alter” for “reduce”; and made minor changes in style. Amendment effective March 23, 2017.

**2013 Amendment:**

Chapter 273 inserted (2)(d)(ii) regarding reduction of franchises or dealer locations; and made minor changes in style. Amendment effective April 22, 2013.

**Saving Clause:**

Section 4, Ch. 273, L. 2013, was a saving clause.

**2009 Amendment:**

Chapter 308 in (1)(a) substituted “the franchisee’s sales in relation to the market” for “amount of business transacted by the franchise”; in (1)(g) near beginning following “subsection (2)” substituted language concerning actions by the franchisee for “failure by the franchisee to substantially comply with the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material”; inserted (1)(h) concerning enforceability of the franchise; inserted (2)(c) regarding failure to change location; inserted (2)(d) concerning market penetration; and made minor changes in style. Amendment effective April 18, 2009.

**Severability:**

Section 10, Ch. 308, L. 2009, was a severability clause.

**1997 Amendment:**

Chapter 221 in (1)(g), before “requirements”, substituted “the written and uniformly applied” for “those”; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

**1985 Amendment:**

In (1), (1)(g), and (3) substituted references to department of justice for references to division of motor vehicles.

**1981 Amendment:**

Changed “department” to “division” throughout the section.

## Case Notes

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**Analysis of Good Cause — Termination of Franchise Agreement Proper — No Error in Upholding Department’s Final Order:**

The defendant, a franchisor, served notice of its intention to terminate the plaintiff’s franchise agreement pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. The plaintiff filed an objection to the notice

with the Department of Justice, claiming that the defendant lacked good cause to terminate the agreement as required under the Montana Dealer Act. Following a contested case hearing and a ruling by the hearings officer that the defendant had good cause, the Department issued a final decision adopting the ruling. The plaintiff then filed a petition for judicial review, and the District Court affirmed the Department's ruling. On appeal, the plaintiff argued that the District Court had erred in affirming the ruling. After analyzing several factors to determine whether good cause existed to terminate the agreement, the Supreme Court affirmed. *S & P Brake Supply, Inc. v. Daimler Trucks North America, LLC*, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264.

**Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary:**

In *Rimrock Chrysler, Inc. v. St.*, 2016 MT 165, 384 Mont. 76, 375 P.3d 392 ([Rimrock I](#)), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court's dismissal of the plaintiff's petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. *Rimrock Chrysler, Inc. v. Dept. of Justice*, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

**Sale of Automobile Franchise — Error in Failure to Resolve Mootness as Threshold Issue Before Underlying Dispute Addressed:**

Ford Motor Company (Ford) notified franchisee Shamrock Motors (Shamrock) that it intended to terminate Shamrock's automobile dealer franchise because Shamrock had sold 80% of its stock without Ford's knowledge or consent, which violated their franchise agreement. The Motor Vehicle Division of the Department of Justice issued a ruling that Ford had good cause, so Shamrock filed for judicial review in the District Court. Ford then removed to federal court, where the ruling was reversed, so Ford appealed to the Ninth Circuit Court. Shamrock then sold the dealership, and the decision was vacated because of lack of jurisdiction. The case was remanded to state court, where Ford moved to dismiss for mootness. The District Court denied the motion without discussion and ruled for Shamrock, concluding that the franchise could not be terminated as a result of the sale of 80% of the franchise stock. Reversing on appeal, the Supreme Court cited *Adkins v. Livingston*, 121 M 528, 194 P2d 238 (1948), in holding that mootness is a threshold issue that must be dealt with before the underlying dispute may be addressed. A matter is moot when, because of an event or happening, the issue has ceased to exist and no longer presents an actual controversy. A question is moot when a court cannot grant effective relief. If the parties cannot be restored to their original position, an appeal becomes moot. When Shamrock chose to sell the franchise during the appellate process, the question of whether Ford had good cause to terminate the franchise in the first instance became academic and thus moot. The District Court erred when it did not resolve the issue of mootness before addressing the merits of the claim, not recognizing that once Shamrock sold the dealership and was no longer the franchisee, there was no effective relief that the court could fashion under Title 61, ch. 4, part 2, so the appeal from the Motor Vehicle Division's ruling should have been dismissed as moot. *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, 293 M 188, 974 P2d 1150, 56 St. Rep. 99 (1999), followed in *Shamrock Motors, Inc. v. Chrysler Corp.*, 1999 MT 39, 293 M 317, 974 P2d 1154, 56 St. Rep. 164 (1999).



