SENATE
COMMERCE & LABOR

Minutes of Meeting
Friday, April 1, 1977

The meeting of the Commerce and Labor Committee was held on April 1, 1977, in Room 213 at 1:30 p.m.

Senator Thomas Wilson was in the chair.

PRESENT: Senator Bryan
Senator Wilson
Senator Blakemore
Senator Hernstadt
Senator Ashworth
Senator Young
Senator Close

ALSO PRESENT: See Attached List

SB 356 REGULATES MOTOR VEHICLE DEALERS' FRANCHISES (BDR 43-922)

Mr. Daryl Capurro, Executive Director of the Nevada Franchised Auto Dealers Association, appeared in support of the bill. Mr. William Thornton, an attorney for Thornton, Stephens, Atkins and Kellison of Reno, Ruth Moore and Phyllis Atkins also appeared in support of the bill. Mr. Capurro read from a prepared statement, which is attached.

Mr. Fred Bartlett, formerly a Ford dealer in Reno, stated the manufacturer usually pinpoints the investment required by the dealer by the projection of the market which is available to the dealer in that particular area. The figures are revised when it is felt the market is expanding, and the dealer is requested to put up additional capital.

SENATOR WILSON stated an unfair practice of the manufacturer, which requires an unreasonable change in the capital structure, is trying to be reached by this act. He asked how and why does this normally occur.

Mr. Bartlett stated the manufacturers generally will advise that the planning potential is being changed and this will require additional capital to handle that increase when the addendum to the sales contract is sent to the dealers. This recently occured in the Reno district. After pressure from the Ford dealers, Ford cut back those planning potential figures.

SENATOR WILSON asked what happens when the dealer doesn't have the additional capital.

Mr. Bartlett said the manufacturer finds another dealer who will put up the money and takes the original dealer out of the company.

Mr. Capurro stated this tactic can be used as a tool because the dealer has no real input into the planning potential. He is told what he will sell.

Damages were discussed. SENATOR RICHARD BRYAN stated there is a general punitive damage statute for fraud, oppression or malice.

Mr. Bill Thornton read from the bill, which stated that punitive damages may be awarded if the defendant acted maliciously.

SENATOR WILLIAM HERNSTADT stated that if it turns out that this bill materially affects the advertising relationships of the dealer, he would have to abstain from the voting because he has a sizeable business relationship with the dealers.

Mr. Thornton stated this bill is important to the dealers in Nevada because, looking into the dealers' contracts, Mr. Thornton's law firm found that dealers are consumers. Usually auto dealers are not thought of as consumers, but as it turns out, the kinds of agreements that are forced upon dealers by manufacturers make them consumers with no remedies. The bill creates a new cause of action for judicial decision. Mr. Thornton read from General Motors' contract, stating the manufacturers regulate virtually everything about the business. Under contract, it is impossible to transfer ownership of the dealership without the consent of the manufacturer. It also states that the manufacturer may terminate the dealership if there is any disagreement between owners. If a manufacturer terminates a dealer, it is effective upon receipt of the notice. If a dealer wishes to terminate, he must give 30-60 days written notice. He quoted from a Yale Law Review which stated that Ford Motor Company's arguments on the constitutionality of proposed acts blend the traditional sanctity of contracts and the prohibition of class legislation with a tax on the vagueness of the criteria. Ford Motor Company has contended the acts are unconstitutional because it vitiates the terms of existing contracts freely arrived at between private parties. Mr. Thornton maintained the contracts are not freely arrived at and there is law that says contracts may be regulated.

Senate

Mr. Bartlett addressed a question on section 10. The section states a manufacturer or distributor shall not unreasonably withhold consent to transfer of any ownership or interest in a franchise.

Mr. Archie Pozzi, of Pozzi Motors in Carson City, stated Ford Motor Company set the figure for Mr. Pozzi's planning volume and he has never come close to it. Still, Mr. Pozzi's working capital was raised $65,000 last year. The manufacturer can raise the planning volume at will. The planning volume is tied to the working capital. If the dealer isn't able to raise the working capital, the manufacturer pressures the dealer monthly to get it. The manufacturer also considers how many cars a dealer sells in relation to the big car segment. Many times the dealers can make their assignments. But this past year, Ford was involved in a strike, which halted the production of cars. Thus, the dealers had no cars to sell. Still, they are pressured to meet their assignments.

Mr. Capurro introduced the dealers who were appearing in support of the bill. They were: Mr. Herb Hallman of Reno, Mr. Jim Cashman of Las Vegas, Mr. Howard Henning of Fallon, Mr. Dick Dan from Reno, Mr. John Hope of Reno, Mr. John McCandless of Las Vegas, Mr. Jerry Allred of Las Vegas, Mr. Act Grulli of Yerington, Mr. Dick West of Reno, Mr. Jim Marsh of Las Vegas, Mr. Fletcher Jones of Las Vegas, and Mr. Don Hellwinkle of Minden.

Mr. Sid Gilliatt, a member of the marketing staff for General Motors Corporation, stated GMC is not opposed to reasonable regulations. There is presently proper judicial area for disputes as provided by Nevada law. GMC feels that personal service contracts are essential. GMC feels it has grounds to terminate a dealership if the principle dealer-operator is removed from the operation of the dealership because the foundation on which the agreement was entered has been destroyed.

Mr. Timothy McCann, an attorney for GMC, stated General Motors can live with these provisions, but it may not go far enough to cover other aspects. For example, under GMC's dealer agreement, a dealer may be involuntarily terminated if he is convicted of a crime. In that situation, GMC feels it is beneficial to the public interest to have a 15-day notice period instead of a 60-day notice period. GMC feels the same 15-day notice period should exist if the state revokes a dealer's license. Thse instances are not covered under this bill.

Senate

In answer to SENATOR WILSON's question about GMC's capital structure policy, Mr. Gilliatt stated GMC establishes owned network capital minimum standards based on the volume of business and on the method of the dealer's business. GMC has never terminated a dealer for failure to comply with the capital standards agreement. Dealer's attention is called to it and GMC urges the dealer to retain the capital he generates until he meets the standard. The purpose of the network capital standards is to build a cushion in case there is a lapse in business because of strikes or oil embargos. He stated he had no objection to section 10, pertaining to this issue. He objected to section 12 because the burden of proof falls on the manufacturer, rather than the dealer in cases of protests of relocations or additional dealers. California law places the burden of proof on the dealer. He also objected to the 60-day notice. It is burdensome to the manufacturer and the prospective dealer who is attempting to relocate and improve his facilities.

Mr. McCann pointed out a ruling by California's Attorney General with regard to burden of proof in which the burden of proof being placed on the manufacturer may constitute a violation of anti-trust laws. The ruling is attached. He also submitted proposed amendments to this bill, which are attached.

SENATOR CLIFF YOUNG asked if an injunction has been granted in the case of termination of a franchise, is the manufacturer sufficiently protected under the existing language to justify termination in court.

Mr. McCann stated GMC agrees the burden of proof should be on the manufacturer in the case of termination. When an objection is raised to an additional dealer or a relocated dealer, the dealer should have the burden of proof.

SB 362 — AUTHORIZES ADOPTION OF STANDARDS OF PROFESSIONAL CONDUCT FOR LIFE INSURANCE UNDERWRITERS (BDR 57-1213)

Mr. Dave Byington, Legislative Chairman of the Nevada State Life Underwriters Association, stated this bill bears little resemblance to the bill originally proposed by the NSLUA. After obtaining additional input from other resources, the NSLUA requested that the bill be withdrawn.

SB 366 — REQUIRES EXAMINATIONS FOR CERTAIN FRATERNAL BENEFIT INSURANCE AGENTS (BDR 57-1214)

Mr. Byington stated NSLUA feels the fraternal agents should be required to be subject to the same examination requirements as a regular life agent. This

Senate

gives the consumer the same protection as is granted with respect to health and life agents. The growth of the fraternal organizations has been phenomenal in the last few years. They have been exempt from any licensing requirements.

After a discussion, it was agreed to amend the $25,000 figure to $100,000.

Mr. Byington explained the other proposed amendments. Sub-section four is amended to subject fraternal agents to the same requirements as 683A170, which is the regular health and life agents examination, subject to the same regulations as in 683 and subject to the rules and regulations of the commissioner.

Mr. David Hagen, representing the Independent Order of Foresters, stated this fraternal organization does not write health or business insurance. It writes only life insurance for its members. He suggested amending page two, line 36 to exempt those who write contracts on not more than 25 persons for a total of $250,000. The Foresters, who have no objection to the bill, are requesting amendments. It would like January 1, 1977 on page two, line 31 changed to July 1, 1977. It also requests a sub-division c to be added on page two, line 37, which would add an exemption. The proposed exemption would be for an applicant who holds a license as a CLU or as a fraternal insurance counselor.

SENATOR WILSON pointed out that the word "solicits" on line 33 should be deleted. He also said there should be two limits. One would be the amount of the individual policy and the other would be on the number of people.

Mr. James Wadhams, representing the insurance commissioner, stated the commissioner supported the bill and offered to work on amendments.

BDR 40-1600 RELATING TO CONTROLLED SUBSTANCES

There were no objections to submitting this bill for a committee introduction.

SB 358 REDUCES INTERVAL FOR PAYMENT OF WAGES (BDR 32-1230)

SENATOR GENE ECHOLS requested that an amendment be drawn before a hearing is held. He wants two changes made. The 15th should be changed to the 8th on line 5 and the last day of the month would be changed to the 24th of the month on line 9.

SB 371 — REGULATES GROCERY STORES WITH AUTOMATICE CHECKOUT SYSTEMS (BDR 51-1274)

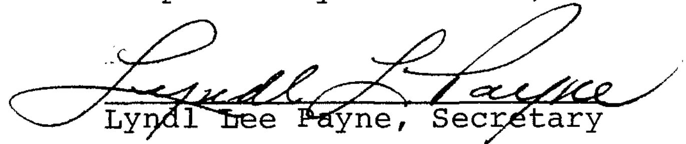
Motion to indefinitely postpone by Senator Ashworth. Senator Close seconded the motion. Vote: Unanimous.

SB 258 — REPEALS MINIMUM WAGE LAW (BDR 53-987)

Motion to indefinitely postpone by Senator Ashworth. Senator Close seconded the motion. Vote: Unanimous.

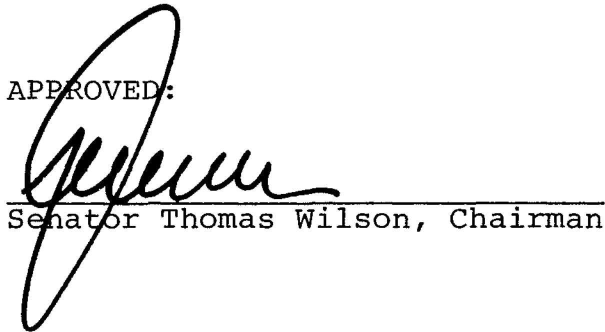
There being no further business, the meeting was adjourned.

Respectfully submitted,



Lyndl Lee Payne, Secretary

APPROVED:



Senator Thomas Wilson, Chairman

Senate

SENATE

ROOM 323 DATE 4-1

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHONE
No	John C. Hope	Scott Motors	Reno	826-066[illegible]
No	Dick Van	Reno Toyota	Reno	826-275[illegible]
No	Howard Henning	Fallon Ford	Fallon	423-217[illegible]
No	Jim Cashman	Cashman Cadillac	Las Vegas	857-03[illegible]
Yes	Archie Pozzi Jr	Pozzi Motors Inc	Carson City, Nev	882-1313
?	Robert F Guinn	Nev Franchised Auto Dealers Ass.	Reno	323-51[illegible]
No	Leo L. Lynn, Jr.	Sierra Linc-Merc	Reno	786-188[illegible]
No	Leo Lynn	" " "	"	" "
No	Herb Halloman	H.H. Chevrolet	"	786-311[illegible]
[illegible]	Don Weir	Carson City Dodge Chrys Reno Dodge	Carson City Reno	786-121[illegible]
No	Bill Pearce	Bill Pearce Mtrs	Reno	826-210[illegible]
No	John N McCandless	McCandless Int'l	Las Vegas	876 6176
No	Jerry Allred	Sunland Motors	Las Vegas	457-30[illegible]
No	John E Warthen	Warthen Buick	"	457-44[illegible]
No	Ace Grulli	Grulli Motor Co.	[illegible]	463-229[illegible]
No	Phyllis Atkins	Thornton, Stephens Atkins & Kellison for NFADA	Reno	786-5770
Yes	Bob Alkire	Kennecott Copper	Ormsby House	882-189[illegible]

SENATE

ROOM 323 DATE 4-1-77

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHON
	Daryl Capurro			
	Bill Thornton			
	Fred Bartlett			
	Archie Posey			
	S. S. Gilliatt			
	Tom McCann			
	Dave Byington			
	James Wadhams			
	David Hagen			
	Bowen			
	Sen Echols			

SENATE

AGENDA FOR COMMITTEE ON COMMERCE AND LABOR

FRIDAY
Date April 1, 1977 Time 1:00 p.m. Room 213

Bills or Resolutions to be considered	REVISED Subject	Counsel requested*
S. B. 356	Regulates motor vehicle dealers' franchises (BDR 43-922)	
S. B. 362	Authorizes adoption of standards of professional conduct for life insurance underwriters (BDR 57-1213)	
S. B. 366	Requires examinations for certain fraternal benefit insurance agents (BDR 57-1214)	
S. B. 358	Reduces interval for payment of wages (BDR 23-1230)	
S. B. 382	Requires entertainment agencies to obtain license from labor commissioner (BDR 53-955)	

*Please do not ask for counsel unless necessary.

Exhibit A
Capurro

TESTIMONY

BEFORE THE

SENATE COMMITTEE ON COMMERCE AND LABOR

ON APRIL 1, 1977

RE SENATE BILL 356

BY

DARYL E. CAPURRO

EXECUTIVE DIRECTOR

OF

NEVADA FRANCHISED AUTO DEALERS ASSOCIATION

Good Afternoon.

Chairman Wilson, members of the Senate Commerce and Labor Committee.

I'm Daryl Capurro, Executive Director of the Nevada Franchised Auto Dealers Association.

The Nevada Franchised Auto Dealers Association is a trade organization representing new car and truck dealers in the state of Nevada. We are appearing here today in total support of the passage of Senate Bill 356. Also here with me at the council table is William Thornton , Attorney, with the firm Thornton, Stephens, Atkins and Kellison of Reno. Mr. Thornton is our legal counsel with respect to the matters covered by Senate Bill 356. Additionally, we have with us approximately 25 dealers from throughout the state of Nevada. I will not introduce them individually but collectively they are here to watch these proceedings. I would also indicate to you there are others who will speak in favor of Senate Bill 356 and beg the Committee's indulgence for me to act as coordinator.

By way of opening remarks I would explain that the provisions of Senate Bill 356 are not unique or revolutionary. Currently there are thirty-eight states who have acted in the area of regulating dealer-manufacturer relationships. The first hand-out of the packet that I provided to you is an appendix taken from material provided to me by the National Automobile Dealers

Association. The National Automobile Dealers Association is a trade association representing new car and truck dealers from throughout the United States. It is interesting to note that among the twelve states listed on the first page that do not have effective statutes regulating the motor vehicle dealer-manufacturer relationship, Nevada appears as one. I would further indicate to you that several other states included on this list of twelve have had bills introduced this year dealing in the same subject matter as Senate Bill 356. The laws in these various states differ somewhat with regard to their approach to regulating the relationships between manufacturers and dealers. For instance, the State of California has established a new Motor Vehicle Board comprised of a combination of dealer members and members of the general public. The Board acts in effect as a Court of First Resort with respect to dealer termination notices or the establishment by manufacturers of new franchise locations. The State of Arizona, on the other hand, has vested the administrative authority with their Department of Transportation. The duties in both cases, however, remain the same with respect to the regulation of dealer-manufacturer relationships. The third method of regulation in effect is that provided in the New Mexico law and in Massachusetts. In those states the matter is strictly a judicial procedure much like we have proposed in Senate Bill 356. Our original intent in drafting Senate Bill 356 was to provide an administrative level by naming the

Director of the Department of Motor Vehicles of the State of Nevada as the Administrator. However, the director objected to the added workload that this particular law, if it became law, would add to his staff and therefore, after reviewing the various other state laws, it was our considered belief that the route that New Mexico took was the best one for our purposes.

Basically, Senate Bill 356 would provide dealers the right to adjudication by a court in cases of terminations or additions of new dealerships. In 1969, the Nevada Legislature passed what now amounts to a rudimentary law covering unfair trade practices of manufacturers, wholesalers and distributors. It is embodied in NRS Chapter 482.3631 to 482.3641. I have provided as the next to last item in your packet a copy of the current law. I say rudimentary because in the passage of years it has been shown that the provisions of that initial law have become outdated and that changes are necessary to provide the necessary regulation of dealer-manufacturer relations. In the past representatives from various manufacturers have carefully explained that the state law is not necessary in governing the relationships of dealers and manufacturers. They have cited Public Law 1026 of the Eighty-Fourth Congress which is an act sometimes referred to as the Federal Dealer Day-In-Court Law. A copy of this particular act is included in your packet with the current Nevada law. Basically it provides a dealer may bring suit

against any automobile manufacturer in any district court of the United States in the district in which said manufacturer resides or is found or has an agent without respect to the amount in controversy, etc. etc. This is taken directly from Section 2 of the act. In effect what the law says is that if there is no agent representing the manufacturer in your state, then you must by necessity take him to court in the district in which his operations are in -- which could be Dearborn, Michigan. Aside from the fact it is extremely difficult to get into a Federal Court, and extremely expensive to prosecute a case through that Federal Court System, the Federal Act really provides very little in the way of relief for the problems that have been experienced by dealers throughout the United States.

Some interesting testimony was offered during the 1969 Session of the Nevada Legislature when we processed the initial dealer-manufacturer law in the State of Nevada. One manufacturer's general counsel cited the Federal Act as a reason why Nevada had no reason to act in this area. He followed this explanation up with a statement that of the hundred or so odd cases that he had represented the manufacturer over the years this act had been in effect that manufacturer had never lost a case. Obviously the law of averages should have caught up to this manufacturer if in deed the law was doing what it was intended to do. I think that it is obvious that at least thirty-eight other states have felt that the Federal Act is not sufficient

to protect new car and truck dealers rights or the rights of the public. We are asking you today to seriously consider adding Nevada to the list of states who have acted in this area.

It is most important that you understand a little bit about the business arrangement between the manufacturer and his dealer network. Basically, the dealer's rights and responsibilities and the obligations of the manufacturer are contained within an instrument called a franchise agreement. It is extremely important to note that the franchise agreement is not an arms length contract in the real sense of the term. By that I mean that the agreement is not one that is ironed out in negotiations individually between the manufacturer and his dealer which may contain compromises on both sides. In effect, it is a take it or leave it proposition. This is particularly true with respect to a dealer who has signed an initial franchise agreement who has made a substantial investment in the business, and then somewhere down the line -- one year, two years, five years or so -- receives out of the blue an amendment to that contract or franchise agreement which he has not been privy to prior to receipt. A good example of what I have just stated is contained in the hand-out you have entitled

NADA'S SUMMARY OF 1975 GM CONTRACT and the accompanying NADA ANALYSIS AND INTERPRETATION OF THE GMC CLARIFICATION OF THE 1975 FRANCHISE AGREEMENT. I can say to you unequivocably here

and now, that the provisions that General Motors Corporation had originally intended to be made in their dealer agreements were not reviewed with any Nevada dealer that I am aware of, nor - I suspect - with any other General Motors dealer throughout the United States. The provisions in the proposed General Motors Agreement of 1975 were carefully drafted by General Motors Corporation attorneys in order to insulate and protect GM in every conceivable way, seemingly without respect to how they would affect the dealer who would be required to sign the agreement or to, in the alternative, divest himself of his dealership. Only after the National Automobile Dealers Association had intervened on behalf of their 20,000-odd new car and truck dealers throughout the United States, did General Motors agree to "clarify" their agreement provisions. The two summaries that I have referred to do not make good bedtime reading, however I believe that they are a factual and realistic account of what dealers face in this country today. I believe this illustrates the case of huge multibillion dollar international corporations, and I am not only referring to General Motors Corporation, but again multibillion dollar international corporations bringing their tremendous resources to bear on small businessmen without a reciprocal ability on the part of the individual dealer to respond, and in some cases to defend themselves, and to affect changes in the basic instrument that allows them to operate.