## 61-4-208, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-208 Prohibited acts — rights of franchisees.**

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(1) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

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

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

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

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

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

(v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other agreement providing otherwise, purchase goods or services from a vendor identified, selected, or designated by a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services of like kind, quality, and design from a vendor that the franchisee chooses;

(vi) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

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

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

## 61-4-208, MCA

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

**(B)** threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of any of these persons or entities;

**(b)** delay, refuse, or fail to deliver new motor vehicles in a reasonable time in a reasonable quantity relative to the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities and sales potential after accepting an order from a new motor vehicle dealer or transferee of a new motor vehicle dealer if the new motor vehicles are publicly advertised as being available for immediate delivery;

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

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

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

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

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

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

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

**(2)**

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

**(b)**

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

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

**(A)** moveable displays, brochures, or promotional materials containing material subject to the intellectual property rights of a franchisor or parts to be used in repairs under warranty obligations of a franchisor; or

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

**(3)**

**(a)** Except as provided in subsection (3)(b) or (3)(c), a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

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

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

## History

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En. 51-606 by Sec. 6, Ch. 380, L. 1977; R.C.M. 1947, 51-606; amd. Sec. 1, Ch. 202, L. 1991; amd. Sec. 12, Ch. 221, L. 1997; amd. Sec. 3, Ch. 313, L. 1999; amd. Sec. 173, Ch. 542, L. 2005; amd. Sec. 6, Ch. 308, L. 2009; amd. Sec. 3, Ch. 273, L. 2013; § 3, Ch. 93, L. 2017, effective March 23, 2017.

Annotations

## Notes

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### Editor's Note.

In 2018, the Code Commissioner made style changes in subsection (1).

### Effective Dates

Section 5, Ch. 93, L. 2017, provided: "This act is effective on passage and approval." Approved March 23, 2017.

### Amendment Notes

The 2017 amendment added (1)(e).

## Notes to Decisions

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### Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Enforcement

Notice requirements in Mont. Code Ann. § 61-4-205 clearly apply only to franchisors, and when the Montana legislature intends provisions of the motor vehicle sale and distribution statutes to apply to more

than one entity, it makes that intention clear, as in Mont. Code Ann. §§ 61-4-202(2)(a), 61-4-208. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

## Research References & Practice Aids

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### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 2017 Amendment:

Chapter 93 inserted (1)(e) prohibiting the enforcement of a right of first refusal in new motor vehicle franchise contracts. Amendment effective March 23, 2017.

#### 2013 Amendment:

Chapter 273 in (1) after "manufacturer" deleted "of new motor vehicles"; inserted (1)(a)(v) regarding purchase by franchisee of goods and services from vendors; in (1)(a)(viii) and (1)(a)(viii)(A) after "distributor branch" inserted "importer" and substituted "any of these persons" for "the listed persons"; in (1)(a)(viii)(B) substituted "any of these persons or entities" for "the listed entities"; in (2)(a) inserted "or importer"; inserted (2)(b) regarding goods and services eligible for reimbursement; in (3)(a), (3)(b), and (3)(c) in two places after "manufacturer" deleted "of new motor vehicles"; and made minor changes in style. Amendment effective April 22, 2013.

#### Saving Clause:

Section 4, Ch. 273, L. 2013, was a saving clause.

#### 2009 Amendment:

Chapter 308 in (1)(a), (1)(a)(i), (1)(a)(vi), (1)(a)(vii), (1)(a)(vii)(A), (1)(a)(vii)(B), (1)(b) in two places, and (1)(c) after reference to dealer inserted reference to transferee of a new motor vehicle dealer; in (1)(a)(iii) at end after "facilities" deleted "when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion"; in (1)(a)(iv) at end after "manufacturer" substituted "in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive" for "that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations"; inserted (1)(a)(v) adding any efforts designed to coerce a dealer into not becoming involved with any other line-makes as a prohibited act; in (1)(c) following "or franchise" inserted "of a new motor vehicle dealer or transferee of a new motor vehicle dealer"; inserted (1)(d) prohibiting a manufacturer from linking a dealer's

performance to certain allocations of vehicles and program participation; and made minor changes in style. Amendment effective April 18, 2009.

**Severability:**

Section 10, Ch. 308, L. 2009, was a severability clause.

**2005 Amendment:**

Chapter 542 in (1)(b) near beginning and near end before "vehicles" inserted "motor" and near middle in two places before "vehicle" inserted "motor". Amendment effective January 1, 2006.

**1999 Amendment:**

Chapter 313 inserted (3) regarding persons who may directly or indirectly own or operate a motor vehicle dealership in Montana and providing exceptions from prohibition; and made minor changes in style. Amendment effective April 15, 1999.

**Saving Clause:**

Section 4, Ch. 313, L. 1999, was a saving clause.

**1997 Amendment:**

Chapter 221 in (1)(a) inserted "or require"; inserted (1)(a)(iii) concerning change of location of dealership, (1)(a)(iv) concerning exclusive facilities, (1)(a)(v) concerning refraining from participation in certain activities, (1)(b) concerning delivery of new vehicles, and (1)(c) concerning unreasonable restrictions; inserted (2) specifying circumstances under which failure is not violation; and made minor changes in style. Amendment effective April 8, 1997.

**Saving Clause:**

Section 15, Ch. 221, L. 1997, was a saving clause.

**1991 Amendment:**

Inserted (2) prohibiting use of coercion to obtain participation in advertising campaigns or sales promotions; and made minor changes in style.

## 61-4-210, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-210 Penalties — administrative penalties.**

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- (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$ 500 or more than \$ 1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.
- (2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$ 500.
- (3) If any new motor vehicle dealer or transferee of a new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent of the listed persons or entities, the new motor vehicle dealer or transferee of a new motor vehicle dealer may recover damages in a court of competent jurisdiction in an amount equal to three times the pecuniary loss, together with costs including reasonable attorney fees.
- (4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates the provisions of this part may be subject to administrative action and a civil penalty not to exceed \$ 500 for each violation.

### **History**

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En. 51-604, 51-607 by Secs. 4, 7, Ch. 380, L. 1977; R.C.M. 1947, 51-604(4), 51-607; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 229, L. 1991; amd. Sec. 7, Ch. 308, L. 2009.

Annotations

### **Notes to Decisions**

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#### **Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Enforcement**

Because a business alleged, in its action under Mont. Code Ann. § 61-4-210(3), that a company failed to comply with Mont. Code Ann. § 61-4-205 notice requirements concerning terminating a dealer agreement, and the company claimed that the dealer agreement did not constitute a franchise and thus the statute was inapplicable, the trial court had jurisdiction to consider whether a franchise existed. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

## 61-4-210, MCA

New motor vehicle dealer who believes its dealer agreement with a manufacturer, distributor, or importer constitutes a franchise and that Mont. Code Ann. § 61-4-205 notice requirements have been violated may bring a direct action in the district court for a violation of the statute pursuant to Mont. Code Ann. § 61-4-210(3); that action is not connected to the proceeding provided for in Mont. Code Ann. §§ 61-4-205 and 61-4-206. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159, 2005 Mont. LEXIS 343 (Mont. 2005).

## Research References & Practice Aids

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### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### 2009 Amendment:

Chapter 308 in (3) in two places following "dealer" inserted "or transferee of a new motor vehicle dealer"; and made minor changes in style. Amendment effective April 18, 2009.

#### Severability:

Section 10, Ch. 308, L. 2009, was a severability clause.

#### 1991 Amendment:

Inserted (4) relating to administrative enforcement and penalties.

#### 1985 Amendment:

In (2) substituted references to department of justice for references to division of motor vehicles.

#### 1981 Amendment:

Changed "department" to "division" throughout the section.

## Case Notes

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**Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed:**

On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing *Kans. City Trailer Sales v. Holiday Rambler Corp.*, 1994 WL 49932 (W. Dist. Mo. 1994).

**Motion to Amend Judgment Inappropriate When Testimony and Evidence Available in Original Proceedings:**

Plaintiff moved to alter or amend a summary judgment order based on affidavits and evidence regarding whether a franchise existed between the parties. The District Court denied the motion, and the Supreme Court affirmed. The affidavits and evidence were not considered newly discovered or previously unavailable, and plaintiff failed to establish that the District Court had the evidence available during the original proceeding, so a motion to alter or amend the judgment was inappropriate. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005). See also *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, 304 M 356, 22 P3d 631 (2001).

**Subject Matter Jurisdiction of District Court to Determine Whether Franchise Exists:**

Plaintiff filed an action under this section, contending that defendant failed to follow the notice provisions in 61-4-205 in terminating plaintiff's dealership agreement and that defendant needed to exhaust its administrative remedies before the District Court could obtain subject matter jurisdiction. Defendant contended that the Department of Justice Motor Vehicle Division lacked jurisdiction because the dealer agreement did not constitute a franchise, so the administrative and notice provisions did not apply. The Supreme Court noted that a vehicle dealer that believes that its agreement with a manufacturer, distributor, or importer constitutes a franchise and that the notice requirements have not been complied with may bring a direct action in District Court pursuant to this section for violation of the notice requirement. That is what plaintiff did. However, an action under this section is not connected to the administrative contested case proceedings provided for in 61-4-205 and 61-4-206 and does not require a party to initiate and exhaust administrative proceedings prior to bringing the action. Thus, the District Court had subject matter jurisdiction over the question of whether a franchise agreement existed between the parties. *Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am.*, 2005 MT 187, 328 M 66, 117 P3d 159 (2005).