One of the real problems with this one-sided arrangement that I have described is that the changes which any manufacturer may propose to make may not be compatible with the situation existing in the state or the community in which any particular dealer resides. This is particularly of concern to Nevada new car and truck dealers when you consider the information that is contained in the statistical sheets which have been included in your packet. You will note that the page entitled U.S. MOTOR VEHICLE FACILITIES SPREAD IN NATION-WORLD, that the U. S. motor vehicle facilities in the state of Nevada are exactly zero. The map indicates the situation quite graphically and illustrates that none of either the imported manufacturers or domestic manufacturers have one red cent invested in physical facilities, etc. in the state of Nevada. By contrast, I can assure you that the 80-85 new car and truck dealers in the state of Nevada have a substantial investment in their facilities and in their community. You will note that on the hand-out entitled, RELATIONSHIP OF FRANCHISED NEW CAR DEALERS TO TOTAL RETAIL TRADE that Nevada new car and truck dealers represent 2.6% of the total retail establishments in the state, yet they generate 14.3% of the total retail sales in the state, represent 11.6% of the total retail payroll in the state, and further represent 6.5% of the employment in the retail sector in the state of Nevada. I won't bore you with the details of the remaining statistical sheets that I have provided to you. You may review them at your convenience and I would be happy to

answer any questions I can regarding them. I would indicate to you that the first five pages of those statistics beginning with the sheet titled, U.S. MOTOR VEHICLE FACILITIES SPREAD IN NATION AND WORLD are taken directly from the MVMA Motor Vehicle Facts and Figures Book for 1976. MVMA stands for Motor Vehicle Manufacturers Association. The remaining pages, eight in all, have been extracted from the 1976 edition of the Franchised New Car and Truck Dealer FACTS Book produced by the National Automobile Dealers Association.

My purpose for revealing the financial data discussed previously is to indicate to you that there is a definite substantial investment in the state of Nevada made by the very people who are here today in support of Senate Bill 356, and further to indicate to you the unfortunate lack of manufacturer investment in the state of Nevada. It is not inconceivable to suspect the reasons for manufacturer opposition to measures such as Senate Bill 356 when their financial investment in the state is zero. Some people may ask the question ... Where is the public interest in regulating the dealer-manufacturer relationship as proposed in Senate Bill 356? ... In response to that I would cite to you the provision NRS Chapter 482.318, titled "Legislative Declaration", a copy of which is included as the last item in your packet. Quoting from 482.318:

> The legislature finds and declares that the distribution and sale of motor vehicles in the state of Nevada vitally affects the general economy of the

and the public interest and the public welfare and in the exercise of its police power it is necessary to regulate and to license motor vehicle manufacturers, distributors, new and used vehicle dealers, rebuilders, leasing companies, salesmen and their representatives doing business in the state of Nevada in order to prevent frauds, impositions and other abuse upon its citizens.

Obviously, at least the 1965 Session of the Nevada Legislature felt that it was important to regulate the activities of the aforementioned business organizations and establishments. However, this public interest or public welfare aspect of Senate Bill 356 is one area that the manufacturers have resisted in the past. It has been their contention that the regulation of the business relationship between the dealer and the manufacturer is strictly a matter between those two entities and that it would be an unfair burden on commerce to upset a contract or to in any way regulate that relationship. For that reason they have contended that laws such as Senate Bill 356, assuming it becomes law, are unconstitutional because of this interference in commerce. I do not purport to be an attorney, however we do have our general counsel, Bill Thornton, here today and Mr. Thornton will go into more detail regarding this subject and others following my remarks. Meanwhile, returning

to the reference to public interest contained in Senate Bill 356, I believe it is extremely important that continuity be retained in those communities where dealerships are actively located for not only the sales of new and used vehicles but perhaps even more importantly for the retention of an adequate service facilitity once those vehicles are in the hands of the public. This refers not only to warranty work but to service work following the expiration of warranty. The new car dealer is the one best able to analyze the problems attendant to vehicles with which he is franchised and therefore to affect repairs. Again, the fact is past legislatures have obviously felt there was a public interest in dealers and manufacturers and that in order to protect the public health, safety and general welfare, regulation was necessary.

Another question that one might ask is ... Why is Senate Bill 356 necessary beyond the public interest aspect? ... Aside from the fact that at least thirty-eight other state legislatures have felt it was necessary to act in this area for one reason or another, there is a past history in Nevada that leads us to believe that it is necessary to protect the rights of the new car and truck dealer. Again, essentially in contrast to their multibillion dollar partner -- and I use that term loosely -- the new car and truck dealer has limited ability to carry on a protracted disagreement with his manufacturer. Further, most dealers would go to any lengths to avoid that

sort of confrontation; however, there are times when communications totally break down and the protective provisions in Senate Bill 356 could be a vital asset to a dealer threatened with unfair termination or with the unwarranted addition of a new dealership.

At this point I would like to review the bill by section noting the important aspects of all of the provisions.

Sections 1 through 8, on pages 1 and 2 of the bill, are the definitions attendant to the act and to the chapter. You will note that"franchise"as used in the act means a written agreement between a manufacturer and distributor and a dealer by which (1) The commercial relationshhip of definite duration or continuing definite duration is established; (2) The dealer is granted the right to offer and sell at retail new motor vehicles other than motorcycles, mopeds, farm tractors or special mobile equipment; (3) The dealer constitutes a component of a distribution system for new motor vehicles; (4) The operation of the dealer's business is substantially associated with the trade-mark, trade name, advertising or other commercial symbol designating a manufacturer or distributor; (5) The operation of a portion of the dealer's business is substantially reliant on the manufacturer or distributor for a continued supply of new motor vehicles, parts and accessories.

It is also important to note the definition of "Relevant market area" as it is also used throughout the act. It is described in

Section 7." Relevant market area" means any area within a radius of 10 miles of an existing dealer of the same line and make or the area assigned in the franchise of an existing dealer or the same line and make, whichever is greater. I might add at this point that this provision is substantially similar to the definition used in the California and Georgia Acts.

Section 9 on page 2 starting on line 16 contains the provision that a manufacturer or distributor shall not terminate, refuse to continue, or unilaterally modify any existing franchise unless (and paraphrasing here): The dealer is notified within fifteen days for circumstances that require quick termination of the franchise agreement for acts which will, in effect, adversely affect the public interest.

Subparagraph (b) of Section 9 on line 29 indicates a sixty-day notice for any other grounds for termination or refusal to continue the franchise.

Section 10 indicates that a manufacturer or distributor shall not unreasonably withhold consent to the transfer of any ownership or interest in a franchise.

Section 11 provides that a dealer may apply to the district court in the county in which his dealership is located for injunctive relief to restrain a change in the franchise agreement. It further states that the manufacturer

or distributor has the burden of proof to establish that there is good cause to terminate, refuse to continue, or modify unilaterally a franchise.

The rest of the Section 11 deals with the areas that a court shall take into consideration however it does not preclude any other, of oourse, consideration of the evidence by the court.

I would add at this point that the provisions of these sections being Section 11, Section 10 and Section 9, are common to many of the state laws among the thirty-eight states that have adopted a Dealer-Manufacturer Relations Act and, in fact, are substantially similar to provisions contained in the California law.

Section 12 on page 3 deals with the other half of the problem which dealers are experiencing. It involves a 60 day notice from the manufacturer or distributor to a dealer in the same line make prior to entering into a franchise for a new dealership or the relocation of an existing dealership in the relevant market area. Bear in mind that the relevant market area is defined as an area within a radius of ten miles of that existing dealer of the same line or make, or the area assigned in the franchise of that existing dealer, whichever is greater. Again, as in the provisions for the dealer proposed to be terminated within the sixty day period provided in Section 12, an existing dealer in the same line make in that same relevant market area has the opportunity to apply for relief to a court of competent

jurisdication, basically a district court and to seek an injunction baring the action prior to a hearing. Again, in any hearing preceding the establishment of a new franchise or the relocation of an existing franchise the manufacturer or distributor has the burden of proof to prove that it is necessary for the addition or relocation of that dealership. I might add at this point that this is another area that manufacturers have in the past expressed some concern over; however, in the opinion of our legal counsel and other attorneys who are familiar with Dealer-Manufacturer Relations Acts that concern is unfounded. I think it is important to note that the manufacturer is in possession of all of the information regarding the factors leading up to a decision to add an additional dealership and that those facts and data and whatever other information that they used in determining another dealership was necessary or the relocation of an existing dealership was necessary morally places the burden on them to prove the necessity to the public interest, if nothing else, that the dealership is required. I can assure you that there is nearly as much danger in allowing an additional dealership or the relocation of an existing dealership to take place as there is a termination of an existing dealership -- especially when you are dealing in areas of providing adequate service, of the relationship of the dealer to the community, and in the area of competition. I believe that it can be successfully argued that too much competition can be as serious a problem in some

cases as not enough. Besides, I have a basic concern over some manufacturer's planner in Detroit, Michigan making far-reaching decisions regarding Nevada communities without proper input.

This would be especially true if you ended up with two inefficient operations replacing one highly efficient operation, or where the extreme competition engendered by the two led to questionable ethical practices on the part of either one. Mr. Thornton may have further comment regarding this provision at the time that he gives his testimony.

In determing, of course, whether good cause has been established, the court, in addition to anything else they may wish to review, must take into consideration the items listed as (a), (b), (c), (d) and (e) under Subsection 4 of Section 12.

Section 13 begins what is sometimes referred to as the "Thou Shalt Not" section...the unfair acts or practices of the manufacturer, distributor or factory branch. I could read to you each one of these, however, you have the bill in front of you and if you have any questions I would be happy to answer them. I would indicate to you again these provisions in Section 13 and Section 14, and in Section 15 are substantially similar to many of the laws in the thirty-eight states that have a Dealer-Manufacturer Relations Act. They are designed to prevent abuses by the manufacturer in his relations with his dealer network. They are in our opinion fair and reasonable

requirements and ones that I think are necessary for the adequate protection of the dealers and of the public. Once again, if you have any questions regarding any of the terms of the Sections 13 through 15 -- again otherwise known as the "Thou Shalt Not" sections, I would be happy to answer them at this time or following our testimony.

Section 16 really provides the mechanism by which an agrieved dealer may apply to a district court for relief and unlike the federal act which manufacturers wanted to cite as adequate in the past, this would allow the agrieved dealer to file for injunctive relief in the county wherein his dealership resided, a responsible place for a case to be heard.

Section 16 also provides in effect a long-arm statute, if you will, enabling an agrieved dealer to reach an offending manufacturer who may not have an agent or representative located within the state -- and I have to say to you that most of the manufacturers do not have such agents. It also provides that if any other method of service is now or would be provided in the future, that in effect the section is cumulative and that those other methods could be used independently of any other method of service.

Section 17 provides the State of Nevada an opportunity to in effect pursue a manufacturer or distributor who is violating or threatening to violate any of the applicable provisions of

Nevada Revised Statutes, and provides for a civil penalty of not less than $50.00 nor more than $1,000 for each day of violation and for each act of violation.

Section 18 and Section 19 are essentially clean-up language. There are no wholesalers of motor vehicles in the state of Nevada; therefore, they not used anywhere else in the chapter , and so the term wholesaler was removed in Section 18. The changes in Section 19 are to conform what is the current law to what is provided in Senate Bill 356. In subsection 3 in Section 19 of page 7, the existing law has been changed. The term induce has been changed to coerce. In our opinion the term coerce should probably have been used in the initial enactment of the law. Induce is perhaps stretching the point too far. In subsection 4 on that same page the deletions there are again somewhat clean-up in nature.

Section 20 - again the changes are consistent with the provisions previously reviewed in Senate Bill 356 and are necessary if those provisions are adopted.

Section 21 - is of the same nature.

You will note that in Section 22 the provisions we proposed to be repealed currently in the law are NRS 482.3633, 482.3637 and 482.3641. The first two chapter citations are proposed for repeal because they are replaced in Senate Bill 356 with different

provisions. The repeal of 482.3641 in our view is necessary because its effect is to actually negate the provisions of the current law . That is the section relative to obligation of contact not impaired. It reads currently: Nothing in NRS 482.3631 to 482.3641 inclusive shall be construed to impair the obligations of the contract or to prevent a manufacturer, distributor or representative or any other person whether or not licensed under 482.3631 to 482.3641 inclusive from requiring performance of a written contract entered into with any license under NRS 482.3631 to 482.3641 inclusive, etc., etc. This last point with regard to the obligation of contract or the impairment of contracts will be covered in Mr. Thornton's testimony since it is one of the items that manufacturers in the past have questioned constitutionally.

One final note -- we had originally requested that the bill be drafted with a final section making the bill effective upon passage and approval. For some reason or other the bill was received and introduced without that section included. At this point we would ask that if you are going to process Senate Bill 356, and we fervently hope that you do, you include an amendment to the effect that the act would become effective upon passage and approval. By way of explanation, if the bill were to pass both houses and be signed by the Governor, it would probably be in effect two months before the July 1st date that is normal with bills where there is no indication of effective date. That two month period of time

would in effect create a hiatus, a vacumn if you will, that could provide an opportunity for a manufacturer to circumvent the law or the legislative intent, and to either terminate a dealer or to add a new dealership or relocate an existing dealership without any concern for Senate Bill 356. Because of that we would respectfully request that you seriously consider adding the amendment to make Senate Bill 356 effective upon passage and approval.

At this point in time I would like to call upon Bill Thornton for his portion of this presentation.

(Thornton presentation)

At this time I would like to introduce to you a man who has intimate knowledge of the inner-workings of a franchise arrangement with the manufacturer, a former dealer .. in fact a very recently retired dealer .. and a man who is highly respected within the industry. His name is Fred H. Bartlett and until March 1 of this year was the President of Bartlett Ford, Inc. in Reno. Mr. Bartlett began his automotive career in 1933. One interesting sidelight with regard to Mr. Bartlett is that he is one of only 60 dealers in the entire nation, in a total dealer network of some 25,000 dealers, to be selected as a

recipient of the prestigious Time Magazine Quality Dealer Award. This award was presented to Mr. Bartlett in New Orleans in February during the National Automobile Dealers Association convention. He is actually Time Magazine Quality Dealer Award winner for 1977. I should point out to you that in order to qualify for this award a dealer must be not only be a good dealer, but also a good citizen. It involves not just a popularity contest among his peers, it involves an extensive screening of his past record as a dealer and his past record in civic achievements. The judging on the national level is done by a panel of totally neutral judges selected by Time Magazine and I think that you would agree with me that this is indeed a prestigious award. I purposely have given this somewhat lengthy introduction with regard to Mr. Bartlett for a reason. I want you to fully understand that this man, prior to his retirement, was a highly successful, highly respected new car and truck dealer, and civic leader. I believe Fred Bartlett more than I could ever do in my testimony as a representative for the industry, can reveal to you some of the real problems of dealers, now and in the past, with regard to relationships with their manufacturers. At this time I would like to ask Fred Bartlett to come forward.

(Bartlett Remarks)

Introduce other speakers, if any, following Bartlett remarks.

(Other speakers)

Archie Pozzi
Don Hellmundall

In closing with regard to our testimony and support of Senate Bill 356, I would ask each of you to seriously review the matters we have presented to you, the material that has been provided, and the need for this type of legislation. We certainly feel there is a need for it, not just because thirty-eight states already have such laws, or that four to six other states are considering it this year, but because we feel the situation in Nevada dictates that we need this type of legislation. I believe it is necessary with regard to the public interest, as much as it is in the interest of the new car and truck dealers of the state of Nevada. And I would certainly have to believe that it is important to the dealers themselves because twenty to twenty-five dealers from around the state in various communities took time from their businesses to appear here to today to support Senate Bill 356. I would like to ask Bob Guinn if he has any closing remarks to add to the testimony that has been presented. Bob was the Executive Director for the Nevada Franchised Auto Dealers Association for 14 years, and carried the ball for the organization in the original enactment of the legislation in the 1969 law. Following Bob's remarks, and I note that there are some representatives from the manufacturers here today, I would ask that the committee allow me the opportunity to respond to statements made by them in the event false or misleading information is given, or in the event clarification is needed. I don't wish to debate specific points or to argue any point or to take up

unnecessary committee time but this bill is of such importance to us that we would feel a necessity to respond if the committee will allow it. That concludes my statement. Bob would you have something further to add?

Exhibit D
Capurro
4-1-77

Appendix

STATE REGULATION OF MOTOR VEHICLE DEALER-MANUFACTURER RELATIONSHIP

NOTE: States not listed in the Appendix on the following pages have no statutes regulating the motor vehicle dealer-manufacturer relationship. The omitted states are: Alabama, Alaska, Delaware, District of Columbia, Illinois, Indiana, Michigan, Missouri, Montana, Nevada, Oregon, Washington and Wyoming. — 12

STATE REGULATION OF MOTOR VEHICLE DEALER-MANUFACTURER RELATIONSHIP

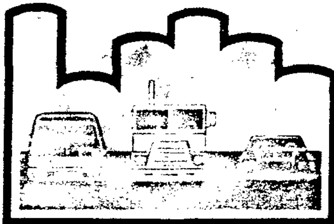
State	Has Board or Commission	Name of Board or Commission	Board Has Motor Vehicle Dealer Members	Number of Dealer Members Required or Authorized	Total Number of Board Members	Rules on Selection of Dealer Members	Board has Power to Deny Franchise Termination (Other State Official has Such Power)	Board has Power to Deny New Franchises (Other State Official has Such Power)
izona	No	—	—	—	—	—	(Yes)	(Yes)
kansas	Yes	Motor Vehicle Commission	Yes	5	7	May be manufacturers, wholesalers, *or* dealers	Yes	No
lifornia	Yes	New Motor Vehicle Board	Yes	4	9	—	Yes	Yes
lorado	Yes	Dealer Licensing Board	Yes	7	9	4 "new" & 3 "used" auto dealers	Yes	Yes
nnecticut	No	—	—	—	—	—	(Yes)	—
orida	Yes	Advisory Council	Yes	3	7	—	No (Yes)	No (Yes)
orgia	Yes	Motor Vehicle Commission	Yes	5	9	—	Yes	Yes
awaii	Yes	Motor Vehicle Industry Licensing Board	Yes	3	7	Must be engaged in motor vehicle industry	Yes	No
aho	Yes	Advisory Board	Yes	7	7	Includes 1 "used" auto & 1 mobile home dealer	No (Yes)	No
wa	Yes	Transportation Regulation Board	No	0	3	—	Yes	Yes
ansas	Yes	Dealer Review Board	Yes	4	7	2 "new" & 2 "used" auto dealers	Yes (Board reviews decision of Director of Vehicles)	No
entucky	Yes	Motor Vehicle Dealers Board	Yes	8	9	4 "new" & 4 "used" auto dealers	No (Yes)	No
ouisiana	Yes	Motor Vehicle Commission	Yes	9	9	May be manufacturers, distributors *or* dealers	Yes	Yes
aine	No	—	—	—	—	—	(Yes)	—
aryland	No	—	—	—	—	—	(Yes)	—
assachusetts	No	—	—	—	—	—	(Yes)	(Yes
innesota	No	—	—	—	—	—	(Yes)	—
M[illegible]sippi	Yes	Motor Vehicle Commission	Yes	6	8	—	Yes	No
Nebraska	Yes	Motor Vehicle Industry Licensing Board	Yes	7	10	Includes 3 "new" & 2 "used" auto dealers, 1 motorcycle, & 1 trailer dealer	Yes	Yes

STATE REGULATION OF MOTOR VEHICLE DEALER-MANUFACTURER RELATIONSHIP

State	Has Board or Commission	Name of Board or Commission	Board Has Motor Vehicle Dealer Members	Number of Dealer Members Required or Authorized	Total Number of Board Members	Rules on Selection of Dealer Members	Board has Power to Deny Franchise Termination (Other State Official has Such Power)	Board ha[s] Power t[o] Deny Ne[w] Franchise (Other St[ate] Official h[as] Such Pow[er])
ew Hampshire	No	—	—	—	—	—	(Yes)	(Yes)
ew Jersey	No	—	—	—	—	—	(Yes)	—
ew Mexico	No	—	—	—	—	—	(Yes)	(Yes)
ew York	No	—	—	—	—	—	(Yes)	—
orth Carolina	Yes	Motor Vehicle Dealers' Advisory Board	Yes	3	6	—	No (Yes)	No (Yes)
orth Dakota	No	—	—	—	—	—	(Yes)	—
nio	Yes	Motor Vehicle Dealers' and Salesmen's Licensing Board	Yes	4	6	Current *or* former dealers	No	No
dahoma	Yes	Motor Vehicle Commission	Yes	7	7	May be manufacturers, distributors, *or* dealers	Yes	No
ennsylvania	Yes	State Board of Motor Vehicle Manufacturers, Dealers & Salesmen	Yes	6	10	3 new auto, 2 used auto, & 1 mobilehome dealers	Yes	No
hode Island	Yes	Motor Vehicle Dealers Licensing Commission	Yes	7	9	—	Yes	Yes
uth Carolina	No	—	—	—	—	—	(Yes)	—
uth Dakota	No	—	—	—	—	—	(Yes)	(Yes)
nnessee	Yes	Motor Vehicle Commission	Yes	10	10	May be manufacturers, distributors, *or* dealers	Yes	Yes
xas	Yes	Motor Vehicle Commission	Yes	4	6	—	Yes	Yes
ah	Yes	Advisory Board	Yes	4	5	3 new & 1 used auto dealers	No (Yes)	No
rmont	No	—	—	—	—	—	(Yes)	(Yes)
rginia	Yes	Motor Vehicle Dealers Advisory Board	Yes	3	6	—	No (Yes)	No (Yes)
irginia	Yes	License Certificate Appeal Board	Yes	3	5	At least 3 must be in motor vehicle business	No	No
sconsin	No	—	—	—	—	—	(Yes)	(Yes)