## 61-4-212, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### 61-4-212 Damage notice.

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- (1) Except as provided in subsection (2), a franchisor is required:
  - (a) to disclose in writing to a new motor vehicle dealer damage to a new motor vehicle delivered to the new motor vehicle dealer if the damage is known to the franchisor and repaired, the damage occurred after the manufacturing process is complete but before delivery to the new motor vehicle dealer, and the damage exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts; and
  - (b) to disclose in writing to a purchaser of the new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts.
- (2) Disclosure is not required for any glass, tires, or bumper of a new motor vehicle if the damaged item has been replaced with original or comparable equipment.
- (3) If disclosure is not required under subsection (2), a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired before completion of the sale.
- (4) For purposes of this section, "franchisor's suggested retail price" means the retail price of the new motor vehicle suggested by the franchisor, including the retail delivered price suggested by the franchisor for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the franchisor for the new motor vehicle.

### History

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En. Sec. 8, Ch. 308, L. 2009.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

## State Notes

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## Notes

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### Compiler's Comments

#### Severability:

Section 10, Ch. 308, L. 2009, was a severability clause.

#### Effective Date:

Section 11, Ch. 308, L. 2009, provided that this section is effective April 18, 2009.

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End of Document

## 61-4-213, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-213 Warranty reimbursement.**

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(1)

(a) If a motor vehicle franchisor requires or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the franchisor:

(i) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered, using the franchisor's labor time guide or the labor time guide used by the dealer for labor furnished other than pursuant to warranty, at the dealer's election, and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as furnished, in an amount equal to the prevailing retail rate charged by the franchisee for the labor or the prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which the labor is rendered or the parts and supplies are furnished other than pursuant to warranty;

(ii) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a)(i) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(iii) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(b) The submission required under subsection (1)(a)(iii) may consist of:

(i) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(ii) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(iii) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of

## 61-4-213, MCA

the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

**(4)** The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) or (3) if the franchisee seeks to be compensated under subsection (1).

**(5)** Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

**(6)**

**(a)** The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2) unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

**(b)** The objection must contain:

**(i)** a full explanation of any and all reasons that the declared rate is materially inaccurate;

**(ii)** evidence substantiating each stated reason;

**(iii)** a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

**(iv)** a proposed adjusted retail labor rate or retail parts rate, as applicable.

**(c)** The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup, except in connection with litigation.

**(d)** A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission for any purpose, including but not limited to that of subsection (9).

**(7)** In a judicial proceeding or a department proceeding involving an application or enforcement of the provisions of 61-4-203, 61-4-204, and 61-4-210(4):

**(a)** the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle franchisee was materially inaccurate;

**(b)** the motor vehicle franchisor has the burden of proof; and

**(c)** any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt of the franchisee's submission.

**(8)** A motor vehicle franchisor may not directly or indirectly:

**(a)**

**(i)** require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means or methodology other than as prescribed in 61-4-204; or

**(ii)** except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a process to establish or alter that labor rate or parts markup, including but not limited to:

**(A)** substituting any other purported qualified repair order sample for that submitted by a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup or the use, for purposes of establishing or reducing the franchisee's

## 61-4-213, MCA

parts markup, of the franchisee's sample submitted for purposes of establishing or increasing its labor rate; or

**(B)** imposing an unduly burdensome or time-consuming method or requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations;

**(b)** recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

**(c)** establish or implement a special part number for parts used in warranty work if it results in lower compensation to the franchisee than as calculated in this section;

**(d)** require, influence, or attempt to influence a franchisee to implement or change the prices for which it sells parts or labor in retail repairs;

**(e)** take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section or dissuade or discourage the franchisee from doing so, including but not limited to:

**(i)** creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

**(ii)** acting or failing to act, other than in good faith;

**(iii)** hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

**(iv)** establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

**(v)** conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

**(f)** implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

**(9)** A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsections (1)(a)(iii) and (1)(b):

**(a)** its warranty labor rate more than once in a 12-month period; and

**(b)** its warranty parts markup more than once in a 12-month period.

**(10)** A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

**(11)** If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

**(a)** the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;

**(b)** the cost of the part shown in a current or prior established price schedule of the franchisor; or

**(c)** the cost of a substantially identical part shown in a current or prior established price schedule of the franchisor.

**(12)**

- (a)** The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and labor rendered under a warranty within 30 days after approval of a claim for reimbursement.
- (b)** All claims for reimbursement must be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly performed, or that the parts or labor were unnecessary to correct the defective condition.
- (c)** A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of submission of the claim.
- (d)** A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.
- (e)** A franchisor may not audit a claim after the expiration of 12 months following the payment of the claim.