1693

39-Total {22-Yes; 15-No (Yes)-21 … (Yes)-10

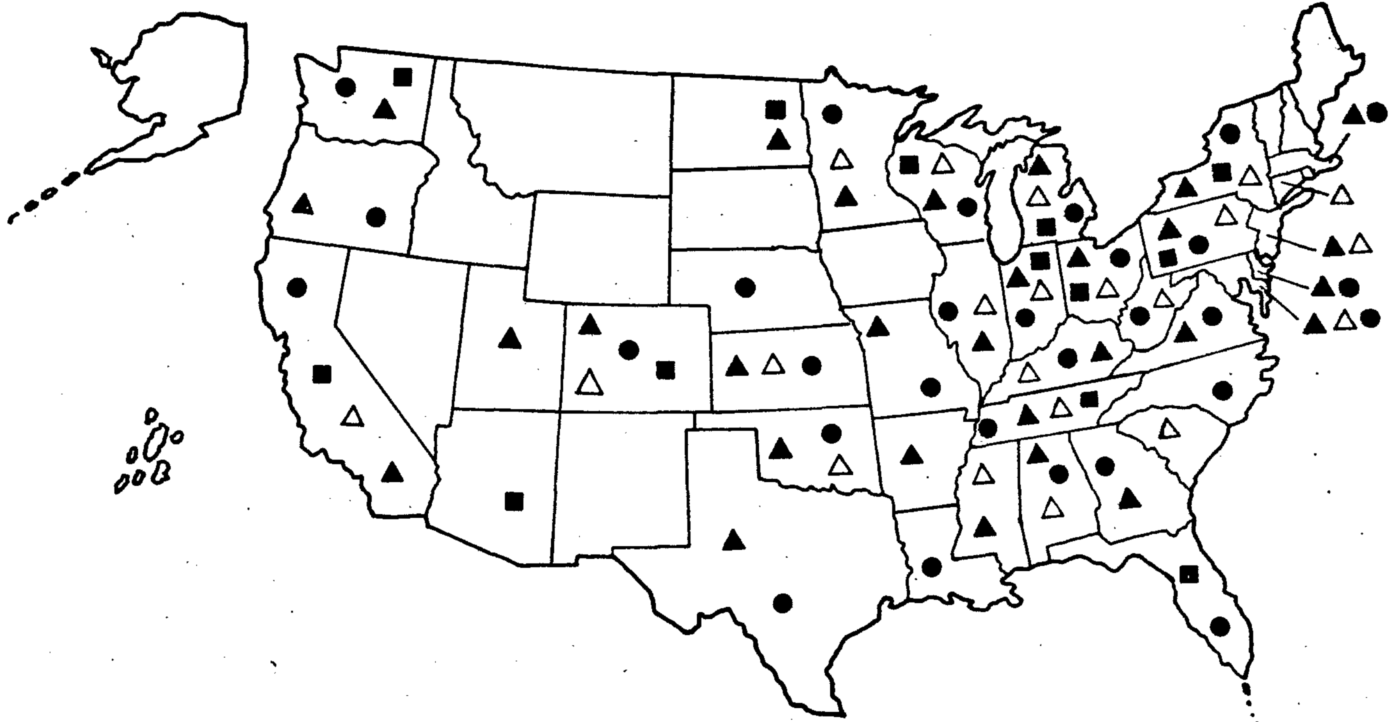


U.S. MOTOR VEHICLE FACILITIES SPREAD IN NATION, WORLD

Thirty-eight of the 50 states now share in the economic opportunities provided by facilities operated by the principal U.S. motor vehicle manufacturers. Thus, a significant number of the nation's jobs are provided by the 102 assembly plants found in 87 cities in 29 states, 214 parts plants located in 133 cities of 23 different states, and other related facilities.

To compete in the growing world automotive market, U.S. vehicle producers are required by many nations to operate facilities within their borders in order to do business there. Such foreign operations extend to all major areas of the globe, including Oceania which includes Australia and other islands of the central and south Pacific.

U.S. MOTOR VEHICLE FACILITIES

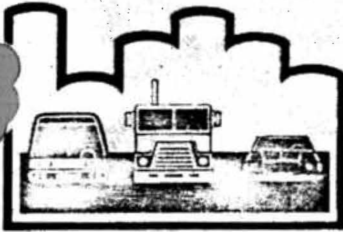


ASSEMBLY PLANTS ... ▲ There are 102 Assembly Plants located in 87 Cities in 29 States.
PARTS PLANTS .... △ There are 214 Parts Plants located in 133 Cities in 23 States.
PARTS DEPOTS .... ● There are 200 Parts Depots located in 119 Cities in 31 States.
PROVING GROUNDS ... ■ There are 37 Proving Grounds located at 35 Centers in 12 States.
Independent Supplier Firms are in hundreds of other Cities.

MOTOR VEHICLES AND PARTS MANUFACTURERS NEW PLANT AND EQUIPMENT EXPENDITURES (In Millions)

Year	Expenditures	Year	Expenditures	Year	Expenditures
1950	$ 490	1959	$ 560	1968	$1,360
1951	770	1960	790	1969	1,650
1952	770	1961	690	1970	1,590
1953	870	1962	780	1971	1,510
1954	1,120	1963	1,000	1972	1,830
1955	970	1964	1,390	1973	2,280
1956	1,440	1965	1,890	1974	2,700
1957	900	1966	1,800	1975	2,060
1958	480	1967	1,540	1976 Est.	2,410

SOURCE: U. S. Bureau of Economic Analysis



RETAIL AUTO DEALERS CONTRIBUTE TO EVERY STATE'S EMPLOYMENT AND PAYROLLS

Virtually every hamlet and township in America has an auto dealership or two. These establishments not only contribute to individual mobility through the products they sell, but to the employment and payrolls of their communities as well.

In every state the dealers contribution to total retail business is significant. In no state does the payroll fall below 11% of the retail total and only in Washington, D.C. does auto dealerships employ less than 10% of all retail workers.

North Dakota depends on auto dealerships for more than 27% of all retail payrolls and more than 20% of all retail employment.

RETAIL AUTOMOTIVE BUSINESSES BY STATE, 1972

	Retail Automotive Dealers (1)				Automotive Percent of Total Retail		
State	Establishments	Sales (millions)	Employees*	Payrolls* (millions)	Sales	Employees	Payrolls
Alabama	6,989	$ 1,949	31,954	$158	29.6	18.6	23.9
Alaska	324	140	2,312	17	18.1	13.6	16.0
Arizona	3,294	1,248	21,841	128	26.2	16.6	22.8
Arkansas	4,854	1,236	19,943	93	31.6	19.7	25.1
California	27,245	12,351	202,768	1,329	25.3	15.9	20.7
Colorado	4,376	1,589	26,045	159	27.1	16.0	22.4
Connecticut	4,002	1,671	26,041	171	23.2	13.3	18.5
Delaware	801	336	5,232	32	22.7	13.5	17.4
Florida	12,984	5,238	78,523	481	26.5	15.1	20.6
Georgia	9,920	3,075	49,828	270	29.5	18.2	23.0
Hawaii	677	361	7,834	43	19.4	12.4	15.9
Idaho	1,728	506	8,909	47	30.5	19.7	25.9
Illinois	14,299	6,486	96,380	604	25.0	13.5	18.5
Indiana	8,932	3,287	54,666	298	28.7	17.0	22.0
Iowa	6,116	1,759	32,609	157	29.9	18.4	23.6
Kansas	5,291	1,488	25,681	129	31.2	18.7	24.8
Kentucky	5,990	1,767	31,982	156	28.7	19.1	23.7
Louisiana	5,659	1,912	32,743	175	26.5	16.8	22.0
Maine	1,907	575	10,453	54	25.8	17.5	21.5
Maryland	4,375	2,375	37,674	245	25.1	15.2	20.6
Massachusetts	6,948	2,814	45,522	279	21.2	11.6	16.0
Michigan	12,467	5,587	81,393	507	27.1	15.8	21.3
Minnesota	6,285	2,101	37,993	198	25.2	15.3	19.5
Mississippi	4,365	1,243	20,543	102	31.4	20.2	26.6
Missouri	9,204	2,971	49,121	268	28.9	16.8	21.5
Montana	1,644	473	8,907	45	29.3	19.9	24.9
Nebraska	3,223	921	17,491	83	28.8	17.7	22.7
Nevada	1,078	431	7,527	46	27.4	19.1	23.0
New Hampshire	1,320	491	8,017	48	24.1	15.7	21.1
New Jersey	8,089	3,755	52,500	355	22.3	12.3	17.0
New Mexico	2,461	714	12,931	66	31.0	19.8	26.2
New York	16,614	7,258	102,285	695	18.5	9.9	13.4
North Carolina	10,407	3,068	49,808	269	28.8	17.9	22.5
North Dakota	1,252	405	7,226	38	31.8	20.2	27.1
Ohio	16,366	6,144	103,054	584	26.8	15.9	20.7
Oklahoma	6,331	1,658	27,176	135	30.0	17.6	23.2
Oregon	4,044	1,418	24,553	143	27.3	17.4	22.2
Pennsylvania	16,869	6,275	101,253	561	24.9	14.5	19.1
Rhode Island	1,335	444	6,835	42	22.0	11.8	16.7
South Carolina	5,580	1,497	24,897	124	28.9	18.5	22.8
South Dakota	1,586	401	7,371	35	30.5	18.8	25.4
Tennessee	7,769	2,544	41,891	215	30.0	18.4	23.7
Texas	26,086	7,591	131,531	666	29.4	18.0	22.9
Utah	2,072	683	11,846	62	28.6	17.0	22.7
Vermont	862	287	4,938	26	26.0	17.4	21.3
Virginia	6,872	2,834	51,129	293	28.3	18.8	24.0
Washington	5,719	1,866	32,726	193	24.9	16.2	20.1
West Virginia	3,057	922	16,404	82	27.9	19.1	23.2
Wisconsin	7,090	2,356	42,129	222	25.4	14.8	19.8
Wyoming	1,009	255	5,028	16	31.3	21.7	18.0
District of Columbia	439	274	4,957	33	15.2	8.9	11.3
U.S. TOTAL	328,206	$119,031	1,942,400	$11,177	25.9	15.5	20.2

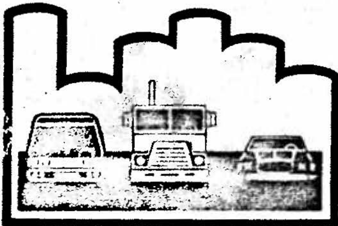
* "Employees" includes one person for sole proprietorships and two persons for partnership. "Payrolls" do not include payment to such individuals.

(1) "Retail Automotive Dealers" includes new and used car dealers; used car dealers; auto and home supply stores and gasoline service stations. Not included are miscellaneous automotive dealers; boat dealers; recreational and utility trailer dealers; motorcycle dealers; and automotive dealers not elsewhere classified.

NOTE: Individual States may not add to "U.S. Total" due to rounding.

SOURCE: U.S. Bureau of the Census, *Census of Retail Trade, 1972.*

1695



MOTOR VEHICLE WHOLESALERS PROVIDE VITAL LINK TO YOU

Many aspects of an industry are vital, yet not visible. The automotive wholesaling business is one of these. Wholesalers provide parts to the hundreds of thousands of service stations and repair shops in every state.

Sales by automotive wholesalers in 1972 exceeded $83 billion, and provided jobs for 391,849 people. About one out of every ten wholesalers nationally is in this automotive segment.

AUTOMOTIVE WHOLESALE BUSINESSES BY STATE, 1972

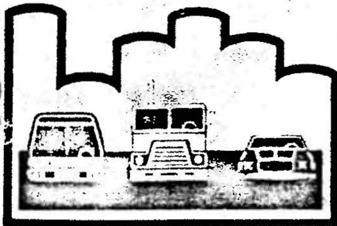
	Automotive Wholesale (1)				Automotive Percent of Total Wholesale		
State	Establishments	Sales (millions)	Employees	Payrolls (millions)	Sales	Employees	Payrolls
Alabama	772	$ 770	6,327	$ 45	10.2	11.3	10.6
Alaska	60	32	405	5	5.3	11.6	11.4
Arizona	415	590	3,844	33	13.4	12.1	12.2
Arkansas	420	195	3,108	21	5.7	10.5	10.3
California	3,151	9,962	37,920	350	14.4	9.7	9.0
Colorado	523	1,296	5,878	51	16.1	11.9	11.7
Connecticut	469	353	4,784	40	4.0	8.9	7.5
Delaware	80	81	1,065	9	3.3	9.5	6.8
Florida	1,515	3,145	13,404	108	15.7	9.2	9.4
Georgia	1,040	2,921	11,547	101	14.8	10.8	10.7
Hawaii	89	96	1,506	12	6.2	10.4	9.8
Idaho	192	69	1,440	11	4.0	8.5	10.0
Illinois	1,652	5,108	21,289	211	9.7	8.2	7.9
Indiana	936	1,660	12,254	104	12.4	13.2	10.6
Iowa	583	655	5,054	40	6.6	8.2	8.1
Kansas	503	1,097	4,329	37	13.4	9.7	10.5
Kentucky	621	827	5,173	40	11.8	10.9	10.8
Louisiana	620	979	5,339	40	10.0	7.8	7.4
Maine	184	190	1,851	14	10.1	11.2	11.2
Maryland	522	2,136	7,237	64	20.9	11.5	11.0
Massachusetts	908	2,526	10,269	95	13.1	8.9	8.5
Michigan	1,433	4,884	16,403	165	18.4	12.0	11.8
Minnesota	733	1,915	8,174	74	12.7	9.5	9.4
Mississippi	452	232	3,324	24	5.9	10.5	10.9
Missouri	986	2,593	11,130	101	12.5	10.1	10.1
Montana	193	147	1,514	12	9.3	12.1	13.0
Nebraska	388	704	3,772	30	11.0	10.2	10.6
Nevada	81	52	791	7	5.7	10.9	10.4
New Hampshire	152	77	1,214	10	6.7	11.9	11.8
New Jersey	1,075	5,867	15,246	155	18.4	9.3	9.3
New Mexico	207	110	1,[illegible]9	14	7.3	13.0	13.7
New York	2,422	5,961	25,567	240	5.9	5.8	5.1
North Carolina	1,051	1,943	10,652	82	12.2	10.7	10.2
North Dakota	163	234	1,607	12	10.5	11.0	11.4
Ohio	1,891	4,845	24,002	219	14.4	12.3	11.8
Oklahoma	579	837	4,796	37	12.1	10.7	10.6
Oregon	501	1,301	6,097	57	14.0	12.6	12.3
Pennsylvania	2,008	3,606	21,631	181	11.1	10.5	9.6
Rhode Island	165	109	1,341	11	5.3	8.4	7.7
South Carolina	460	247	3,729	25	5.3	9.9	8.8
South Dakota	136	60	1,019	7	3.1	7.7	7.9
Tennessee	876	2,324	10,308	80	15.7	12.6	11.7
Texas	2,369	5,581	24,525	196	13.2	9.4	9.2
Utah	260	481	2,777	23	16.4	13.1	13.2
Vermont	87	45	839	6	6.7	13.4	12.0
Virginia	747	1,631	8,110	63	15.9	11.4	10.7
Washington	661	952	6,146	58	9.5	9.4	9.6
West Virginia	340	254	2,997	22	10.6	12.9	12.2
Wisconsin	657	1,173	6,840	61	10.8	9.0	9.1
Wyoming	91	42	657	5	5.8	14.2	15.2
District of Columbia	67	98	859	7	5.7	6.5	5.2
U.S. TOTAL	**36,486**	**$83,016**	**391,849**	**$3,415**	**11.9**	**9.7**	**9.3**

(1) "Automotive Wholesales" includes wholesales of new and used automobiles and motorcycles: trucks and tractors; new automotive parts, accessories and equipment; used automotive parts and equipment; petroleum products marketing equipment; and tires and tubes.

NOTE: Individual States may not add to "U.S. Total" due to rounding.

SOURCE: U.S. Bureau of the Census, *Census of Wholesale Trade, 1972.*

1696



MOTOR VEHICLE-RELATED EMPLOYMENT BY STATES

Motor vehicles are responsible for a significant number of jobs in all of the states. Whether because of the manufacture of vehicles and parts, their sales and servicing, cargo or passenger transportation, each state benefits economically from the production and use of cars, trucks and buses. The national total exceeds 13.4 million jobs.

Most jobs are found in states with the largest population and greatest economic activity. These same states have the largest vehicle populations and report the highest amounts of vehicle travel.

California, with 1.6 million motor vehicle-related jobs, leads all states, with Texas ranking second. Close behind are Michigan, New York, Pennsylvania, Ohio, and Illinois.

EMPLOYMENT IN MOTOR VEHICLE AND RELATED INDUSTRIES BY STATE

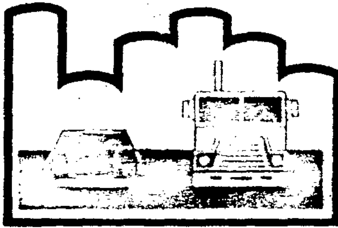
	Motor Vehicle Related Industries Employment						Total Motor Vehicle Related Industries	
State	Motor Vehicles and Parts Mfrs. (1973)	Automotive Sales and Servicing (1972)	Road Construction and Maintenance (1973)	Truck Drivers and Other Employees (1973)	Petroleum Refining and Wholesaling (1973)	Passenger Transportation* (1973)	Employment	Percent Of Total State Employment
Alabama	4,978	45,928	19,569	162,200	2,921	1,805	237,401	21
Alaska	—	3,348	3,065	14,500	380	776	22,069	20
Arizona	473	31,449	9,761	114,700	1,347	1,55[illegible]	159,281	22
Arkansas	1,862	27,695	9,220	134,900	2,566	1,067	177,330	29
California	39,690	304,170	57,419	1,185,400	23,979	30,546	1,641,204	22
Colorado	1,692	39,402	10,223	146,100	3,377	2,183	202,977	22
Connecticut	2,977	37,788	12,375	127,100	2,901	6,354	189,495	15
Delaware	(D)	7,854	3,023	29,900	567	1,216	42,560	18
Florida	1,858	114,013	27,696	270,600	6,032	7,990	428,189	16
Georgia	17,656	75,232	22,878	216,200	4,269	3,745	339,980	19
Hawaii	—	12,679	4,424	21,100	363	1,795	40,361	12
Idaho	—	12,010	5,050	49,200	977	861	68,098	27
Illinois	30,250	143,915	31,366	341,000	15,229	30,586	592,346	14
Indiana	68,741	78,644	16,652	322,300	10,568	3,665	500,570	25
Iowa	7,059	44,496	14,617	164,600	5,885	2,205	238,862	25
Kansas	5,723	35,679	13,021	148,200	6,649	1,665	210,937	28
Kentucky	11,702	43,651	15,132	153,900	3,558	2,899	230,842	22
Louisiana	652	45,696	19,765	166,900	13,583	3,664	250,260	21
Maine	222	14,512	7,332	55,000	1,767	1,189	80,022	23
Maryland	10,549	54,148	14,821	122,500	3,484	5,622	211,124	15
Massachusetts	6,199	70,122	19,684	165,600	3,797	19,522	284,924	12
Michigan	334,199	118,506	26,396	316,200	9,124	8,880	813,305	25
Minnesota	4,421	54,945	22,437	190,600	6,877	8,387	287,667	20
Mississippi	(D)	28,061	13,983	106,000	3,585	828	152,457	23
Missouri	39,494	73,503	17,179	241,600	6,251	7, 761	385,788	22
Montana	—	12,085	5,032	50,600	1,891	948	70,556	31
Nebraska	2,182	25,336	7,986	91,600	2,472	1,554	131,130	24
Nevada	—	10,215	2,961	42,100	614	2,120	58,010	24
New Hampshire	(D)	11,068	4,391	28,300	815	989	45,563	16
New Jersey	15,742	85,291	24,860	212,200	9,479	15,792	363,364	13
New Mexico	—	17,437	7,200	56,000	1,384	2,129	84,150	24
New York	46,035	169,595	59,062	408,700	14,410	95,070	792,872	11
North Carolina	5,962	73,602	25,172	311,900	7,259	4,023	427,918	21
North Dakota	(D)	9,985	4,317	37,200	1,945	667	54,114	30
Ohio	131,596	152,648	37,018	331,600	9,417	10,850	673,129	16
Oklahoma	3,703	39,118	12,553	167,500	7,699	1,559	232,132	27
Oregon	3,424	37,119	10,938	120,200	2,195	3,293	177,169	22
Pennsylvania	22,634	154,729	46,309	453,000	18,256	28,920	723,848	16
Rhode Island	801	10,195	2,298	35,800	1,111	2,149	52,354	14
South Carolina	1,022	34,659	12,357	144,500	3,341	928	196,807	20
South Dakota	102	9,907	5,184	37,700	2,134	604	55,631	27
Tennessee	12,370	61,965	19,324	143,000	3,494	3,869	244,022	16
Texas	12,547	190,070	55,977	677,800	47,454	11,049	994,897	24
Utah	(D)	17,399	5,802	59,700	1,897	1,054	85,852	21
Vermont	—	6,660	3,099	18,600	434	729	29,522	18
Virginia	3,965	69,542	24,847	180,900	5,184	8,020	292,458	17
Washington	2,450	47,346	18,061	193,600	4,352	2,702	268,511	23
West Virginia	(D)	22,426	11,738	87,800	1,682	1,486	125,132	22
Wisconsin	28,642	56,849	17,644	155,600	6,240	8,793	273,768	17
Wyoming	—	6,600	3,533	25,000	589	410	36,132	28
District of Columbia	—	9,133	1,906	15,200	227	4,608	31,074	4
U.S. TOTAL	**889,986**	**2,858,425**	**846,657**	**9,052,400**	**300,443**	**371,106**	**14,319,017**	**19**

— None or not available (D) Withheld to avoid disclosure. * Includes some local transit rail and subway employees.