**(13)** For the purposes of this section, the following definitions apply:

- (a)** "Labor" means work or service performed, including that of a diagnostic character, with respect to repair of a motor vehicle.
- (b)** "Parts" means original or replacement parts, accessories, and components with respect to a motor vehicle, including engine, transmission, and other parts assemblies.
- (c)**
  - (i)** "Qualified repair" means a repair to a vehicle that:
    - (A)** would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having exceeded the time or mileage limit of the warranty;
    - (B)** does not otherwise constitute warranty work; and
    - (C)** does not constitute any of the work encompassed by subsection (13)(c)(ii).
  - (ii)** The term does not include:
    - (A)** routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of and related to a repair;
    - (B)** replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;
    - (C)** repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;
    - (D)** repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns or are otherwise subject to motor vehicle franchisor discounts;
    - (E)** repairs of motor vehicles owned by the dealer or an employee of the dealer;
    - (F)** installations of accessories;
    - (G)** repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;
    - (H)** safety or vehicle emission inspections required by law;

## 61-4-213, MCA

- (I) vehicle reconditioning;
- (J) parts sold at wholesale;
- (K) repairs using aftermarket parts; or
- (L) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(d) “Qualified repair order” means a repair order that encompasses, in whole or in part, a qualified repair or repairs.

(e) “Repair order” means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price and, in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) “Warranty” means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified preowned warranty, in each case issued or administered by a motor vehicle franchisor.

## History

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§ 4, Ch. 283, L. 2019, effective May 3, 2019; § 17, Ch. 389, L. 2021, effective April 29, 2021.

Annotations

## Notes

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### Codification

Section 18, Ch. 283, L. 2019 provided: “(1) 30-11-717 through 30-11-719 are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to 30-11-717 through 30-11-719 .

(2) 61-4-213 is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to 61-4-213.”

### Editor's Notes

In 2020, the Code Commissioner reoutlined this section.

### Effective Dates

Section 20, Ch. 283, L. 2019 provided: “[This act] is effective on passage and approval.” Approved May 3, 2019.

### Amendment Notes

The 2021 amendment by ch. 389, in (1)(a)(i), added “using the franchisor’s labor time guide or the labor time guide used by the dealer for labor furnished other than pursuant to warranty, at the dealer’s election” following “labor as rendered” and substituted “the labor” for “such labor” twice; and deleted “such” preceding “allocation is indicated” in (5).

### Preambles

## 61-4-213, MCA

The preamble attached to Ch. 389, L. 2021 provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

**Severability**

Section 19, Ch. 283, L. 2019 provided: "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."

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

**State Notes**

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**Notes**

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**Compiler's Comments****Effective Date:**

Section 20, Ch. 283, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

**Preamble:**

The preamble attached to Ch. 283, L. 2019, provided: "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

**Severability:**

Section 19, Ch. 283, L. 2019, was a severability clause.



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## 61-4-215, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### 61-4-215 Mediation of disputes.

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- (1) All disputes between a manufacturer, person, or entity described in 61-4-208(1) and a new motor vehicle dealer or transferee of a new motor vehicle dealer alleged to be in violation of any provision of Montana law, including but not limited to 30-11-701 through 30-11-713, 30-11-717 through 30-11-719, 61-4-131 through 61-4-137, 61-4-150, 61-4-205(1) and (2), 61-4-208, and 61-4-213, are subject to mediation as provided for in this section. A demand for mediation must be served on the adverse party before or contemporaneous with the filing of the objection, protest, complaint, or petition or the bringing of the action. A demand for mediation must be in writing and served on the adverse party by certified mail, return receipt requested, or by overnight delivery service that provides proof of delivery at an address designated for the party in the records of the complainant. The demand for mediation must contain a brief statement of the dispute and the relief sought by the complainant filing the demand.
- (2) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. If the parties are unable to agree on a mediator, a party may apply to a district judge of the first judicial district, Lewis and Clark County, for appointment of a mediator. The meeting place must be within this state in a location selected by the mediator in proximity to the place of business of a party domiciled in this state. The mediator may extend the date of the meeting for good cause shown by either party or on the stipulation of both parties.
- (3) The service of a demand for mediation under subsection (1) must stay the time for the filing of any objection, protest, complaint, or petition with the department or for bringing an action until the representatives of both parties have met with a mutually selected or appointed mediator for the purpose of attempting to resolve the dispute. If an objection, protest, complaint, or petition is filed before the meeting, the department or the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, on the written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the department or court considers to be appropriate. A suspension order issued under this subsection may be revoked on motion of any party or on motion of the department or the court.
- (4) The department shall encourage dealers and manufacturers to establish a panel of mediators who have the character, ability, and training to serve as mediators and who have knowledge of the motor vehicle industry.
- (5) A mediator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of the mediator's or arbitrator's powers and duties under this chapter. An act or omission of a mediator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

### History

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Annotations

## Notes

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### Codification

Section 19, Ch. 389, L. 2021 provided: “[Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1 through 4].”