(1) Does not include the "Automotive Stamping Industry" with 120,000 employees in 1972 and 400,000 employees of other "Non-Automotive Industries Producing Automotive Products."

NOTE: Individual States may not add to "US Total" due to rounding.

SOURCE: Compiled by the Motor Vehicle Manufacturers Association of the U.S. Inc. from U.S. Bureau of the Census and American Trucking Associations data.



NEW MOTOR VEHICLE REGISTRATIONS BY STATES

New registrations, akin to retail sales, showed mild signs of uneven recovery during 1975. But increases were the exception with only ten states reporting more new vehicles registered in 1975 than in 1974. Trucks continued to fare more poorly throughout 1975 with 43 of the 50 states showing continued decline of registrations. In all, total new registrations were down 26% compared to the pre-recession, 1973 level.

NEW REGISTRATIONS BY STATES

	Passenger Cars		Motor Trucks		Total	
	1974	1975	1974	1975	1974	1975
Alabama	129,291	128,860	46,478	41,393	175,769	170,253
Alaska	9,745	15,381	6,616	14,327	16,361	29,708
Arizona	70,543	64,051	34,887	29,498	105,430	93,549
Arkansas	72,660	70,594	44,560	38,980	117,220	109,574
California	817,583	742,697	241,897	213,404	1,059,480	956,101
Colorado	99,135	92,751	48,013	41,274	147,148	134,025
Connecticut	131,090	118,574	22,267	17,486	153,357	136,060
Delaware	27,471	24,949	6,310	5,614	33,781	30,563
Florida	396,843	362,818	101,308	72,729	498,151	435,547
Georgia	197,576	177,417	66,089	50,874	263,665	228,291
Hawaii	30,932	33,693	6,161	6,255	37,093	39,948
Idaho	23,385	22,922	21,139	19,330	44,524	42,252
Illinois	589,758	527,693	118,592	103,338	708,350	631,031
Indiana	228,964	210,829	73,083	63,620	302,047	274,449
Iowa	124,711	118,748	56,433	53,419	181,144	172,167
Kansas	98,451	90,204	48,670	40,260	147,121	130,464
Kentucky	114,681	110,301	48,171	45,756	162,852	156,057
Louisiana	146,068	150,289	54,957	53,317	201,025	203,606
Maine	37,637	36,899	15,153	12,945	52,790	49,844
Maryland	198,403	199,109	40,995	38,017	239,398	237,126
Massachusetts	231,732	222,015	36,362	31,258	268,094	253,273
Michigan	513,129	496,476	112,867	111,956	625,996	608,432
Minnesota	171,497	158,942	62,716	55,627	234,213	214,569
Mississippi	77,015	71,889	38,466	30,691	115,481	102,580
Missouri	194,399	174,575	69,148	60,349	263,547	234,924
Montana	23,764	23,025	21,754	20,689	45,518	43,714
Nebraska	63,031	57,896	35,929	30,402	98,960	88,298
Nevada	25,603	26,361	11,303	11,904	36,906	38,265
New Hampshire	39,162	37,143	11,757	9,824	50,919	46,967
New Jersey	344,140	308,346	49,813	38,236	393,953	346,582
New Mexico	41,609	40,341	24,472	23,762	66,081	64,103
New York	670,349	618,753	101,868	88,119	772,217	706,872
North Carolina	196,350	173,778	68,141	51,651	264,491	225,429
North Dakota	28,570	25,728	20,600	18,685	49,170	44,413
Ohio	457,722	479,497	103,030	100,871	560,752	580,368
Oklahoma	NOT AVAILABLE					
Oregon	80,871	84,870	42,240	42,754	123,111	127,624
Pennsylvania	502,069	474,940	118,628	105,535	620,697	580,475
Rhode Island	36,332	32,646	5,453	4,262	41,785	36,908
South Carolina	98,574	91,807	31,187	24,759	129,761	116,566
South Dakota	25,888	21,143	17,035	13,895	42,923	35,038
Tennessee	165,423	157,343	56,978	50,968	222,401	208,311
Texas	509,024	535,698	195,671	197,800	704,695	733,498
Utah	37,980	39,785	20,726	22,694	58,706	62,479
Vermont	20,785	20,358	7,235	6,357	28,020	26,715
Virginia	191,236	185,727	57,383	50,908	248,619	236,635
Washington	109,256	114,709	44,731	49,486	153,987	164,195
West Virginia	68,040	70,713	30,214	34,509	98,254	105,222
Wisconsin	179,856	172,508	52,169	46,443	232,025	218,951
Wyoming	13,330	13,907	14,028	14,841	27,358	28,748
Dist. of Columbia	25,928	23,962	2,005	1,759	27,933	25,721
Federal Government	13,503	8,180	55,438	40,293	68,941	48,473
GRAND TOTAL	**8,701,094**	**8,261,840**	**2,656,918***	**2,397,417***	**11,358,012***	**10,659,257***

*Includes 35,792 Motor Home Chassis in 1974 and 44,294 in 1975.

SOURCE: R. L. Polk & Company. Permission for further use must be obtained from R. L. Polk & Company.

The Franchised New Car Dealer

Franchised dealerships, throughout the U.S. accounted for 13.7 percent of total retail sales while constituting 2.8 percent of the total retail establishments in the nation. Dealership failures were set at 63 for 1975 compared with a high of 117 in 1967.

Estimated Number of Franchised New Car Dealers
As of End of Year

Year	Total	Handling Domestic Makes Only	Handling Both Domestic and Imported Makes	Handling Imported Makes Only
1966	31,600	25,000	3,400	3,200
1967	31,100	24,000	3,800	3,300
1968	31,100	23,200	4,300	3,600
1969	30,800	22,500	4,500	3,800
1970	30,300	20,400	5,700	4,200
1971	30,100	17,700	7,900	4,500
1972	30,100	16,700	8,700	4,700
1973	30,000	18,700	6,600	4,700
1974	29,600	18,500	6,500	4,600
1975	29,300	18,900	5,600	4,800

Estimated Number of Franchised New Car Dealers by State
As of December 31, 1975

State	Number	State	Number
Alabama	480	Montana	230
Alaska	40	Nebraska	350
Arizona	190	Nevada	80
Arkansas	400	New Hampshire	190
California	1,920	New Jersey	830
Colorado	360	New Mexico	170
Connecticut	420	New York	1,830
Delaware	70	North Carolina	760
Dist. of Columbia	40	North Dakota	200
Florida	720	Ohio	1,600
Georgia	660	Oklahoma	490
Hawaii	40	Oregon	410
Idaho	190	Pennsylvania	1,860
Illinois	1,460	Rhode Island	120
Indiana	820	South Carolina	370
Iowa	780	South Dakota	160
Kansas	510	Tennessee	560
Kentucky	480	Texas	1,560
Louisiana	400	Utah	190
Maine	260	Vermont	130
Maryland	420	Virginia	710
Massachusetts	790	Washington	520
Michigan	1,320	West Virginia	380
Minnesota	690	Wisconsin	910
Mississippi	390	Wyoming	120
Missouri	720	TOTAL	29,300

SOURCE: NADA Research & Dealership Operations Department

Estimated Number of Franchised New Truck Dealers By State

As of December 31, 1975

State	Dealers	State	Dealers
Alabama	345	Montana	310
Alaska	30	Nebraska	480
Arizona	160	Nevada	70
Arkansas	345	New Hampshire	130
California	1,230	New Jersey	500
Colorado	350	New Mexico	170
Connecticut	300	New York	1,270
Delaware	50	North Carolina	655
Dist. of Columbia	20	North Dakota	380
Florida	450	Ohio	1,165
Georgia	500	Oklahoma	540
Hawaii	40	Oregon	330
Idaho	230	Pennsylvania	1,395
Illinois	1,320	Rhode Island	50
Indiana	700	South Carolina	230
Iowa	910	South Dakota	270
Kansas	630	Tennessee	420
Kentucky	355	Texas	1,325
Louisiana	365	Utah	180
Maine	190	Vermont	130
Maryland	230	Virginia	560
Massachusetts	450	Washington	340
Michigan	1,000	West Virginia	320
Minnesota	840	Wisconsin	880
Mississippi	400	Wyoming	160
Missouri	710	TOTAL	24,410

SOURCE: NADA Research & Dealership Operations Department

Year	Domestics	Imports	Total
1966	1,613,600	12,200	1,625,800
1967	1,519,200	17,300	1,536,500
1968	1,805,400	24,200	1,829,600
1969	1,929,000	34,500	1,963,500
1970	1,746,100	64,800	1,810,800
1971	2,009,000	84,800	2,093,800
1972	2,530,600	95,000	2,625,600
1973	3,008,200	140,100	3,148,300
1974	2,586,600	100,400	2,687,000
1975	2,351,000	128,000	2,479,000

SOURCE: Ward's Automotive Reports. 1966 and 1967 figures include NADA estimates for imports.

Automobile Sales

New Passenger Cars

Annual Totals

Year	Total Cars	Domestic Cars	Imported Cars	Imported Cars As a Percent of Total Sales
1966	9,035,548	8,377,425	658,123	7.3%
1967	8,348,463	7,567,884	780,579	9.3%
1968	9,610,587	8,624,820	985,767	10.3%
1969	9,576,275	8,464,375	1,111,900	11.6%
1970	8,393,232	7,115,537	1,277,695	15,2%
1971	10,239,462	8,676,284	1,563,178	15.3%
1972	10,937,698	9,321,502	1,616,196	14.8%
1973	11,435,847	9,669,689	1,766,158	15.4%
1974	8,852,768	7,448,921	1,403,847	15.9%
1975	8,614,524	7,050,120	1,564,404	18.2%

NOTE: Imports include tourist deliveries.
SOURCE: Ward's Automotive Reports.

Average Number of New Cars Sold per Dealer and Average Selling Price per Vehicle

Year	New Cars Sold	Avg. Vehicle Selling Price
1966	286	$3,000
1967	268	$3,200
1968	309	$3,240
1969	311	$3,400
1970	277	$3,430
1971	340	$3,730
1972	363	$3,690
1973	381	$3,930
1974	300	$4,390
1975	295	$4,750

SOURCE: NADA Research & Dealership Operations Department.

Estimated Total Sales of Franchised New Car Dealers

	1975 All Dealers ($ Millions)	Average Per Dealer ($ Thousands)
Alabama	$ 1,300	$2,705
Alaska	190	4,675
Arizona	740	3,905
Arkansas	810	2,030
California	7,790	4,074
Colorado	1,130	3,177
Connecticut	1,060	2,560
Delaware	220	2,973
Dist. of Columbia	170	4,368
Florida	3,210	4,430
Georgia	1,740	2,655
Hawaii	260	6,095
Idaho	320	1,686
Illinois	4,530	3,098
Indiana	2,110	2,572
Iowa	1,230	1,584
Kansas	940	1,830
Kentucky	1,120	2,306
Louisiana	1,480	3,744
Maine	410	1,600
Maryland	1,720	4,069
Massachusetts	1,990	2,520
Michigan	4,130	3,127
Minnesota	1,420	2,053
Mississippi	840	2,133
Missouri	1,810	2,519
Montana	310	1,359
Nebraska	570	1,652
Nevada	320	3,857
New Hampshire	330	1,771
New Jersey	2,510	3,018
New Mexico	460	2,696
New York	4,890	2,674
North Carolina	1,810	2,385
North Dakota	280	1,434
Ohio	4,120	2,591
Oklahoma	1,040	2,099
Oregon	1,040	2,529
Pennsylvania	4,480	2,406
Rhode Island	280	2,367
South Carolina	860	2,348
South Dakota	240	1,445
Tennessee	1,680	3,014
Texas	5,410	3,465
Utah	510	2,717
Vermont	210	1,588
Virginia	1,880	2,636
Washington	1,340	2,602
West Virginia	700	1,843
Wisconsin	1,760	1,933
Wyoming	180	1,557
TOTAL U.S.	79,880	2,726

SOURCE: U.S. Bureau of the Census and NADA Research & Dealership Operations Department

Relationship of Franchised New Car Dealers to Total Retail Trade

For Establishments With Payroll (By State)

State	Number of Dealers as % of Total Retail Establishments in the State	Dealer Sales as % of Total Retail Sales in the State	Dealer Payroll as % of Total Retail Payroll in the State	Dealer Employees as % of Total Retail Employment in the State
Alabama	2.8	15.1	12.3	7.1
Alaska	2.8	18.8	9.0	7.7
Arizona	2.0	12.4	10.9	5.7
Arkansas	3.2	17.8	11.6	7.3
California	2.0	12.7	9.5	5.4
Colorado	2.8	15.2	12.2	6.4
Connecticut	2.6	11.5	9.6	5.4
Delaware	2.5	11.4	8.5	4.8
Dist. of Columbia	1.2	6.5	5.6	3.3
Florida	1.8	13.5	9.9	5.1
Georgia	2.6	12.0	9.8	5.6
Hawaii	1.2	10.7	9.4	4.5
Idaho	3.9	14.2	13.1	8.1
Illinois	2.8	13.5	8.1	4.6
Indiana	3.0	13.1	10.5	5.6
Iowa	3.9	14.2	10.7	6.2
Kansas	3.4	14.2	11.2	6.3
Kentucky	2.8	12.0	10.6	6.2
Louisiana	2.3	15.6	10.4	6.2
Maine	4.3	13.3	12.1	7.6
Maryland	2.7	21.6	10.2	5.7
Massachusetts	2.7	13.1	8.4	4.5
Michigan	3.3	17.2	12.0	6.7
Minnesota	3.4	13.0	8.8	4.9
Mississippi	3.2	16.2	12.6	7.5
Missouri	2.7	12.8	9.9	5.1
Montana	4.3	13.6	13.3	8.6
Nebraska	3.3	12.6	9.5	5.5
Nevada	2.6	14.3	11.6	6.5
New Hampshire	4.0	11.6	12.3	7.0
New Jersey	2.3	12.8	8.0	4.7
New Mexico	2.8	14.5	12.6	6.9
New York	2.0	11.2	6.4	3.9
North Carolina	2.8	14.0	8.5	6.4
North Dakota	4.4	15.7	11.9	7.1
Ohio	3.2	13.5	11.2	6.1
Oklahoma	3.2	14.2	11.3	6.5
Oregon	3.3	15.1	13.3	7.7
Pennsylvania	3.3	14.5	9.9	5.8
Rhode Island	2.4	10.1	8.3	4.5
South Carolina	2.7	12.1	10.7	6.1
South Dakota	3.3	13.6	9.5	5.3
Tennessee	2.7	15.5	10.7	6.0
Texas	2.5	15.2	10.0	5.6
Utah	3.5	16.9	13.1	6.7
Vermont	4.1	12.9	13.1	8.3
Virginia	3.3	12.8	12.6	7.1
Washington	2.9	13.4	10.9	6.4
West Virginia	4.4	16.1	14.3	9.1
Wisconsin	3.5	13.4	10.4	5.6
Wyoming	4.5	16.9	14.4	8.5
TOTAL U.S.	2.8	13.7	9.8	5.6

SOURCE: NADA Research & Dealership Operations Department

1702

Estimated Number of Employees of Franchised New Car Dealers

1975 Averages by State (Including Owners and Officers)

	Total	Per Dealer		Total	Per Dealer
Alabama	12,200	25	Montana	3,800	17
Alaska	1,100	27	Nebraska	5,800	17
Arizona	7,900	42	Nevada	2,500	30
Arkansas	7,400	19	New Hampshire	3,500	19
California	70,800	37	New Jersey	20,200	24
Colorado	11,100	31	New Mexico	4,300	25
Connecticut	10,100	24	New York	41,000	22
Delaware	1,900	26	North Carolina	18,500	24
Dist. of Columbia	2,000	53	North Dakota	2,700	14
Florida	28,900	40	Ohio	40,300	25
Georgia	16,600	25	Oklahoma	10,100	20
Hawaii	2,900	69	Oregon	10,800	26
Idaho	3,700	20	Pennsylvania	39,900	21
Illinois	34,200	23	Rhode Island	2,600	21
Indiana	18,400	22	South Carolina	8,300	22
Iowa	11,300	15	South Dakota	2,100	13
Kansas	9,000	18	Tennessee	14,100	25
Kentucky	10,300	21	Texas	42,600	27
Louisiana	11,900	30	Utah	4,900	26
Maine	4,200	17	Vermont	2,300	18
Maryland	15,200	36	Virginia	20,100	28
Massachusetts	18,400	23	Washington	12,600	24
Michigan	34,700	26	West Virginia	7,500	19
Minnesota	12,800	19	Wisconsin	16,000	18
Mississippi	7,600	19	Wyoming	1,900	17
Missouri	15,400	21	TOTAL U.S.	718,400	25

SOURCE: NADA Research & Dealership Operations Department

Estimated Payrolls of Franchised New Car Dealers

Year	Annual Payrolls: Total of All Dealers ($ Billions)	Annual Payrolls: Average Per Dealer ($ Thousands)	Weekly Payrolls: Total of All Dealers ($ Millions)	Weekly Payrolls: Average Per Dealer ($ Thousands)
1966	4.1	130	79	2.5
1967	4.2	136	81	2.6
1968	4.7	152	91	2.9
1969	5.3	171	101	3.3
1970	5.5	180	105	3.5
1971	5.8	193	112	3.7
1972	6.6	220	128	4.2
1973	7.2	239	138	4.6
1974	7.3	246	140	4.7
1975	7.5	256	144	4.9

SOURCE: NADA Research & Dealership Operations Department

Estimated Payrolls of Franchised New Car Dealers

Year 1975 By State

	Annual Payrolls: Total of all Dealers ($ Millions)	Annual Payrolls: Average Per Dealer ($ Thousands)	Weekly Payrolls: Total of all Dealers ($ Thousands)	Weekly Payrolls: Average Per Dealer ($ Thousands)
Alabama	$ 113	$235	$ 2,170	$4.5
Alaska	14	357	270	6.9
Arizona	88	463	1,690	8.9
Arkansas	62	157	1,200	3.0
California	839	439	16,140	8.4
Colorado	120	338	2,310	6.5
Connecticut	112	270	2,150	5.2
Delaware	20	278	380	5.3
Dist. of Columbia	24	624	460	12.0
Florida	329	455	6,330	8.8
Georgia	169	258	3,250	5.0
Hawaii	33	794	630	15.3
Idaho	33	175	630	3.4
Illinois	391	267	7,520	5.1
Indiana	192	234	3,690	4.5
Iowa	101	130	1,940	2.5
Kansas	83	162	1,600	3.1
Kentucky	95	197	1,830	3.8
Louisiana	110	277	2,120	5.3
Maine	37	144	710	2.8
Maryland	170	403	3,270	7.8
Massachusetts	201	255	3,870	4.9
Michigan	393	298	7,560	5.7
Minnesota	126	181	2,420	3.5
Mississippi	65	166	1,250	3.2
Missouri	174	243	3,350	4.7
Montana	32	137	620	2.6
Nebraska	49	142	940	2.7
Nevada	30	361	580	6.9
New Hampshire	34	183	650	3.5
New Jersey	230	277	4,420	5.3
New Mexico	40	235	770	4.5
New York	462	252	8,880	4.8
North Carolina	157	207	3,020	4.0
North Dakota	23	118	440	2.3
Ohio	429	270	8,250	5.2
Oklahoma	91	184	1,750	3.5
Oregon	112	273	2,150	5.3
Pennsylvania	396	212	7,620	4.1
Rhode Island	27	226	520	4.3
South Carolina	77	209	1,480	4.0
South Dakota	18	107	350	2.1
Tennessee	136	244	2,620	4.7
Texas	421	270	8,100	5.2
Utah	48	254	920	4.9
Vermont	21	158	400	3.0
Virginia	205	288	3,940	5.5
Washington	139	271	2,670	5.2
West Virginia	63	165	1,210	3.2
Wisconsin	156	171	3,000	3.3
Wyoming	16	137	310	2.6
TOTAL	$7,506	$256	$144,350	$4.9

SOURCE: NADA Research & Dealership Operations Department

Estimated Average Weekly Earnings Dealership Employees

Year	Average
1966	$115
1967	$118
1968	$129
1969	$138
1970	$145
1971	$156
1972	$170
1973	$181
1974	$192
1975	$206

Estimated Average Weekly Earnings

Of Franchised New Car Dealer Employees Year 1975 by State

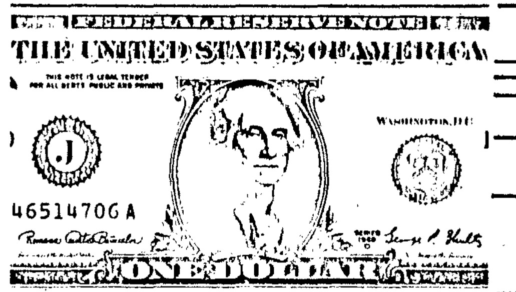
State	Earnings	State	Earnings
Alabama	$183	Montana	$166
Alaska	254	Nebraska	167
Arizona	219	Nevada	234
Arkansas	166	New Hampshire	191
California	233	New Jersey	224
Colorado	213	New Mexico	182
Connecticut	218	New York	222
Delaware	203	North Carolina	168
Dist. of Columbia	236	North Dakota	167
Florida	224	Ohio	210
Georgia	193	Oklahoma	177
Hawaii	222	Oregon	204
Idaho	173	Pennsylvania	196
Illinois	225	Rhode Island	207
Indiana	206	South Carolina	184
Iowa	175	South Dakota	173
Kansas	182	Tennessee	190
Kentucky	182	Texas	195
Louisiana	182	Utah	192
Maine	172	Vermont	178
Maryland	220	Virginia	201
Massachusetts	215	Washington	218
Michigan	223	West Virginia	167
Minnesota	193	Wisconsin	192
Mississippi	168	Wyoming	167
Missouri	223	TOTAL U.S.	$206

Note: Includes officers of corporations but excludes proprietors and partners of unincorporated dealerships.