### Preambles

The preamble attached to Ch.389, L. 2021 provided:

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

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

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End of Document

# 61-4-216, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

## **61-4-216 Administrative hearings and adjudications — procedure.**

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(1) A new motor vehicle dealer or transferee of a new motor vehicle dealer who is directly and adversely affected by the action or conduct of a manufacturer, person, or entity described in 61-4-208(1) that is alleged to be in violation of any provision of Montana law, including but not limited to 30-11-701 through 30-11-713, 30-11-717 through 30-11-719, 61-4-131 through 61-4-137, 61-4-150, 61-4-208, and 61-4-213, may seek a declaration and adjudication of rights and obligations with respect to the alleged action or conduct by filing with the department a complaint and request for an administrative hearing that conforms substantially with the requirements of the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, which governs all matters and procedures respecting the hearing and judicial review of cases such as this. The hearing officer shall assess the department's costs against the parties or a party as a cost of the action.

(2) Objections or notice of protest pursuant to 61-4-205(1) and (2) must be adjudicated pursuant to those statutes if mediation pursuant to 61-4-215 is unsuccessful.

## **History**

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§ 2, Ch. 389, L. 2021, effective April 29, 2021.

Annotations

## **Notes**

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### **Codification**

Section 19, Ch. 389, L. 2021 provided: “[Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1 through 4].”

### **Preambles**

The preamble attached to Ch.389, L. 2021 provided:

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

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.”

## Research References & Practice Aids

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### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

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## 61-4-217, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 2 Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers (§§ 61-4-201 — 61-4-225)***

### **61-4-217 Standing to bring action.**

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- (1) The following entities have standing to seek redress for violations of Title 30, chapters 11 and 14, part 25, of this chapter, or of any other provision of Montana law relating to or affecting the relationship between a manufacturer, person, or entity described in 61-4-208(1) and a new motor vehicle dealer:
- (a) a new motor vehicle dealer;
  - (b) a transferee of a new motor vehicle dealer; and
  - (c) any corporation or association that is primarily owned by or composed of new motor vehicle dealers and that primarily represents the interests of new motor vehicle dealers if at least one of the corporation or association members would have standing on its own, the interests that the action seeks to protect are germane to the corporation or association's purpose, and the claim asserted or the relief requested does not require the participation of individual members in the action.
- (2) Entities that have standing under subsection (1) may:
- (a) file a petition and request the department handle the matter as an administrative proceeding; or
  - (b) bring a civil action in a court of competent jurisdiction.
- (3) An action filed under this section may seek:
- (a) recovery of actual damages;
  - (b) declaratory or injunctive relief; or
  - (c) reasonable costs of the suit and attorney fees to a prevailing party.
- (4) A court or administrative hearing officer may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained for a willful violation of this chapter.

### **History**

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§ 3, Ch. 389, L. 2021, effective April 29, 2021.

Annotations

### **Notes**

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#### **Codification**

Section 19, Ch. 389, L. 2021 provided: “[Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1 through 4].”

**Preambles**

The preamble attached to Ch.389, L. 2021 provided:

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

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.”

**Research References & Practice Aids**

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**Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 2, MCA

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## 61-4-401, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)***

### **61-4-401 Declaration of policy.**

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It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

### **History**

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En. Sec. 1, Ch. 144, L. 1937; R.C.M. 1947, 51-201.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

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## 61-4-402, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)***

### 61-4-402 Definitions.

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- (1) “Finance company” or “finance agency” means a person, firm, association, corporation, or other organization engaged in the business of buying, selling, assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor’s lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.
- (2) The term “manufacturer” means a person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.
- (3) The term “motor vehicle”, as used in this part, includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.
- (4) The terms “sell”, “sold”, “buy”, and “purchase”, as used in this part, include exchange, barter, gift, and offer or contract to sell or buy.
- (5) The term “wholesale distributor” means a person, firm, association, corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

### History

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En. Sec. 2, Ch. 144, L. 1937; R.C.M. 1947, 51-202(b) thru (d), (f); amd. Sec. 9, Ch. 384, L. 1999.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

### State Notes

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### Notes

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**Compiler's Comments**

**1999 Amendment:**

Chapter 384 inserted definition of motor vehicle; and made minor changes in style. Amendment effective October 1, 1999.

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## 61-4-403, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)*

### 61-4-403 Certain financing agreements prohibited.

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It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that the dealer will finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement, or understanding is against the public policy of the state, and such condition, agreement, or understanding is unlawful, void, and unenforceable, either at law or equity.

### History

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En. Sec. 3, Ch. 144, L. 1937; R.C.M. 1947, 51-203; amd. Sec. 52, Ch. 421, L. 1979.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

### State Notes

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### Notes

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Contracts in restraint of trade generally void, 28-2-703.

Unlawful restraint of trade, 30-14-205.

61-4-403, MCA

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## 61-4-404, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)*

### 61-4-404 Threats prima facie evidence.

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Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer that the manufacturer will cease to sell or will terminate or refuse to enter into a contract to sell motor vehicles to the dealer unless the dealer finances the purchase or sale of any motor vehicles only with or through a designated person is presumed to be made at the direction of and with the authority of the manufacturer. The threat is prima facie evidence of the fact that the manufacturer has sold or intends to sell the motor vehicles on the condition or under the agreement prohibited by the provisions of this part.

### History

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En. Sec. 4, Ch. 144, L. 1937; R.C.M. 1947, 51-204; amd. Sec. 179, Ch. 542, L. 2005.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

### State Notes

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### Notes

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#### Compiler's Comments

2005 Amendment:

61-4-404, MCA

Chapter 542 in two places before "vehicles" deleted "vehicle or"; and made minor changes in style. Amendment effective January 1, 2006.

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## 61-4-405, MCA

Current through the 2021 Session of the Montana Legislature.

***LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)***

### 61-4-405 Penalty.

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Any person who shall violate any of the provisions of this part and any employee, agent, or officer of any such person who shall participate in any manner in making, enforcing, or performing or in aiding or abetting in the performance of any such contract, condition, agreement, or understanding shall be deemed guilty of a crime and upon conviction thereof shall be punished for each offense by a fine of not more than \$ 5,000 or by imprisonment in the penitentiary for not more than 5 years or in the county jail for not more than 1 year or by both such fine and imprisonment.

### History

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En. Sec. 5, Ch. 144, L. 1937; R.C.M. 1947, 51-205.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

### State Notes

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### Notes

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Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

61-4-405, MCA

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## 61-4-406, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 4 Monopolies in Financing Sale of Motor Vehicles (§§ 61-4-401 — 61-4-406)*

### **61-4-406 Suit for injury to business or property.**

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In addition to the criminal and civil penalties provided in this part, any person who is injured in the person's business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue for damages in any court having jurisdiction in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover twice the amount of damages sustained and the costs of suit. Whenever it appears to the court before which any proceedings under this part may be pending that the ends of justice require that other parties must be brought before the court, the court may cause them to be made parties defendant and summoned, whether or not they reside in the county where the action is pending.

### **History**

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En. Sec. 6, Ch. 144, L. 1937; R.C.M. 1947, 51-206; amd. Sec. 1943, Ch. 56, L. 2009.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 4, MCA

### **State Notes**

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### **Notes**

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#### **Compiler's Comments**

#### **2009 Amendment:**

61-4-406, MCA

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**Part Compiler's Comments**

**Applicability:**

Section 9, Ch. 144, L. 1983, provided: "This act applies only to covered motor vehicles purchased after October 1, 1983."

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## 61-4-501, MCA

Current through the 2021 Session of the Montana Legislature.

**LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 5 New Motor Vehicle Warranties — Remedies (§§ 61-4-501 — 61-4-533)**

### 61-4-501 Definitions.

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For purposes of this part, the following definitions apply:

- (1) “Collateral charge” means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.
- (2) “Consumer” means the purchaser or lessee, other than for purposes of resale or lease, of a passenger motor vehicle used for personal, family, or household purposes that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations. The term includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the passenger motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
- (3) “Incidental damage” means incidental and consequential damage as defined in 30-2-715.
- (4) “Manufacturer” has the meaning applied to that word in 61-4-201.
- (5)
  - (a) “Motor vehicle” means a vehicle, including the nonresidential portion of a motor home, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.
  - (b) The term does not include:
    - (i) a truck with 15,000 pounds or more gross vehicle weight rating; or
    - (ii) components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.
- (6) “Reasonable allowance for use” is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the motor vehicle is not out of service because of nonconformity. The reasonable allowance for use must be computed by multiplying the total contract price of the motor vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the motor vehicle traveled prior to the manufacturer’s acceptance of its return.
- (7) “Warranty period” means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier.

### History

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En. Sec. 1, Ch. 144, L. 1983; amd. Sec. 1, Ch. 744, L. 1985; amd. Sec. 2, Ch. 300, L. 1991; amd. Sec. 1, Ch. 360, L. 2003; amd. Sec. 180, Ch. 542, L. 2005; amd. Sec. 1, Ch. 84, L. 2007.

Annotations

## LexisNexis® Notes

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### Case Notes

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#### Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: Lemon Laws

Where the buyers purchased a motor home that swayed and handled so badly that they feared for their lives, the buyers presented sufficient evidence to support their claim under the Lemon Law. The buyers met the threshold requirements for a Lemon Law claim under Mont. Code Ann. § 61-4-503, because they took the motor home to multiple dealers eight times in an attempt to have the problems resolved within the first two years of the warranty period set forth in Mont. Code Ann. § 61-4-501(7). *Vader v. Fleetwood Enters.*, 2009 MT 6, 348 Mont. 344, 201 P.3d 139, 2009 Mont. LEXIS 9 (Mont. 2009).