SOURCE: NADA Research Department

Advertising And The Franchised Dealership

Where the Average Dealer's Advertising Dollar Goes



Total U.S. Motor Vehicle Registrations in 1975

	Autos	Trucks and Buses	Total Vehicles*
Alabama	1,876,000	581,000	2,457,000
Alaska	135,000	75,000	210,000
Arizona	1,109,000	411,000	1,520,000
Arkansas	875,000	414,000	1,289,000
California	11,392,000	2,642,000	14,034,000
Colorado	1,870,000	164,000	2,034,000
Connecticut	1,429,000	486,000	1,915,000
Delaware	289,000	62,000	351,000
Dist. of Columbia	249,000	15,000	264,000
Florida	4,855,000	989,000	5,844,000
Georgia	2,609,000	763,000	3,372,000
Hawaii	428,000	69,000	497,000
Idaho	419,000	242,000	661,000
Illinois	5,406,000	987,000	6,393,000
Indiana	2,572,000	756,000	3,328,000
Iowa	1,528,000	559,000	2,087,000
Kansas	1,271,000	549,000	1,820,000
Kentucky	1,653,000	572,000	2,225,000
Louisiana	1,635,000	557,000	2,192,000
Maine	520,000	152,000	672,000
Maryland	2,055,000	369,000	2,424,000
Massachusetts	2,787,000	332,000	3,119,000
Michigan	4,619,000	919,000	5,538,000
Minnesota	1,967,000	630,000	2,597,000
Mississippi	983,000	396,000	1,379,000
Missouri	2,180,000	713,000	2,893,000
Montana	370,000	232,000	602,000
Nebraska	826,000	353,000	1,179,000
Nevada	348,000	124,000	472,000
New Hampshire	418,000	94,000	512,000
New Jersey	3,839,000	428,000	4,267,000
New Mexico	552,000	239,000	791,000
New York	6,772,000	842,000	7,614,000
North Carolina	2,844,000	853,000	3,697,000
North Dakota	332,000	220,000	552,000
Ohio	6,206,000	903,000	7,109,000
Oklahoma	1,425,000	675,000	2,100,000
Oregon	1,331,000	311,000	1,642,000
Pennsylvania	6,354,000	978,000	7,332,000
Rhode Island	510,000	71,000	581,000
South Carolina	1,384,000	352,000	1,736,000
South Dakota	337,000	185,000	522,000
Tennessee	2,029,000	626,000	2,655,000
Texas	6,165,000	2,134,000	8,299,000
Utah	608,000	236,000	844,000
Vermont	235,000	58,000	293,000
Virginia	2,785,000	540,000	3,325,000
Washington	1,883,000	654,000	2,537,000
West Virginia	720,000	246,000	966,000
Wisconsin	2,194,000	471,000	2,665,000
Wyoming	193,000	127,000	320,000
TOTAL U.S.	107,371,000	26,356,000	133,727,000

SOURCE: Federal Highway Administration
* Total Vehicles Excludes Motorcycles (5,494,000)

NADA'S SUMMARY OF THE 1975 GM CONTRACT

General Motors Corp. has just completed and issued to its dealers a new Sales and Service Agreement, replacing the 1970 Agreement. NADA, with the assistance of expert legal counsel and knowledgeable dealers, has reviewed this Agreement and offers this summary of some of the key provisions which appear to be of primary interest and concern to all GM dealers.

It should be pointed out that no attempt is made here to offer a detailed analysis of what is a lengthy and comprehensive agreement. It is not possible to treat all of the additions, deletions, and modifications in the new Agreement without an excessively long presentation. Dealers and their legal advisers are urged to read and study this Agreement themselves.

There are two documents treated in this summary. The first is the "Dealer Sales and Service Agreement," a four-page document which, among other things, specifies the general purpose of the Agreement, requires a listing of the dealer owners and dealer operators, and is executed by the dealer and a GM Div. official. The other document is entitled "Additional Provisions Applicable to Dealer Sales and Service Agreement." This is a lengthy 40-page specification of various provisions, all of which are incorporated by reference in the Sales and Service Agreement.

The major portions of this summary will treat the "Additional Provisions" document since these provisions specify the commitments and obligations of the parties, particularly the dealer.

At the outset, the following general observations should be made. The provisions in the Agreement are carefully drafted by GM attorneys to insulate and protect GM in every conceivable way. As such, the provisions are, as they have always been, one-sided in nature, with the manufacturer limiting itself to few commitments while the obligations and responsibilities of the dealer are spelled out in great detail. Furthermore, there is no opportunity granted the dealer to reject or modify any provision. The entire Agreement must be accepted as presented.

Another significant fact is the emphasis placed by GM in pointing out that the franchise is a personal service contract between GM and the dealer. It has no separate intrinsic value apart from the dealer's continuing status as a franchised dealer. The franchise itself is stated to be a non-exclusive grant conferred by GM upon the dealer, without any fee, to sell and service its motor vehicles on terms specified solely by GM. The foregoing factors are made clear in the provisions of the four-page "Dealer Sales and Service Agreement" and should be read carefully.

The purpose of this summary is to make dealers aware of the key provisions of the contract so they will be certain as to their primary obligations under the Agreement. Although NADA sought a much better contract, one that particularly would include an Indemnification (hold harmless) clause, NADA was not as successful as was anticipated. NADA proposed several improvements in the contract, but GM accepted only a few of them. These improvements will be part of the continuing efforts of the NADA Industry Relations Committee to secure a better contract by means of periodic amendments.

and Accessories provisions are identical with those in the old Agreement and dealers must order parts in accordance with the procedures set forth in the GM Parts and Accessories Terms of Sale Bulletin.

The only warranties given by GM are those express warranties furnished in writing by GM and the dealer is required to provide each customer with a copy of the warranty and must explain its provisions.

GM is not liable for failure to fill orders due to strikes, government regulations, economic disorders, discontinuance of production, or any other cause beyond its control. The dealer is not liable for failure to accept orders due to labor trouble or any other cause not due to the dealer's fault or negligence.

Article III. Dealership Operations: GM has the right to put dealers where it wants, when it wants, and may force the dealer to change locations when it wants. The dealer must disclose to GM the usage of dealership space. This becomes important in a situation where a dealer duals with an import or another domestic. GM may then require the dealer to expand the dealership facilities, thereby increasing the financial burden of taking on another line.

Responsibilities of the Dealer:

1. The dealer must provide premises which are satisfactory in appearance, layout, and properly equipped for the conduct of operations.

2. The dealership must be open for operation during normal business hours on business days in order that the dealer may meet the needs of customers.

3. The dealer is responsible for the installation and maintenance of a product and service sign.

4. The dealer must actively and effectively promote the purchase of new GM motor vehicles.

5. Advertising--The dealer will develop and utilize advertising and sales promotion programs and will make every reasonable effort to build and maintain customer confidence in the dealer and GM products. Further, the dealer will not publish any deceptive or misleading advertising. However, unlike the old Agreement, GM may require the dealer to participate, without limitation, in any advertising or sales promotion program offered by GM--an important and potentially expensive change for the dealer.

6. The dealer must organize and maintain an effective sales and customer relations organization.

7. Treatment of Purchasers--The dealer must inform purchasers of the details of the purchase and provide an itemized invoice with every purchase. The dealer will not make misleading statements as to items making up the total selling price, and this includes any statement indicating increased charges for destination, dealer preparation, or other charges already included in the sticker price. Further, the dealer cannot force the customer to take options and must inform each customer, in writing, of any option installed that is not a GM option. The dealer must further state, in writing, that GM makes no warranties as to these options.

8. The dealer must engage in used motor vehicle operations.

9. The dealer will explore the opportunities for rental and leasing operations with GM and will establish such operations if the opportunities are apparent. Obviously, this means when these opportunities are apparent to GM.

10. Service--The dealer will provide prompt, efficient and courteous service to any owner of the dealer's line make vehicle who requests service and will provide itemized invoices covering the details of the service provided. The dealer will perform pre-delivery inspections and adjustments on each new motor vehicle prior to sale and delivery. The dealer will perform warranty repairs and special adjustments when required thereon and requested by the customer--regardless of the origin of purchase.

The dealer will perform campaign inspections and/or corrections in accordance with the related bulletins. The dealer will equip and staff a complete service and parts organization and must carry an adequate stock of parts. In the event that a dealer uses parts which are not GM parts, he must disclose in writing that the parts are not GM parts, and must fruther disclose in writing that GM makes no warranty on the parts. (NOTE: The dealer must perform repairs and adjustments on all line make products if the dealer is reasonably equipped to do so.)

11. The dealer will make every effort to build and maintain customer confidence in the dealer and the line make.

12. The dealer will maintain the minimum net working capital necessary to conduct the dealership operations--the amount to be mutually determined by the dealer and GM.

13. The dealer will maintain the Uniform Accounting System established by GM. The dealer will also maintain a complete system of records covering each person with a management position with the dealer. The dealer will also maintain complete records covering its sales and service activities and must keep these records for two years.

14. The dealer will provide GM with periodic sales estimates, following up with reports of actual sales.

15. The dealer will permit GM to audit the books at reasonable times and to enter the premises and make copies of the dealer's records. (NOTE: GM may disclose any of the dealer's financial statements and records in its possession when authorized by dealer, required for judicial proceeding, or when GM finds that they are PERTINENT TO GOVERNMENTAL ADMINISTRATIVE PROCEEDINGS.)

Evaluation of Dealer Performance--GM will evaluate annually, or for such shorter periods as GM shall determine, the effectiveness of the dealer's performance under this Article. In sales, the comparison will be the sales of the dealer as against the sales in the dealer's zone and national sales. Under this Agreement, GM will discuss with the dealer the composition of the sales evaluation reports and the service evaluation reports.

GM will provide assistance to dealers in general and specialized sales management and sales management and sales training courses, and general and specialized service and parts training courses. GM will further provide field service and parts personnel to assist the dealer.

Article IV. Termination: There are basically five ways in which the Agreement can be terminated:

1. The dealer may terminate the Agreement on one month's notice.

2. The dealer and GM may mutually agree as to termination.

3. Termination due to certain acts or events by dealer or its management.

4. Termination for failure of performance by dealer.

5. Termination due to the death or incapacity of the dealer.

The first two are fairly simple and self-explanatory; however, the last three items are worthy of some discussion.

Acts by Dealer--The following causes for termination are the same or virtually unchanged from the old Agreement: removal, resignation, withdrawal or elimination of any dealer operator or dealer owner; any attempted sale, transfer or assignment of any right under the agreement; any sale or transfer of any interest in record or beneficial ownership of the agreement; any dispute among dealer operators or dealer owners which adversely affects the dealership operation; insolvency; conviction of a crime; failure to file proper financial statements with GM; failure of the dealer to maintain operations open for business as required for seven consecutive business days; and, failure to comply with the applicable licensing statutes.

The following are new provisions or old provisions which have been substantially changed: any attempt to conduct any part of the business at another location; any transfer or relinquishment or discontinuance of use by dealer of any part of the dealership operations; any submission by dealer (or any of his employees in the dealership name) of ANY FALSE application or claim or statement related thereto for warranty, predelivery, inspection, special policy or campaign adjustments-- WHETHER OR NOT THE DEALER OFFERS RESTITUTION OR EVEN MAKES RESTITUTION.

When any of the foregoing acts or events occurs to the SATISFACTION OF GM, GM may immediately terminate the dealer. Under the old Agreement, at least GM had to discuss the matter with the dealer before termination. Under the new Agreement, the factory may terminate without any opportunity for discussion whatsoever.

Termination for Failure of Performance--When GM determines that the dealer has failed to perform, GM will discuss the situation with the dealer. Then it may do one of two things: it may then immediately terminate the dealer; or, it may grant the dealer a period of time (left in the Agreement to the discretion of GM) in which the dealer must correct the failure of performance, or be terminated. Under the old Agreement, the dealer had a right to a six-month period to correct. The new contract allows the factory to terminate, in writing, as soon as the deficiencies are discussed with the dealer--provided the factory does not believe the dealer can rectify the problems.

Termination Due to Death or Incapacity of Paragraph Three Person--Under the new Agreement, GM may terminate whenever a Paragraph Three person dies or becomes "physically or mentally incapacitated so as TO BE UNABLE TO ACTIVELY EXERCISE FULL MANAGERIAL AUTHORITY for the operating management of the dealer". This means that whenever, and for any period, in the eyes of GM, the person is not able to exert full managerial responsibility, GM may terminate. Such a position makes the successor provisions particularly important, if not vital to the dealer who desires to have spouse or heirs succeed to the dealership.

In the event that the dealer makes no provision for a successor dealer, the executor/administrator may operate the dealership for at least six months and up to one year upon application to GM--in order that there is an orderly termination of the business.

The most important aspect of the Agreement for those dealers operating in states with dealer licensing statutes, is the provision relating to applicable statutes. The contract itself states that whenever its provisions contravene applicable Federal or state law--that law will control. As a result, if any obligation or requirement of this Agreement violates the law, it is void and has no effect.

What follows is a capsule summary of the key changes in the new Agreement. The more important provisions of the new Agreement are then discussed in greater detail.

HIGHLIGHTS OF KEY CHANGES

Dealer Operations

Now the dealer must disclose, in writing, any option, accessory, or part installed which is not GM and that GM does not warranty the item.

Now GM can force the dealer into participating in any and all advertising or promotional programs--including rebate programs.

Now GM can force the dealer into the leasing and/or rental business.

Now GM can force the dealer to change locations.

Now the dealer must indicate for what other purposes the dealership premises are being used.

Now GM may provide its copies of dealer's financial statements and related data, when GM feels it is pertinent, to any court or governmental agency proceeding.

Terminations

Now the dealer may be terminated immediately for any false claims or supporting statements to GM--whether by the dealer or his employees. It is not a defense that the statement was not willful or even that the dealer did not know that it was made. Restitution has no effect on the right to terminate by GM.

Now the dealer may be terminated for any physical or mental incapacity which keeps him from the active management of the dealership for any period of time.

Now GM must disclose to the dealer the factors which lead to the formation of the planning potential.

SUMMARY OF THE AGREEMENT

Many of the provisions of the new Agreement summarized herein are identical with, or substantially the same as, those of the old Agreement, but NADA feels that they are sufficiently important to be noted here. In addition, changes and new additions of importance are also discussed.

Article I. Definitions: This section is self-explanatory, defining the terms used in the Agreement, and needs no treatment here.

Article II. Sales to Dealers: GM has the right to offer motor vehicles and to discontinue any model at any time, set prices, change allowances and terms of sale, process the orders of the dealer for vehicles, and change prices--even on sold orders. The dealer is prohibited from removing any equipment installed by GM to meet any Federal, state, or local laws. The contract also allows for drop shipments by GM. The Parts

Rights of Succession (Widow's Rights): The rights of succession are changed in the 1975 Agreement, and bear close scrutiny by the dealer and his attorney before any steps are taken. Given the much easier provisions for termination due to incapacity (see the earlier discussion), planning for successors is even more important now than before. If the dealer desires that his heirs take an interest in the dealership, either active or financial, NADA strongly urges that they complete and file the application for the Successor Addendum as soon as it is practicable.

The 1975 Agreement appears to be more flexible than the old Agreement. However, GM must still approve of all succession plans before they will take effect; accordingly, the actual increase in flexibility remains to be seen. There are three possible situations which bear special emphasis here. These are not all-inclusive and represent only the most important of a very complicated and confusing set of options and procedural alternatives.

1. By use of a Successor Addendum, filed prior to his incapacity, the dealer's heir may succeed to the dealer's financial interest in the dealership (at least up to 75 percent). In order to accomplish this, the dealer must also provide for a successor dealer operator in the same Successor Addendum.

2. By use of a Successor Addendum, filed prior to the dealer's disability, the dealer may provide for a successor dealer operator whose only qualifications are that he or she is employed on a full-time basis in the dealership and is being trained to assume a responsible position with the dealer or a comparable automobile dealership. Such a successor would receive a two year franchise agreement from GM, while a fully qualified successor dealer would receive a five year agreement.

3. If a Successor Addendum is not executed prior the dealer's incapacity, any surviving dealer operators have greater flexibility in naming a successor. Under the new Agreement, GM will give prior consideration to a contract including a successor dealer operator designated by the surviving dealer operators. Two things are important here. First, the surviving dealers may name anyone they desire; it need not be an heir of the incapacitated or deceased dealer. Secondly, they must name the person as a dealer operator; they may not name someone to take a financial interest. The person named must be capable of taking an active role in the management of the dealership.

Despite the added flexibility of the new Agreement, GM has a greater area of discretion, even after approving a Successor Addendum, in accepting the terms as previously agreed to, or as proposed by the dealer operators after the incapacity or death of the dealer. This view is only the briefest summary and dealers and their attorneys must consider all of the ramifications of this section before taking any action.

Article V. Umpire Plan: GM only stated that there is an umpire plan, a copy of which will be given the dealer when he signs the Agreement.

Article VI. General Provisions: The most important provision in this section is the one entitled "Applicable Law." This section, simply stated, means that where the performance by either GM or the dealer of any responsibility or obligation set forth in the Agreement violates the law where the performance is to take place, the law prevails over any such provision in the Agreement. This means that dealers in states with strong dealer licensing statutes will have the protection of these laws when they conflict with the Agreement's provisions.

CONCLUSION: This summary of the new franchise agreement has sought to point out the more important provisions of the contract. In this short space, NADA cannot outline the contract in detail, and each dealer should carefully read the document.

****

NADA ANALYSIS AND INTERPRETATION
OF THE
GM CLARIFICATION OF THE 1975 FRANCHISE AGREEMENT

On February 2, 1976, the General Sales Manager of each of the GM Divisions mailed to all GM dealers a letter which, in the words of GM, "clarifies" particular provisions of the 1975 Dealer Sales and Service Agreement. This letter is the result of several meetings between GM factory officials and NADA. In these meetings, NADA sought to make constructive changes in the priority items of the franchise agreement. While there were many changes which could have been and should have been made, NADA realized that it would be best to concentrate on a few items which were critical to the majority of the dealer body.

NADA concentrated its efforts in the areas of termination, advertising and promotional programs, rental and leasing operations, incapacity of the dealer and the successor provisions. Long-range changes in the areas of location of additional dealerships, distribution and the Umpire Plan were also discussed in these meetings and are the subject of continuing dialogue with GM officials.

The changes in the contract or in its application reflected in the February 2 letter are important in two particular respects. The first is the significance of GM's meeting with NADA, listening to specific suggestions concerning the franchise agreement and taking action on these suggestions. This is an important breakthrough in industry relations.

Secondly, it should be pointed out that this letter constitutes an official statement of corporate policy. As it is signed by the General Sales Manager, it is as binding on GM as the contract itself. NADA suggests that you attach the GM letter and this analysis to your franchise agreement.

INTRODUCTION

The following is a point-by-point treatment of the GM letter in the order presented by GM. The format of the treatment is as follows: the specific provision of the 1975 Agreement is discussed; next, the change, with clarification, which was effected by the February 2 letter is analyzed; finally, the effect of that change on the dealer is explained. To fully understand this analysis, the dealer should have his 1975 sales agreement and GM's letter before him. Page references to the sales agreement are to those of the Oldsmobile agreement.

Following this discussion, NADA will treat items contained in the GM letter which were not part of NADA's negotiations with GM. Finally, there is a discussion and interpretation of the Successor Guide published by GM along with the February 2 letter.

I. Advertising and Sales Provisions

A. 1975 Agreement

Article III, C(3)(a)(ii), Page 11, provides that the "Dealer will: . . . (ii) participate in advertising and sales promotion programs offered from time to time (by GM) in accordance with the applicable provisions thereof." The implication of this language was clear and could have resulted in forced participation in any advertising and/or promotion program offered by GM.

B. Change

NADA advocated that a Dealer should have the right to decide whether or not to participate in a particular advertising or promotional program.

GM agreed to the extent that its letter states that a Dealer does not have to participate in each and every advertising and promotional program offered. Noting that advertising is a factor in evaluating sales and service performance by a dealer, the letter states that failure to advertise could be a reason for poor sales or service performance. Consequently, it would appear that only a Dealer with poor sales or service performance would be subject to pressure from GM to engage in a particular advertising program.

C. Effect

The effect of the change is to eliminate the mandatory nature of the requirement to advertise. It is now clear that GM may not terminate a Dealer for either failing to advertise or refusing to adopt any particular GM advertising or promotional program. Neverthele s, a Dealer who refuses to advertise and who also has poor or marginal sales or service performance may be required to advertise, or even to adopt a particular advertising program in order to avoid termination for failure of performance. This situation would only arise when a Dealer is facing termination for failure of performance in the sales or service areas. A Dealer with adequate sales and service performance cannot be forced to participate in any advertising or promotional program or even to advertise at all.

II. Rental and Leasing Business

A. 1975 Agreement

Article III, C(3)(f), Page 12, provides that the Dealer "will establish rental and leasing operations . . . if such additional opportunities are apparent." As NADA stated in its analysis on September 26, 1975, it was clear that a Dealer could be forced to engage in rental and leasing operations when the opportunities were apparent to the factory, whether or not the Dealer himself wished to do so.

B. Change

NADA feels that the decision to engage in rental and leasing operations should be a mutual one made both by the Dealer and GM. While NADA was unable to effect a change whereby a Dealer may refuse to engage in leasing operations for any reason, it is now clear that a Dealer may refuse to enter into leasing operations if he has a legitimate reason.

Before a Dealer is required to enter into the leasing business, GM must show to the Dealer's satisfaction that participating in this segment of business activity will "enhance the Dealership operating profit." In other words, if a rental or leasing operation would not be profitable for the Dealer, he is not required to establish such operations.

C. Effect

The effect of the change is to give the Dealer the option to refuse to take on a rental or leasing operation when such refusal is reasonable. Furthermore, GM can never terminate a Dealer for refusing to engage in the rental or leasing business. As was the case with advertising, the refusal to engage in rental or leasing operations is not cause for termination. It is, however, a factor in evaluating a Dealer's overall sales performance. Consequently, a Dealer with poor sales performance who is facing termination for failure of performance may be required to establish rental or leasing operations as part of a plan to improve performance and avoid termination. A Dealer with adequate sales performance cannot be forced into the rental or leasing business under the threat of termination.

III. Termination

A. 1975 Agreement

Article IV, A(2), Subsections (b), (h) and (l), Page 20, specifies three types of acts or events which, when they occur, warrant immediate termination, regardless of their significance. For example, (b) any misrepresentation to GM by a Dealer in applying for a franchise, (h) any dispute among the Dealer Owners or Operators or (l) the submission of any false or fraudulent warranty claim would warrant immediate termination under this section.

B. Change

NADA felt that this was one of the most arbitrary and offensive provisions of the franchise agreement. Reasonable limitations were an absolute necessity in order to make the contract at all acceptable. GM's letter has made it clear that there will be no termination under these three subsections unless the acts or events themselves are so contrary to the spirit, nature, purpose or objectives of the Agreement as to warrant termination. Additionally, a slight or insignificant deviation resulting from an honest mistake will not result in termination under these three provisions of the agreement.

Furthermore, the letter states that GM's internal procedures provide that no termination for violation of any of the fourteen provisions of the immediate termination section will take place until the circumstances of the Dealer's situation are discussed with him and are "thoroughly reviewed" by Divisional and Corporate management.

C. Effect

The language regarding the review of a termination decision and the discussion of a potential termination with a Dealer is probably one of the most significant advances gained by NADA. The effect of these changes is to place reasonable limitations on the arbitrary right by the factory to terminate a Dealer without just cause, at least in these three areas. In addition, dealers will no longer be subjected to potential harassment by factory representatives for insignificant deviations.

IV. Fraud by Employees

A. 1975 Agreement

Article IV, A(2)(b), Page 21, also gave GM the right to terminate a Dealer due to fraud by a Dealer's employee even though the Dealer principal was unaware of the practice. This meant that a Dealer could be terminated even though he did everything reasonably within his power to insure employee honesty and upon discovering the fraud he disclosed the matter to GM and offered and paid restitution.

B. Change

While NADA recognizes that under the law in every state, a principal is liable for the actions of his agent, it is not fair to terminate a franchise agreement when the Dealer has done everything in his power to assure that this practice would not take place. In our discussion with GM, we found that they agreed with our argument in spirit and in fact.

The letter indicates that a Dealer will be terminated when he "negligently permits a certain conduct to continue." This means that if a Dealer is negligent in the operation of his business, he is subject to termination for fraud on the part of his employee. The letter states that "under normal business conditions, efficient management procedures should guard against such activities." Therefore, a Dealer who is actively involved in his dealership and uses reasonable care in its operation should not suffer the consequences for the actions of his employees.

C. Effect

The effect of this change is to protect the diligent Dealer from the fraud of his employees provided that he acts quickly and honestly upon discovering such fraud. It should also be pointed out that the conduct of the dealer must be "so contrary to the spirit, nature, purpose or objectives of the Agreement as to warrant its termination."

V. Incapacity of a Dealer Principal

A. 1975 Agreement

Article IV, A(4), Page 23, provides that a Dealer Operator may be terminated when he or she "is physically or mentally incapacitated so as to be unable to actively exercise full managerial authority for the operating management of the dealer."

B. Change

The GM letter of February 2 points out two things. First of all, under the 1975 contract the incapacity of a Dealer Owner will not result in termination. Only when the Dealer Operator becomes incapacitated will GM terminate. Secondly, it is the position of GM that the language of the agreement establishes a better standard by which the incapacity of the Dealer Operator may be measured.

C. Effect

The primary effect of the language is to allow a dealership to remain in operation when the Dealer Owner(s) becomes incapacitated and there is another Dealer Operator (other than the Dealer Owner) listed in Paragraph Three. Furthermore, the language gives an incapacitated Dealer Operator a standard against which he may measure his level of incapacity in a termination under this section of the agreement. If the Dealer Operator can show that he is able to exercise full managerial authority for the operating management of the dealership, then termination for incapacity is not warranted.

OTHER QUESTIONS COVERED IN THE GM LETTER AND NOT PRESENTED BY NADA

In its letter, GM also listed several other questions which were the product of the various line-group meetings along with other Dealer discussions. These topics were not discussed at any of the meetings that NADA held with GM and accordingly this analysis will be limited to a brief summary of the letter's contents.

Restrictions on Dualing

The letter states that there is no GM policy or practice which prohibits a GM Dealer from handling competitive products. It further states that a dealer has a right to sell and distribute other automobiles and no GM representative can interfere in any way with that right. However, the letter further points out that the Dealer must maintain adequate facilities, manpower, capital and management to effectively fulfill his responsibilities for his GM products.

GM Contract and State Laws

As was pointed out in the NADA Summary of the 1975 Agreement dated September 26, 1975, any provision of the contract which contravenes state law is null and void. GM recognizes this in its letter and it is therefore clear that those Dealers in strong manufacturer/dealer licensing law states are protected from the more restrictive provisions of this agreement. NADA urges that each Dealer member in those states which have such laws familiarize himself with its provisions.

Disclosure of Accessories

With respect to the disclosure requirements regarding accessories installed in new GM cars, it is the opinion of GM that such disclosure is in line with the concept of the consumer protection requirements under the Magnuson-Moss Act. NADA does not believe that the Magnuson-Moss Act or any regulation issued thereunder requires such disclosure. Nevertheless, the contract continues to require this disclosure.

SUCCESSOR GUIDE

Along with the letter, GM enclosed a booklet entitled "Successor Provisions in the Dealer Agreement." NADA believes that the area of successorship is one of the most critical aspects of the franchise agreement and one of the most confusing. Consequently, in our discussions with GM, NADA urged the preparation by GM of some sort of successor guide which would explain in clear, concise layman's language, with illustrative examples, just exactly what a Dealer should do to protect his interest in the dealership in the event of the death or incapacity of one of the Dealer Operators and/or Dealer Owners.

GM's response was to include the above-mentioned Guide. While the booklet does clarify some of the provisions of the agreement, we feel that the booklet is too brief and treats the subject matter superficially in failing to provide enough critical information to aid the Dealer in this estate planning.

The booklet that was published does merit some discussion. The area of successorship, however, is too complicated to adequately cover in this analysis and will be the subject of a forthcoming NADA Management Guide. Nonetheless, the key provisions are treated here so that the Dealer may become aware of his obligations and responsibilities. NADA urges that the Dealer consult with his attorney before making any decision in this area. Each case is an individual matter and deserves great attention because of its importance, both with respect to the continuation of the dealership itself and also because of the impact of changes on the Dealer's heirs and his estate planning.

Sole Dealer Owner and Operator

One point must be made at the outset which is important to all Dealers who are both the sole Dealer Owner and sole Dealer Operator. Because of the change in the 1975 Agreement regarding termination for incapacity, it is now possible for a Dealer Owner to be physically or mentally incapacitated and still retain the franchise. Therefore, the sole Dealer Owner and Operator should make arrangements for the execution of a Successor Addendum providing that, in the case of his incapacity, another person will become Dealer Operator while he remains the Dealer Owner.

Dealer Operators

The following points regarding Dealer Operators should be noted:

1. Where there is only ONE Dealer Operator listed in Paragraph Three, there can be no successor rights unless a Successor Addendum has been executed.

2. When there are two or more Dealer Operators listed, there are two ways to establish a successor dealership:

   a. The Dealer Operators may execute a Successor Addendum, and if it is accepted by GM, then GM shall offer the successor dealership a franchise agreement. NADA urges this method be followed by the Dealers as it provides for a stable and orderly transition.

   b. If however, upon the death or incapacity of a Dealer Operator or upon the death of a Dealer Owner, and no Successor Addendum has been executed, any remaining Dealer Operator(s) may propose a successor dealership to GM and this proposal will receive prior consideration by GM. NOTE: GM says that the proposal will receive "prior consideration;" GM is not bound to offer the proposed successor dealership a franchise.

Dealer Owners

The following provisions concerning Dealer Owners are of special importance:

1. A Dealer Owner may, by the execution of a Successor Addendum, transfer his ownership interest to another person upon his death. This person need not take an active role in the management of the dealership so long as there is a Dealer Operator having 25 percent or more ownership of the business. HOWEVER, THIS IS SUBJECT TO THE BUY-OUT PROVISIONS DISCUSSED IN NO. 2 BELOW.

2. Where a Dealer wishes to provide for a proposed Dealer Owner(s) who is separate from the proposed Dealer Operator(s), then an agreement must be executed between the proposed Dealer Owner(s) and the proposed Dealer Operator(s) before GM will accept the proposed successor dealership. This agreement must provide that the proposed Dealer Operator(s) may, at his option, buy out the proposed Dealer Owner(s) [who is not a Dealer Operator(s)] through stock dividends, salary, bonuses and cash over a five-year period or less, following the death or incapacity of the original Dealer.

   For example, Dealer X wants to leave a financial interest in his dealership to his wife while leaving the bulk of the business operation to his son, the General Manager. He provides in a Successor Addendum that his wife is to be a proposed other owner and that his son, the General Manager, is to be the Dealer Operator with a 25 percent interest in the ownership of the dealership. The wife and the son must execute an agreement providing that the son has the option to buy out his mother through stock dividends, salary, or cash over a maximum of a five-year period before GM will accept the proposed successor dealership.

3. A Dealer who is both a Dealer Owner and a Dealer Operator may have his immediate family participate in the ownership of the dealer entity so long as the Dealer Owner continues in his capacity as Dealer Operator.

Term of New Agreement

1. If one of the Dealer Operators of the proposed successor dealer has been or is now a Dealer Operator, a regular five-year agreement will be executed.

2. However, if none of the proposed Dealer Operators has been qualified and recognized by GM, the term of the agreement will be for two years.

This is a skeleton outline of the basic provisions of the successor provisions of the 1975 Agreement. It is by no means a complete analysis and before a Dealer takes any action, he should consult with his legal advisers as to the appropriate steps. This is a complicated but vital aspect of the franchise operation and an area which deserves considerable attention by each Dealer.

CONCLUSION

Any questions GM Dealers have with regard to the 1975 Agreement, GM's clarification of this Agreement or our interpretation of GM's letter, should be directed to NADA's Legal Department. However, questions concerning successorship provisions and their application in individual dealer circumstances should be directed to the appropriate GM Division Zone Manager inasmuch as NADA is not in a position to interpret GM's policy with regard to these complicated and abstract provisions.

NADA will continue its efforts to seek further solutions to problems under franchise agreements in the interest of its Dealer members.

482.315 Records to be maintained by short-term lessors.

1. Every person engaged in business as a short-term lessor shall maintain a record of the identity of each short-term lessee and the exact time the vehicle is the subject of such lease or in the possession of the short-term lessee.

2. Every such record shall be a public record and open to inspection by any person.

3. If the director prescribes a form for the keeping of the record provided for in this section, the short-term lessor shall use the form.

4. It shall be a misdemeanor for any such short-term lessor to fail to make or have in his possession or to refuse an inspection of the record required in this section.

[21:202:1931; 1931 NCL § 4435.20]—(NRS A 1961, 130; 1967, 706)

MANUFACTURERS, REBUILDERS, DEALERS, SALESMEN AND LESSORS

LICENSING

482.318 Legislative declaration. The legislature finds and declares that the distribution and sale of motor vehicles in the State of Nevada vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, new and used vehicle dealers, rebuilders, leasing companies, salesmen, and their representatives doing business in the State of Nevada in order to prevent frauds, impositions and other abuse upon its citizens.

(Added to NRS by 1965, 1471; A 1971, 1302)

482.320 Dealers, manufacturers and rebuilders: Movement, operation of new or used vehicles displaying special plates; exceptions.

1. A manufacturer, dealer or rebuilder having an established place of business in this state, and owning or controlling any new or used vehicle of a type otherwise required to be registered under the provisions of this chapter, may operate or move such vehicle if there is displayed thereon a special plate or plates issued to such manufacturer, dealer or rebuilder as provided in NRS 482.330. Such a vehicle may also be moved or operated for the purpose of towing other vehicles which are to be sold or exchanged, or stored for the purpose of sale or exchange.

2. The provisions of this section do not apply to:

(a) Work or service vehicles owned or controlled by a manufacturer, dealer or rebuilder.

(b) Vehicles leased by dealers, except vehicles rented or leased to vehicle salesmen in the course of their employment.

[Part 16:202:1931; A 1937, 330; 1951, 165; 1953, 280; 1955, 468]—(NRS A 1957, 506; 1959, 913; 1960, 128; 1963, 103; 1965, 1473; 1971, 1303)

2. Any person employed by a long-term lessor licensed under the provisions of subsection 1 who engages in the practice of arranging or selling such services, and any person employed by a short-term lessor who sells, offers or displays for sale or exchange vehicles which are owned by such short-term lessor shall, before commencing operations, and annually thereafter:

(a) Secure from the department a license to act as a salesman of such services; and

(b) Comply with the same terms and conditions which apply to salesmen of vehicles as specified in NRS 482.362.

3. Licenses issued pursuant to subsection 1 shall expire on December 31 of each year. Prior to December 31 of each year, licensees shall furnish the department with an application for renewal of such license accompanied by an annual fee of $25. The renewal application shall be provided by the department and shall contain information required by the department.

4. The provisions of NRS 482.352, relating to the denial, revocation or suspension of dealers' or rebuilders' licenses, shall apply to licenses issued pursuant to the provisions of subsection 1. The provisions of NRS 482.362, relating to the denial, revocation and transfer of vehicle salesmen's licenses, shall apply to licenses issued pursuant to the provisions of subsection 2.

(Added to NRS by 1965, 1472; A 1967, 707; 1971, 1307; 1975, 1072, 1578)

UNFAIR TRADE PRACTICES OF MANUFACTURERS, WHOLESALERS AND DISTRIBUTORS

482.3631 Inducing dealers by coercion to order motor vehicles, parts, accessories, other commodities. No motor vehicle manufacturer, wholesaler, distributor, factory branch or representative thereof may induce by means of coercion, intimidation or discrimination any dealer to:

1. Order or accept delivery of any motor vehicle, parts or accessories therefor, or any other commodity which was not voluntarily ordered by such dealer.

2. Order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such vehicle as publicly advertised by the manufacturer thereof.

3. Order from any person any parts, accessories, equipment, machinery, tools, appliances or other commodity.

(Added to NRS by 1969, 674)

482.3633 Cancellation of, failure to renew dealers' franchises. No motor vehicle manufacturer, wholesaler, distributor, factory branch or representative thereof may:

1. Cancel or fail to renew the franchise of any dealer without fairly compensating such dealer at a fair going business value for the capital investment of such dealer if:

(a) The capital investment was entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and

(b) The cancellation or failure to renew was not done in good faith.

2. For the purposes of this section, "capital investment" includes, but is not limited to, tools, equipment and parts inventory possessed by the dealer on the day of notification of cancellation or nonrenewal and which are still within possession of such dealer on the day the cancellation or nonrenewal is effective.

3. For the purposes of this section, "good faith" is the duty of each party to a franchise to act in a fair and equitable manner toward each other, in order to guarantee one party freedom from coercion, intimidation or threats of coercion or intimidation from the other party; but recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(Added to NRS by 1969, 674)

482.3635 Encouraging dealers to sell motor vehicles through false, misleading sales, financing practices; refusal to deliver orders; payment of advertising, promotion costs. No motor vehicle manufacturer, wholesaler, distributor, factory branch or representative thereof may:

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

2. Refuse to deliver to a dealer having a franchise with such manufacturer, wholesaler or branch, within 60 days after an order of such dealer has been received in writing unless inability to deliver is caused by shortage or curtailment of material, labor, transportation or utility services, or to any labor or production difficulty, or to any cause beyond the reasonable control of the motor vehicle manufacturer.

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

4. Demand or require, directly or indirectly, a dealer to pay any amount of money which is projected or proposed for the advertisement, display or promotion of any motor vehicle which is being sold under franchise, when such advertisement, display or promotion works to the detriment, embarrassment or financial disadvantage of such dealer, unless such dealer has agreed thereto in writing.

(Added to NRS by 1969, 674)

482.3637 Civil actions by dealers: Injunctive relief; damages. Any person who is injured in his business or property by a violation of any provision in NRS 482.3631 to 482.3641, inclusive, or any person so injured because he refuses to accede to a proposal for an arrangement which, if

consummated, would be in violation of NRS 482.3631 to 482.3641, inclusive, may bring a civil action in the district court in which the dealer's place of business is located to enjoin further violations and to recover the actual damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.
(Added to NRS by 1969, 675)

482.3639 Revocation of, refusal to issue dealer's license for franchise if civil action pending.
1. The director shall revoke or refuse to issue a dealer's license for a franchise replacing a canceled or terminated franchise if a civil action pursuant to NRS 482.3637 is pending and was filed within 60 days following the written notification of the cancellation or nonrenewal of an existing franchise and a certified copy of such complaint alleging the date of such notification is filed with the department within 60 days by the complaining dealer.
2. The court in which such action was filed may, however, in order to maintain adequate and competitive service in the area or upon a showing of good cause by the manufacturer, distributor or factory branch order the director to issue such dealer's license if the dealer complies with the provisions of this chapter pertaining to licensing of vehicle dealers.
(Added to NRS by 1969, 675)

482.364 Canceled, nonrenewed franchise of complaining dealer effective until civil action concluded; exception.
1. Upon the filing of a complaint pursuant to NRS 482.3637 by a complaining dealer within 60 days following the written notification of the cancellation or nonrenewal of the existing franchise, any canceled or nonrenewed franchise of the complaining dealer shall stay in full force and effect until the complaint has been expeditiously disposed of, unless the court, pursuant to NRS 482.3639, has ordered the director to issue a dealer's license to a new franchisee.
2. If the new franchise is given by a manufacturer, distributor or factory branch for the sale of the same make of vehicle in the same area of responsibility as that covered in the canceled or terminated franchise, such act shall be prima facie evidence that the new franchise replaced the canceled or terminated franchise.
(Added to NRS by 1969, 675)

482.3641 Obligation of contract not impaired; performance of contract. Nothing in NRS 482.3631 to 482.3641, inclusive, shall be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative or any other person, whether or not licensed under NRS 482.3631 to 482.3641, inclusive, from requiring performance of a written contract entered into with any licensee under NRS 482.3631 to 482.3641, inclusive, nor shall the requirement of such performance constitute a violation of any of the provisions of NRS 482.3631 to

482.3641, inclusive; but any such contract, or the terms thereof, requiring performance, shall have been freely entered into and executed between the contracting parties.
(Added to NRS by 1969, 675)

RESTRICTIONS ON MONOPOLY FINANCING

482.3643 Definitions. As used in NRS 482.3643 to 482.3665, inclusive, unless the context otherwise requires, the following words and terms have the following meanings:
1. "Person" means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.
2. "Sell," "sold," "buy" and "purchase" include exchange, barter, gift and offer or contract to buy or sell.
(Added to NRS by 1969, 583)

482.3645 Agreements to finance through designated source which lessens competition, creates monopoly declared void.
1. It is unlawful for any person who is engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, to sell or enter into a contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the security agreements or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles or to purchase such security agreements or leases.
2. Any such condition, agreement or understanding is hereby declared to be void and against the public policy of this state.
(Added to NRS by 1969, 583)

482.3647 Threat to discontinue sales to retail seller prima facie evidence of violation. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to such person who is so engaged in the business of selling motor

Public Law 1026 - 84th Congress
Chapter 1038 - 2d Session
S. 3879

AN ACT

All 70 Stat. 1125.

To supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act—

Automobile dealers.

Definitions.

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

Suits against automobile manufacturers.

SEC. 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided*, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

SEC. 3. Any action brought pursuant to this Act shall be forever barred unless commenced within three years after the cause of action shall have accrued.

SEC. 4. No provision of this Act shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

SEC. 5. This Act shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this Act and an express provision of State law which can not be reconciled.

Approved August 8, 1956.

GENERAL MOTORS CORPORATION

April 4, 1977

(1) cant pull out

(2)

Senator Thomas R. C. Wilson
Chairman, Commerce and Labor Committee
Nevada State Legislature
Carson City, Nevada 89710

Re: SB 356

Dear Senator Wilson:

As discussed at the April 1, 1977 Commerce and Labor Committee hearing on SB 356, please find attached recommended amendments to the present draft of SB 356 and the reasons for such amendments. A copy of this letter and attachments is also being sent to Mr. William C. Thornton, who is the attorney for the Nevada Franchised Automobile Dealers Association.

It must be emphasized that General Motors does not object to SB 356 in its entirety. However, General Motors does believe certain Sections of SB 356, in their current form, either raise serious Constitutional and anticompetitive issues or are unreasonable in the requirements they impose. The Constitutional and anticompetitive issues are primarily raised in Sections 9, 12, 13, and 14 and, accordingly, the Committee's attention is specifically directed to the recommended language changes of, and comments upon, those Sections in the attachments to this letter.

The unreasonable requirements issue is typified by the various provisions which provide a dealer with an unnecessary amount of time to seek appropriate relief, or which improperly and unnecessarily intrude upon the province of the courts. While the discussion of these issues may be found throughout the attachments, the Committee's attention is specifically directed to the discussion of Sections 16, 20, and 21.

It should be noted that the attachments to this letter make frequent reference to the California dealer franchise statute. The reason for such reference is that it is General Motors understanding that SB 356 is based upon that California statute. However, as discussed in the attachments to this letter, certain Sections of SB 356, in their present form, contain significant departures from the California statute and, therefore, are more stringent and unreasonable.

On behalf of General Motors, I would like to thank the Committee for this opportunity to offer amendatory language to SB 356. If any member of the Committee has questions concerning the attachments to this letter, I may be contacted by phone at (313) 556-4028. In addition, if the Committee feels that it may be necessary or beneficial to conduct another hearing on the issues raised in the attachments to this letter, I or an appropriate General Motors representative would be available to attend.

Very truly yours,

FRAZER F. HILDER
GENERAL COUNSEL

By Timothy C. McCann
Timothy C. McCann
Attorney

sjs
encl.
cc: Mr. William C. Thornton
Thornton, Stephens, Atkins & Kellison
777 W. Second Street
Reno, Nevada 89503

State of Nevada

S.B. 356 - Commerce and Labor

The following format will be used:

1. identification of particular section of SB 356;
2. new material underlined; material to be omitted [bracketed]; or explanation of type of changes which are recommended; and
3. comments on the recommended changes.

All page and line references are based upon latest draft version of SB 356.

Section 6. In order to clarify this section the following changes are recommended: 1) semicolons added to the ends of lines 19, 22, and 24 on page 1; and 2) the phrase "; and" or the phrase "; or" added at the end of line 3 on page 2, depending upon whether subsections 1 through 5 are intended by the Legislature to be conjunctive or disjunctive.

Definition of "line" and "make". The terms "line" and "make" are used frequently in SB 356. Although these terms are commonly used throughout the industry, there is currently litigation in Iowa concerning their definitions. Therefore, in order to avoid unnecessary confusion and litigation, and in order to assure the implementation of the Nevada Legislature's intent, it is recommended that the terms "line" and "make" be defined.

Sections 9 and 11.

1. Notwithstanding the terms of any franchise, [a manufacturer or distributor shall not terminate, refuse to continue, or unilaterally modify any existing franchise unless] no termination or refusal to continue an existing franchise shall become effective until:

[1.]a. [The dealer is notified by certified or registered mail by the manufacturer or distributor as follows] The manufacturer or distributor has notified the dealer by certified or registered mail of the specific grounds for such termination or refusal and the following time periods have elapsed:

[a](1) Fifteen days [before the effective date of the intended action, setting forth the specific grounds with respect to any of the following] after the dealer's receipt of such notification in the following situations:

4

[(1)](a) Transfer of any ownership or interest in the franchise without the consent of the manufacturer or distributor;
[(2)](b) Material misrepresentations by the dealer in applying for the franchise or in providing any other information required either under the laws of the State of Nevada or the terms of the franchise;
[(3)](c) Insolvency of the dealer or filing of any petition by or against the dealer under any bankruptcy or receivership law;
(d) Revocation of a dealer's license under this chapter;
(e) Failure to keep a dealership open for seven days; or
(f) Conviction of the dealer, or a dealer operator or dealer owner for any crime;
[(b)](2) [Sixty days before the effective date thereof, setting forth any other specific grounds for termination or refusal to continue] Thirty days after the dealer's receipt of such notification in all other situations; or
[2.]b. the manufacturer or distributor has received the written consent of the dealer.
2. Before any termination or discontinuance of an existing franchise becomes effective under subsection 1 above, the affected dealer may seek injunctive relief pursuant to Section 16 of this act.

COMMENTS ON SECTIONS 9 and 11

The introductory phrase of Section 9, "Notwithstanding the terms of any franchise agreement . . . ," is significant because it typifies a serious Constitutional issue which is raised by SB 356 primarily in Sections 9, 13, and 14. The United States Constitution provides in Article I, Section 10, that "No State shall . . . pass any Law impairing the Obligations of Contracts . . .," and the State of Nevada Constitution provides in Article 1, Section 15, that "No . . . law impairing the obligation of contract shall ever be passed."

General Motors believes that the provisions of Sections 9, 13, and 14 seriously impair the contractual obligations contained in the GM franchise agreement, and contravene the clear letter and intent of both the United States and Nevada Constitutions. These

sections substantially rewrite the terms of the franchise agreement executed between each Nevada GM dealer and GM. These sections would effectively nullify certain substantive obligations contained in the GM franchise agreement which are based upon decades of experience with the franchise system of distributing and marketing new motor vehicles and which GM believes has been developed with the best interests of the public, dealers, and GM in mind. Finally, these sections would unnecessarily inject the State of Nevada into the dealer-manufacturer contractual relationship and thereby contribute to the spiraling regulatory burden placed upon that relationship.

Finally, there are those who would argue that the "obligations of contract" issue is unfounded. However, Section 22 of SB 356 repeals current "NRS 482.3641" which is entitled "Obligation of contract not impaired; performance of contract." That section provides:

> "nothing in NRS 482.3631 to 482.3641, inclusive, [known as Unfair Trade Practices of Manufacturers, Wholesalers, and Distributors] shall be construed to impair the obligations of contract or to prevent a manufacturer . . . or any other person . . . from requiring performance of a written contract . . . , nor shall the requirement of such performance constitute a violation of any of [those] provisions . . . [provided] any such contract . . . shall have been freely entered into and executed between the contracting parties."

The repeal of this section would indicate a blatant disregard for a Constitutional right and would lend incontrovertible support to the Constitutional issue raised above.

If, despite this serious Constitutional issue, the Nevada Legislature decides to enact a provision such as Section 9, then that section should be substantially rewritten in order to assure that it can be properly implemented when applied to the real world. Thus, it is recommended that the critical point in time for determining timeliness of notices and the effective date of a termination or discontinuance should be the date a dealer receives a notice, i.e., a "time certain", and not an ambiguous time described by the phrase "the effective date of the intended action." Most of the recommended changes in the first part of Section 9 implement this concept of using the "time certain" date of a dealer's receipt of notice.

6

An important omission from the recommended language is the phrase "unilateral modification". The provisions of Section 9 are not germane to the situation of a modification in a franchise agreement. For example, the situations described in Subsection 1 are grounds for termination or discontinuance of a franchise agreement and would appear to have no relevance to a modification of a franchise agreement. Such modifications usually involve changes in product terms of sale bulletins, parts terms of sale bulletins, etc. In short, the concept of "unilateral modification" should be treated in a separate section which defines what is intended by the Nevada Legislature and which establishes its own set of requirements.

In drafting such a separate section the Nevada Legislature should be aware that a manufacturer or distributor must deal uniformly with thousands of dealers across the nation and, for this reason, GM has drafted a standard franchise agreement. Any statute which would unreasonably permit Nevada dealers to obtain an unfair advantage over other States' dealers in the context of a uniform modification of a franchise agreement could result both in a substantial hardship upon the dealers of neighboring States and in an unnecessary burden upon interstate commerce in that a manufacturer would be required to administer different sets of franchise agreements.

The recommended language adds another clause to the current misrepresentation clause and adds three new subsections to the 15 day notice provision. These additions describe situations in which it would be in the best interest of the people of Nevada that a franchise could be terminated or discontinued in an expeditious manner. In addition, the 60 day provision has been shortened to 30 days. There is no reason that a dealer needs 60 days to determine whether he will object to a termination or discontinuance. Thirty days provides more than adequate time to make such a determination and file a simple suit in court seeking to enjoin the effectiveness of such termination or discontinuance. Any longer time unnecessarily deprives the people of Nevada, the dealer, and the manufacturer of an expeditious and timely resolution of the issue.

Finally, it is recommended that a new subsection 2 be added to Section 9. New subsection 2 is based upon Section 11.1. Because Section 11 deals with enforcement of Section 9, it is recommended that Section 11 be consolidated with Section 16. For the language of such a consolidation, please see the Section 16

discussion below. The reasons for the language changes in the part of Section 11 which is incorporated in Section 16 immediately follow.

For clarification, Section 11.2. should be modified by adding the phrase "but not limited to" just before Subsection (a). Section 11.2(f) should be modified by deleting "repeatedly". The frequency of failures is irrelevant compared to the seriousness or severity of such failures. For example, a dealer might fail to provide warranty service once, and yet it might involve a safety related defect which seriously jeopardizes the lives of the owner of a vehicle and persons who are in close proximity to the vehicle. In addition, the term "repeatedly" is not defined and conceivably permits a dealer to fail in his warranty obligations "many" times short of "repeatedly", all to the detriment of the people of Nevada which he services. Therefore, it is recommended that the Nevada Legislature delete "repeatedly" in order to safeguard the lives and vehicle service benefits of the people of Nevada. As indicated above, the language implementing these recommended changes may be found in Section 16 below.

Section 10. It is recommended that this section should be deleted in its entirety because it is redundant to Section 13.3 and/or because it is confusing and inconsistent with Section 13.3. In addition, it is irrelevant to, and improperly placed between, Sections 9 and 11 which deal with termination or discontinuance of a franchise.

Section 12.

1. [Sixty days before a manufacturer or distributor proposes to enter into a franchise establishing an additional dealership for new motor vehicles, or relocate an existing dealership in] A manufacturer or distributor, who intends to add a new motor vehicle dealership in, or to relocate an existing dealership into, the relevant market area of another dealer in the same line and make, [the manufacturer or distributor] shall notify, by registered or certified mail, return receipt requested, the director and each dealer in that line and make in [the] such relevant market area of [its] such intention [to establish or relocate an additional dealership].

2. [Before the effective date of the proposed establishment of an additional dealership or relocation of an existing dealership] Within fifteen days of the receipt of such notice, any [aggrieved] dealer so notified may [apply to the district court in the county where the dealership is located for], seek injunctive relief [to restrain the establishement or relocation] pursuant to Section 16 of this act.

COMMENT ON SECTION 12

Section 12 is probably the most significant provision in the Bill from the standpoint of the Constitutional and antitrust issues which it raises. GM has property rights in the motor vehicles it manufactures, the means by which such vehicles are distributed and marketed, and the trademarks and tradenames under which such vehicles are distributed and marketed. Among other reasons, the GM franchise agreement was developed to protect these significant property rights.

The United States Constitution provides in the 5th and 14th Amendments that no person shall be deprived of, and no State shall deprive any person of life, liberty, or property without due process of law. The State of Nevada Constitution provides in Article 1, Section 1, that there are certain inalienable rights, among which are those of "acquiring, possessing, and protecting property."

GM believes that Section 12 places severe restrictions upon GM's ability to exercise and protect its property rights. Furthermore, these restrictions are imposed without adequate due process safeguards. For example, under Section 12 if an existing dealer objects to GM's decision to add or relocate a dealer, then the burden of proof is placed upon GM to justify its decision, not upon the "aggrieved dealer" who is seeking injunctive relief against GM. This is a complete departure from the commonly accepted precepts of due process.

In this regard it is interesting to note that SB 356 is based upon a similar California dealer franchise statute. However, contrary to Section 12 of SB 356, Section 3066(b) of the California statute provides that "the franchisee [i.e., the dealer] shall have

"the burden of proof to establish there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealer." (Emphasis added and please refer to Appendix A for the text of Section 3066(b) of the California statute.) This approach is consistent with due process safeguards.

The dealer who is the objecting party should have the burden of proof in any injunctive proceeding. This approach is reasonable in light of the information possessed by such a dealer. The objecting dealer is familiar with the geographic area and people. It is interesting to note that of the items to be considered by the court under Section 12.4, the dealer, not the manufacturer, is usually in the best position to show those items.

Turning to the anticompetitive aspects of Section 12, the original draft of California Section 3066(b) referred to above was written substantially the same as currently proposed in SB 356. However, the Office of the Attorney General, State of California, indicated in an August 3, 1973 opinion that the type of provision contained in Section 12 of SB 356 would be anticompetitive under the Federal Sherman Antitrust Act. (See Appendix B)

The opinion concerning the anticompetitive aspects of the type of provisions in Section 12 has been confirmed by GM experience with such provisions in other states. This type of section is often abused by existing motor vehicle dealers in order to delay, curtail, or eliminate competition, all to the detriment of the public. In addition, the delays seriously disadvantage the person seeking a new franchise or seeking to relocate his existing franchise, not the manufacturer or distributor.

If, despite these serious Constitutional and anticompetitive issues, the Nevada Legislature decides to enact a provision similar to Section 12, then the section should be rewritten as recommended above. Specifically, as discussed under Section 9, a "date certain" should be established in order to determine compliance with verious statutory requirements. For this reason, the date of a dealer's receipt of notice should be determinative and not an ambiguous and confusing phrase such as "before a manufacturer or distributor proposes to enter . . ." and "before the effective date of the proposed establishment . . . ." (Emphasis added.)

Again, as discussed under Section 9, an expeditious resolution of any issue is the fairest and most beneficial approach for the people of Nevada, concerned dealers, and the manufacturer

or distributor. For this reason the sixty day period is reduced to fifteen days. It must be emphasized that is is not the manufacturer or distributor who will be disadvantaged by the delay, but the additional or relocating dealer, who would probably be a Nevada citizen, and the Nevada public which needs an additional or relocated dealer.

A small but significant change is the use of "into" instead of "in" when speaking of a relocation of a dealer. (See line 17 of page 3 of SB 356.) If an existing dealer is merely relocating in his same relavant market area, then such a dealer relocation should not be subject to Section 12. However, if an existing dealer is relocating into a different relevant market area, then this type of relocation should be subject to Section 12.

As currently written, Section 12.2 would permit "any aggrieved dealer" to seek injunctive relief. However, this privilege should be extended only to a dealer who has received notice pursuant to Section 12.1. And the use of the word "aggrieved" should be deleted because it is conclusory and assumes the dealer is aggrieved when this is an issue which should be decided by the court.

Again, as recommended under Section 9, the enforcement provisions of Section 12 should be separated from the procedural requirements. For this reason, Subsection 12.3 and 12.4 are consolidated with Section 16 and the actual language of such a consolidation may be found in the Section 16 discussion below. The reasons for the language changes in the parts of Section 12.3 and .4 which are incorporated in Section 16 immediately follow.

The significant recommended change in Section 12.3 is the shifting of the burden of proof from the manufacturer and distributor to the dealer. This is discussed earlier in this section of comments. The only change in Section 12.4 is the addition of the phrase "but not limited to" just before subsection (a).

Section 13.

1. ...if at all times the dealer meets any reasonable capital standards previously agreed to by the dealer and the mfr. or distri. [. a dealer may not change the capital structure if it causes] and if such changes do not cause a change in the ownership or control of the franchise or [has] have the effect of a sale....

2. ... to change his executive management other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

3. ... to any other person [. A principal owner, officer, partner, or stockholder may], provided such action does not cause a change in the control of the dealership....

4. ... for the value of the franchised business [as a going concern]. There shall not be a transfer....

Comments on Section 13.

Please refer to the comments on Section 9 above. The Constitutional issue raised in those comments is applicable to Section 13.

If despite the Constitutional issue, the Nevada Legislature chooses to enact a provision similar to Section 13, then it is recommended that relatively small but significant changes should be made. Subsections 1 through 4 of Section 13 are based upon Sections 11713.2(b),(c), (d), and (e) of the California dealer franchise statute. (See Appendix B for the California subsections.) The recommended changes in the Subsections of Section 13 are patterned mostly upon the California provisions and greatly clarify the meaning of Subsections 1 through 4 of Section 13.

For example, as Subsection 1 is currently written, the first sentence prohibits a mfr. from preventing a change in the capital structure of a dealer and yet the next sentence states such prevention is not prohibited if it is reasonable and concerns a change in control. The recommended change is simple and yet it explicitly indicates that the action in the second sentence is an exception to the general prohibition in the first sentence, which appears to be the intention behind current Subsection 1.

The recommended change in Subsection 2 is especially significant because it recognizes the importance of the personal service nature of a franchise agreement. Again, the recommended change for Subsection 3 is an attempt to reconcile the first sentence with the second sentence by explicitly indicating that the second sentence is an exception to the first.

The recommended deletion for Subsection 4 recognizes the fact that the value of a "franchised business" depends almost entirely upon the existence of a franchise agreement - without the franchise and related rights a dealership's value is limited to the physical assets. Because there is no guarantee a franchise agreement will always continue in effect, and because the second sentence of Subsection 4 recognizes that the nature of a franchise agreement dictates that this be so, the dealership should not be valued "as a going concern" but should be valued upon its physical assets.

Section 14.

1. Require a dealer to prospectively agree to a release....

2. It is recommended that certain language relating to price reductions be added to Section 14.

4. [Modify unilaterally] replace, enter into ....

Comment on Section 14.

The addition of the word "prospectively" is patterned upon the California dealer franchise statute at Section 11713.2(g). (See Appendix C.) The simple use of this word makes this provision more reasonable in that it permits a release, etc. after a liability has arisen and the dealer can evaluate whether such a release, etc., is in his best interest.

It is recommended that Section 14.2 be modified by the addition of appropriate language regarding price reductions. Again, an example of such a provision is the California dealer franchise statute at Section 11713.2(b). (See Appendix C.) Basically, this California provision requires a dealer to "pass through" a price reduction to customers and, if implemented in Nevada, would obviously benefit the people of Nevada.

The phrase "modify unilaterally" should be deleted from Section 14.4 as discussed under the comments to Section 9 and 11 above.

Section 15

4. ... of the grounds for disapproval. Failure to approve, disapprove, or pay w/in the above specified time limits, in individual instances for reasons beyond the reasonable control of the mfr or distr shall not constitute a violation of this Section.

Comment on Section 15.

The additional language is based upon Section 3065(d) of the California dealer franchise statute. (See Appendix A). This additional language is self-explanatory and is a reasonable exception to the general requirements of Section 15.4.

Section 16.

1. Whenever it appears ... of this act, [any person aggrieved] a dealer who is or will be injured thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, or in the county where the plaintiff dealer is located, for injunctive relief to restrain such violation or threat of violation.

2. In any action brought under Section 9 [as recommended above or Section 11 of the current version of S.B. 356] the mfr. or distr. has the burden of proof to establish that there is good cause to terminate or refuse to continue a franchise. In determining whether such good cause exists, the court shall consider existing circumstances, including but not limited to:

1738

(a) Same as current Section 11.2(a)
(b) " (b)
(c) " (c)
(d) " (d)
(e) " (e)
(f) whether the dealer has [repeatedly] failed to fulfill the warranty obligation to be performed by him.
(g) Same as current Section 11.2(g).