### Research References & Practice Aids

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#### LAW REVIEWS

23 Montana Lawyer 1, ARTICLE: DISPUTE RESOLUTION OPTIONS OPEN DOORS TO AMICABLE SETTLEMENTS, By Chris Manos and Carson Taylor, January, 1998, Copyright (c) 1995 State Bar of Montana The Montana Lawyer.

#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 5, MCA

### State Notes

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### Notes

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#### Compiler's Comments

##### 2007 Amendment:

Chapter 84 in definition of consumer in first sentence near beginning inserted "or lessee", inserted "or lease", inserted "passenger", inserted "used for personal, family, or household purposes", and after "modifications or alternations" deleted "by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions" and inserted second sentence regarding person to whom vehicle is transferred and express warranty; and in definition of motor vehicle in (b)(i) substituted "15,000 pounds" for "10,000 pounds". Amendment effective March 30, 2007.

**2005 Amendment:**

Chapter 542 in definition of motor vehicle in (a) after “motor home” deleted “as defined in 61-1-130”; in definition of reasonable allowance for use in three places before “vehicle” inserted “motor”; and made minor changes in style. Amendment effective January 1, 2006.

**2003 Amendment:**

Chapter 360 in definition of motor vehicle in (a) near end inserted “or registered” and in (b) after “weight rating” deleted “or a motorcycle as defined in 61-1-105”; and made minor changes in style. Amendment effective October 1, 2003.

**1991 Amendment:**

Inserted definition of manufacturer; and near beginning of definition of motor vehicle, after “vehicle”, inserted “including the nonresidential portion of a motor home as defined in 61-1-130”, in second sentence deleted reference to a motorhome, and at end inserted sentence creating residential purpose exception.

**1985 Amendment:**

Inserted (1) defining collateral charge as all governmental charges; inserted (3) defining incidental damage as incidental and consequential damage; in (4) in second sentence, after “61-1-130”, inserted remainder of sentence excluding from definition of motor vehicle a truck with 10,000 pounds or more gross vehicle weight rating or a motorcycle under 61-1-605; inserted (5) defining reasonable allowance for use as an amount directly attributable to use of the vehicle by consumers prior to first written notice of the nonconformity to manufacturer or agent during subsequent period when vehicle is not out of service because of nonconformity; and in (6), after “means” substituted “the period ending 2 years” for “the term of an express agreement or the period ending 1 year” and after “motor vehicle” inserted “or during the first 18,000 miles of operation”.

**Code Commissioner Correction — Subsections Not Codified:**

As amended by Ch. 744, L. 1985, this section contained a definition of “Department” as the Department of Commerce and a definition of “Division” as the Division of Motor Vehicles. Section 13, Ch. 503, L. 1985, instructed the Code Commissioner to replace all references to the Division of Motor Vehicles with references to the Department of Justice. To avoid two definitions of “department” for this part, the Code Commissioner has not codified the two definitions and throughout the part has replaced “department” with “department of commerce” and “division” with “department of justice”.

## 61-4-505, MCA

Current through the 2021 Session of the Montana Legislature.

*LexisNexis® Montana Code Annotated > Title 61 Motor Vehicles (Chs. 1 — 14) > Chapter 4 Sales and Distribution of Motor Vehicles (Pts. 1 — 5) > Part 5 New Motor Vehicle Warranties — Remedies (§§ 61-4-501 — 61-4-533)*

### 61-4-505 Dealer exemption — liability to manufacturer.

---

(1) This part does not impose any liability on a dealer or create a cause of action by a consumer against a dealer under 61-4-503.

(2) A dealer is not liable to a manufacturer for any refunds or motor vehicle replacements in the absence of evidence indicating that repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

### History

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En. Sec. 8, Ch. 144, L. 1983; amd. Sec. 4, Ch. 744, L. 1985; amd. Sec. 183, Ch. 542, L. 2005.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 5, MCA

### State Notes

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### Notes

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#### Compiler's Comments

##### 2005 Amendment:

Chapter 542 in (2) near middle before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

##### 1985 Amendment:

61-4-505, MCA

Inserted (2) establishing that dealer is not liable to manufacturer for refund or replacements without evidence that repairs made by dealer were carried out inconsistent with manufacturer's instructions.

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## 61-4-531, MCA

Current through the 2021 Session of the Montana Legislature.

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### 61-4-531 Nondelegable.

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The liabilities and obligations contained in this part may not be delegated or assigned to or assumed by any other person or entity.

### History

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En. Sec. 17, Ch. 744, L. 1985.

Annotations

### Research References & Practice Aids

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#### Hierarchy Notes:

Title 61, MCA

Title 61, Ch. 4, MCA

Title 61, Ch. 4, Pt. 5, MCA

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