---

3. In any action brought under Section 12, the plaintiff dlr has the burden of proof to establish there is insufficient cause for establishing an additional dealership or relocating an existing dealership. In determining the insufficiency of cause the court shall consider existing circumstances, incl but not limited to:

(a), (b), (c), (d), (e) - Same as current Section 12.4(a)-(e).

[2] 4. In addition to any other judicial relief ... including a reasonable attorney's fee. [In an action for money damages, the court may award punitive damages not to exceed three times the actual damages if the defendant acted maliciously. The amount of damages ... is the fair market value of the franchise....]

[3] 5. Same as in current Section 16.3.

[4] 6. Same as in current Section 16.4.

[5] 7. Same as in current Section 16.5.

Comment on Section 16

As explained above under the comments to Sections 9, 11 and 12, Section 16 consolidates the enforcement provisions of those sections. Thus, the primary recommended change in Section 16.1 is merely the addition of another place of venue - the county in which the plaintiff dealer is located. This addition is taken from current Section 11.1. The other change deletes "any person aggrieved" in favor of "a dealer

who is or will be injured." There is no reason to permit "any person" to initiate a suit for injunctive relief if the only party who will be directly affected by the violation or threat of violation is a dealer. Such a provision would only encourage spurious, time delaying suits.

Recommended Section 16.2 is merely an adaptation of current Section 11.1 and .2. The primary changes in Section 11.1 and .2 as incorporated in recommended Section 16 are discussed in detail under the comments to Section 11 above.

Recommended Section 16.3 is merely an adaptation of current Section 12.3 and .4. Again, the primary changes in Sections 12.3 and .4 as incorporated in recommended Section 16 are discussed in detail under the comments to Section 12 above.

Recommended Section 16.4 is current Section 16.2 w/the last two sentences deleted. Punitive damages are usually intended to punish a willful wrongdoer. A private civil action for such damages is entirely unnecessary in the situation where, as under Section 17.1 of S.B. 356, a government representative such as a State Attorney General may initiate a suit for civil penalties. As for prescribing the amount of damages sustained, this is an improper usurpation of the role of the judiciary. It should be left to the court to weigh all the circumstances surrounding a particular case and arrive at an equitable amount for damages.

Sections 20 and 21.

Because of the interrelationship of these two sections, it is recommended they be combined into one simple section as follows:

Sec 20. NRS 482.3639 is hereby repealed.

Section 21. NRS 482.364 is hereby amended to read as follows:

[1] Upon the filing of a complaint pursuant to [NRS 482.3637 ... or nonreviewed franchise] sections [11, 12 or] 16 of this Act, [following the mfr's . . . has ordered the director to issue

a dealer's license to a new [franchisee] dealer] the court shall initially determine whether the complaining dealer's franchise shall stay in full force and effect until the complaint is expeditiously resolved. However, in order to maintain adequate and competitive service in the area or upon a showing of good cause by the mfr., distr. or factory branch, the court may issue an order which gives immediate effect to the mfr's. or distr's. termination or discontinuance, and/or which instructs the director to revoke the complaining dealer's license and simultaneously issue a dealer's license to the new or replacement dealer.

[2. Delete in its entirety].

Comments on Sections 20 and 21.

Recommended Section 21 takes the complicated and inconsistent provisions of Sections 20 and 21 and simplifies them in order to achieve an equitable provision intended to effect an expeditious resolution of a dispute. The primary differences are as follows.

The concept of an "automatic-stay" of a termination or discontinuance as illustrated in the current version of Section 21 is discarded in favor of leaving it to the court to decide whether such a stay is in the best interest of all concerned parties. It is w/in the peculiar province of the courts to resolve disputes on a case by case basis and the Nevada Legislature should not encroach upon this power by requiring a franchise remain in effect unless a court acts to the contrary. It should be the role of the court to act in the first instance and decide whether a franchise should remain in effec Thus, recommended Section 21 properly places the responsibility of resolving the dispute w/in the discretion of the courts.

Another significant advantage of such an approach is that it does not fix a court in a rigid procedural formula. Thus, under the current provision of Section 21 it might be possible for a dealer franchise to remain in effect even though during the hearing on the complaint significant changes in the dealership or significant information about the dealership indicate that the existing dealer franchise should be terminated or discontinued to protect the interests of all concerned parties, including the interests of the people of Nevada.

Furthermore, this approach obviates the need for Section 482.364.2 as amended by Section 21 and Section 482.3639 as amended by Section 20. Therefore, those provisions are deleted or repealed.

Finally, all references to Sections 11 and 12 are unnecessary if recommended Section 16 above is implemented. This recommended section incorporates reference to recommended Sections 11 and 12. In addition, whether a stay of an existing franchise is effected under Section 482.364.1, as amended by Section 21, is irrelevant in the situations of an addition or relocation - these latter acts do not involve the termination or discontinuance of an existing dealer franchise. This is another reason for the recommended deletion of most of Section 482.364.1 as amended by Section 21.

065. Warranty reimbursement

(a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill such warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed to franchisee for the warranty work and all other conditions of such obligation. The reasonableness thereof shall be subject to the determination of the board; provided that a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of such compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that such part, in fact, is not defective, the franchisor shall return such part so alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

1743

(d) All such claims made by franchisees hereinunder shall be either approved or disapproved within 30 days after their receipt by the franchisor. When any such claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within such period, and each notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3064 for such labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(Added by Stats.1973, c. 996, p. 1970, § 10, operative July 1, 1974.)

Library references

Contracts [illegible].
C.J.S. Contracts §§ 327, 334.

§ 3066. Hearings on protests

(a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, or 3065, the board shall fix a time, which shall be within 60 days of such order, and place of hearing and send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups which have requested notification by the board of protests and decisions of the board. The board or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Government Code Sections 11507.6, 11507.7, except subdivision (c), 11510, 11511, 11513, 11514, * * * 11515, and 11517 shall be applicable to such proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish there is good cause not to enter into a franchise establishing or relocating an additional motor * * * vehicle dealership.

(c) In any hearing on a protest filed pursuant to Section 3064 or 3065, the franchisee shall have the burden to establish that the schedule of compensation or the warranty reimbursement schedule is not reasonable.

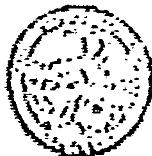
(Added by Stats.1973, c. 996, p. 1970, § 10, operative July 1, 1974. Amended by Stats.1974, c. 351, p. —, § 3, urgency, eff. July 5, 1974, operative July 1, 1974.)

1974 Amendment. Authorized "hearing officer designated by the board" to hear and consider evidence and included sections "11510" and "11517" in the enumeration in subd. (a).

APPENDIX A / 1[illegible]

APPENDIX B

STATE OF CALIFORNIA



OFFICE OF THE ATTORNEY GENERAL
Department of Justice
STATE BUILDING, LOS ANGELES 90012

August 3, 1973

Honorable Joe A. Gonsalves
Member of the Assembly
State Capitol
Sacramento, CA 95814

RE: Assembly Bill 225 (as amended June 5, 1973)

Dear Assemblyman Gonsalves:

We are writing to express our concern over those portions of Assembly Bill 225 which would, in part, create an implied exemption for new car dealers to the Cartwright Act, the State antitrust law.

Assembly Bill 225, which has been reviewed by our legal staff, has an apparent anticompetitive effect upon the new car market. Specifically, the bill requires an automobile manufacturer to notify each dealer in the same line-make in a given metropolitan area or community of its intent to establish or relocate an additional dealership in that area. Any single dealer may then file a protest with the New Motor Vehicle Board, which determines whether good cause for an additional dealership exists. The manufacturer has the burden of proof to establish good cause before the Board. In connection with this, he must establish that additional competition is required in the market area.

The bill does not directly prohibit the establishment of a new dealership if some or all of the line-make dealers decide to restrict competition. The effect will, however, be virtually the same, and will result in a situation precluded by current statute and case law.

Under present law, if the dealers decided among themselves to allocate territories, their action would constitute a *per se*

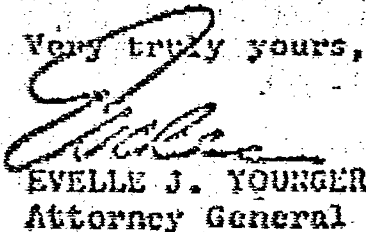
violation of the Sherman Antitrust Act. White Motor Co. v. United States, 372 U.S. 253 (1963). Likewise, territorial restrictions imposed by the manufacturer on dealers are per se violations. United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967). Many cases hold that decisions under the Sherman Act are applicable to problems arising under the State Cartwright Act.

In pointing out these problems, we should also make it clear that we are not opposing the very desirable portions of Assembly Bill 225 which provide for safeguards to dealers, and, ultimately, consumers, in the implementation of vehicle warranties.

The anti-competitive aspects of Assembly Bill 225, however, force us to take a position of opposition. The purpose of the Cartwright Act to insure competitive conditions in the public interest would not be served by the bill in its present form.

If we can be of any assistance to you in this matter, please feel free to call on us.

Very truly yours,



EVELLE J. YOUNGER
Attorney General

oh

§ 11713.2 Additional unlawful acts

It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require or attempt to prevent or require, by contract or otherwise any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) To prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that such consent shall not be unreasonably withheld.

(e) To prevent, or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.

(f) To obtain money, goods, services, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and such other person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if such referral would be binding on the dealer. This subdivision shall not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for pri[vate] retail consumers prior to the dealer's receipt of the written official price incr[ease] notification. A sales contract signed by a private retail consumer shall consti[tute] evidence of each such order. In the event of manufacturer price reductions, [the] amount of any such reduction received by a dealer shall be passed on to the pri[vate] retail consumer by the dealer if the retail price was negotiated on the basis of [the] previous higher price to the dealer. Price reductions shall apply to all vehi[cles] in the dealer's inventory which were subject to the price reduction. Price di[ffer]ences applicable to new model or series motor vehicles at the time of the intro[duc]tion of new models or series shall not be considered a price increase or price [de]crease. Price changes caused by either (1) the addition to a motor vehicle of [re]quired or optional equipment pursuant to state or federal law, or (2) revaluation [of] the United States dollar in the case of foreign-make vehicles, shall not be sub[ject] to the provisions of this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt o[f a] valid claim by a dealer thereof, any payment agreed to be made by the ma[nu]facturer or distributor to the dealer by reason of the fact that a new vehicle [of a] prior year model is in such dealer's inventory at the time of introduction of [new] model vehicles. A manufacturer or distributor shall not authorize or enable [a] new model or series passenger vehicle or station wagon to be delivered by dea[lers] at retail more than 30 days prior to the eligibility date of such model change all[ow]ance payment for prior year model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealersh[ip] the opportunity to participate in the ownership of such dealership or succes[sor] dealership under a valid franchise for a reasonable time after the death of [the] owner.

(k) To offer any refunds or other types of inducements to any person for [the] purchase of new motor vehicles of a certain line-make to be sold to the state or [a] political subdivision thereof without making the same offer to all other deal[ers] in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a fr[an]chise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Di[vi]sion 2.

(m) To employ a person as a representative who has not been licensed pursu[ant] to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dea[ler] for any lawful purpose.

(o) To compete with a dealer in the same line-make operating under an agr[ee]ment or franchise from a manufacturer or distributor in the relevant market ar[ea]. A manufacturer or distributor shall not, however, be deemed to be competing w[hen] operating a dealership either temporarily for a reasonable period, or in a bo[na] fide retail operation which is for sale to any qualified independent person a[t a] fair and reasonable price, or in a bona fide relationship in which an independ[ent] person has made a significant investment subject to loss in the dealership and c[an] reasonably expect to acquire full ownership of such dealership on reasonable ter[ms] and conditions. A distributor shall not be deemed to be competing when a who[lly] owned subsidiary corporation of such distributor sells motor vehicles at retail, [if,] for at least three years prior to January 1, 1973, such subsidiary corporation [has] been a wholly owned subsidiary of such distributor and engaged in the sale of [ve]hicles at retail.

(p) To unfairly discriminate among its franchisees with respect to warranty rei[m]bursement or authority granted its franchisees to make warranty adjustments w[ith] retail customers.

APPENDIX C

THE FOLLOWING IS A WIRE SENT TO GENERAL MOTORS BY

CHAIRMAN WILSON:

Timothy C. McCann, Attorney
General Motors Corporation

Senate Commerce and Labor Committee requests the following information no later than Tuesday, April 12th, 3:00 P.M.: Specifics on Iowa litigation, court case and docket number.

Senator Thomas Wilson
Chairman
Senate Commerce and Labor Committee

4-1-77

GENERAL MOTORS CORPORATION

April 12, 1977

Senator Thomas R. C. Wilson
Chairman, Commerce and Labor Committee
Nevada State Legislature
Carson City, Nevada 89710

Dear Senator Wilson:

This is in response to your April 7, 1977 telegram request for additional information concerning Iowa litigation involving the definition of the terms "line" and "make". In June, 1975, a civil lawsuit for declaratory judgment was filed in the Iowa District Court in and for Polk County, Iowa. The case number is "Law No. CL 9-4943" and the caption of the case is as follows:

Iowa Truck Center, Inc., Plaintiff
v.
Iowa Department of Public Safety and
Charles W. Larson, Commissioner of Public
Safety,
and
General Motors Corporation,
and
Bob Brown Chevrolet, Inc.,
and
Iowa Department of Transportation and
Victor Preisser, Director of Transportation, Defendants.

Chapter 322 of the Code of Iowa is the Iowa dealer franchise statute covering motor vehicle manufacturers, distributors and dealers. There is currently in effect a Dealer Sales and Service Agreement for GMC Heavy Duty Trucks

General Motors Building 3044 West Grand Boulevard Detroit, Michigan 48202

between the Iowa Truck Center (hereinafter referred to as ITC) and GMC Truck & Coach Division of General Motors Corporation (hereinafter referred to as GMC Truck). In addition, before the events which precipitated the lawsuit, there was a Dealer Sales and Service Agreement for Chevrolet Motor Vehicles, including Light and Medium Duty Trucks, in effect between Bob Brown Chevrolet, Inc. and Chevrolet Motor Division of General Motors Corporation (hereinafter referred to as Chevrolet).

In April, 1975, Chevrolet and Bob Brown Chevrolet, Inc. extended their Dealer Agreement to include Chevrolet Heavy Duty (HD) Trucks. In June, 1975, the ITC filed the above-captioned declaratory judgment suit seeking the rescission of the HD Truck portion of the Dealer Agreement between Bob Brown Chevrolet, Inc. and Chevrolet.

The ITC is contending that because GMC HD Trucks and Chevrolet HD Trucks are the same "line-make" as that term is used in Chapter 322 of the Code of Iowa, Chevrolet was required to comply with the provisions of Chapter 322 of the Code of Iowa which deal with the addition of a motor vehicle dealership in a community where the same line-make is currently represented. Both the Iowa Department of Transportation and General Motors Corporation (hereinafter referred to as GM) have taken the position that GMC HD Trucks and Chevrolet HD Trucks are not the same "line-make" as that term is used in Chapter 322 of the Code of Iowa and as that term has been consistently applied by the agency in administering that Chapter.

It is important to note that the term "line-make" is nowhere defined in Chapter 322 of the Code of Iowa. The current lawsuit is primarily the result of this absence of an adequate definition of the term "line-make".

In addition to the defense described above, General Motors Answer, Counterclaim, and Cross-Petition, which was filed on January 7, 1977, challenged the constitutionality of the Iowa statute in general, and eight sections of it specifically. Among the constitutional issues raised by General Motors Corporation were the impairment of the obligation of contracts, unreasonable burden upon interstate commerce, the supremacy clause, due process, and equal protection. The case is still in the pleadings stage.

General Motors recently learned of a Petition before the Commissioner of Motor Vehicles for the State of Virginia. Apparently this Petition was initiated by a group of three Volkswagen dealers against Volkswagen of America, Inc. The dealers are seeking termination of a Porsche-Audi dealership on the basis that the Audi Fox is the same "line-make" as the Volkswagen Dasher, and that the soon to be introduced Audi 50 is the same "line-make" as the soon to be introduced Volkswagen Polo, and, therefore, that Volkswagen, in effect, added a Volkswagen dealership in the guise of a Porsche-Audi dealership without complying with the Virginia statutory provision concerning the addition of a new dealership. Again, the primary issue is the definition of "line-make" as that term is used in Section 46.1-547(d) of Article 3 of the Code of Virginia covering motor vehicle dealer franchise agreements. And again, the Code of Virginia does not define the term "line-make".

These disputes highlight the statement made in my April 4, 1977 letter and attachments -- although the terms "line" and "make" or "line-make" are used throughout the motor vehicle industry, definitions of those terms, especially precise statutory definitions, may be nonexistent. The absence of definitions of "line" and "make" in proposed Nevada statute SB 356 may further contribute to unnecessary, time-consuming, and costly disputes.

I hope this information has been responsive to your request. If you have any further questions, please feel free to contact me at any time at (313) 556-4028.

Very truly yours,

FRAZER F. HILDER
GENERAL COUNSEL

By Timothy C McCann
Timothy C. McCann
Attorney

sjs

SUMMARY--Proposes various amendments to controlled substances law. (BDR 40-1600)
Fiscal Note: Local Government Impact: No.
State or Industrial Insurance Impact: No.

AN ACT relating to controlled substances; regulating the filling and writing of certain prescriptions; expanding the list of controlled substances; providing an additional ground for revocation or suspension of registration; limiting the transfer of controlled substances; and providing other matters properly relating thereto.

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

Section 1. Chapter 453 of NRS is hereby amended by adding thereto a new section which shall read as follows:

A pharmacist shall not fill a second or subsequent prescription for a controlled substance listed in schedule II for the same patient unless the frequency of prescriptions is in conformity with the directions for use. The need for any increased amount shall be verified by the prescriber in writing or by telephone.

Sec. 2. NRS 453.191 is hereby amended to read as follows:

453.191 1. The controlled substances listed in this section are included in schedule IV.

2. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(a) Barbital;

(b) Chloral betaine;

(c) Chloral hydrate;

(d) Ethchlorvynol;

(e) Ethinamate;

(f) Mebutomate;

(g) Methohexital;

(h) Meprobamate;

(i) Methylphenobarbital;

(j) Paraldehyde;

(k) Pemoline;

(l) Petrichloral; or

(m) Phenobarbital.

3. Any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible:

(a) [Fenfluramine;

(b) Diethylpropion; or

(c) Phentermine.] Chlordiazepoxide;

(b) Clonazepam;

(c) Chlorazepate;

(d) Diazepam;

(e) Diethylpropion;

(f) Fenfluramine;

(g) Flurazepam;

(h) Oxazepam;

(i) Phentermine; or

(j) Prazepam.

4. The board may [accept] except by rule any compound, mixture or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Sec. 3. NRS 453.236 is hereby amended to read as follows:

453.236 1. A registration under NRS 453.231 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant has:

(a) Furnished false or fraudulent material information in any application filed under the provisions of NRS 453.011 to 453.551, inclusive;

(b) Been convicted of a violation of any state or federal law relating to any controlled substance or of any felony, or had his registration or license to manufacture, distribute or dispense controlled substances revoked in any state;

(c) Had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(d) Surrendered or failed to renew his federal registration;

(e) Ceased to be entitled under state law to manufacture, distribute or dispense a controlled substance; [or]

(f) Failed to maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific or individual channels [.] ; or

(g) Failed to keep complete and accurate records of controlled substances purchased, administered or dispensed.

2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order's becoming final all controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and division of all orders suspending or revoking registration and the division shall promptly notify the bureau and the board of all forfeitures of controlled substances.

5. A registrant shall not employ as his agent or employee in any premises where controlled substances are sold, dispensed, stored or held for sale any person whose pharmacist's certificate has been suspended or revoked.

Sec. 4. NRS 453.251 is hereby amended to read as follows:

453.251 Controlled substances listed in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form [.] and may be received by a registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

Sec. 5. NRS 453.258 is hereby amended to read as follows:

453.258 A record of each refill of any prescription for a controlled substance listed in schedule III, IV or V, or any authorization to refill such a prescription, shall be kept on the back of the original prescription. Such record shall show the date of each refill or authorization , the number of dosage units and the name or initials of the pharmacist who refilled such prescription or obtained the authorization to refill.

Sec. 6. NRS 453.381 is hereby amended to read as follows:

453.381 1. [A] Except as otherwise prohibited in this subsection, a physician, dentist or podiatrist, in good faith and in the course of his professional practice or as directed by the health division of the department of human resources at a

certified hospital or at a rehabilitation clinic, may prescribe, administer and dispense controlled substances, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

[2.] A physician, dentist or podiatrist is prohibited from prescribing controlled substances listed in schedule II for himself, his spouse or children.

2. Each prescription for a controlled substance listed in schedule II shall be written on a separate prescription blank.

3. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense controlled substances, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

[3.] 4. Any person who has obtained from a physician, dentist, podiatrist or veterinarian any controlled substance for administration to a patient during the absence of such physician, dentist, podiatrist or veterinarian shall return to such physician, dentist, podiatrist or veterinarian any unused portion of such substance when it is no longer required by the patient.