
SENATE BILL NO. 355—COMMITTEE ON TRANSPORTATION

MARCH 17, 2003

Referred to Committee on Transportation

SUMMARY—Extends coverage of provisions relating to franchises for motor vehicles to include certain recreational vehicles. (BDR 43-1238)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to recreational vehicles; extending under certain circumstances the coverage of provisions relating to franchises for motor vehicles to include recreational vehicles designed to be mounted upon or drawn by a motor vehicle; providing a penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 482 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2.** *“Distributor” means a person, other than a*
4 *manufacturer, who is engaged in the business of selling new*
5 *vehicles to dealers.*
6 **Sec. 3.** *“Vehicle” means a motor vehicle or a recreational*
7 *vehicle. The term includes a recreational vehicle designed to be*
8 *mounted upon or drawn by a motor vehicle.*
9 **Sec. 4.** NRS 482.028 is hereby amended to read as follows:
10 482.028 ~~“Distributor”~~ *Except as otherwise provided in*
11 *section 2 of this act, “distributor” means a person, other than a*
12 *manufacturer, who is engaged in the business of selling new motor*
13 *vehicles to dealers.*



1 **Sec. 5.** NRS 482.043 is hereby amended to read as follows:
2 482.043 “Franchise” means a written agreement between a
3 manufacturer or distributor and a dealer by which:

4 1. A commercial relationship of definite duration or continuing
5 indefinite duration is established.

6 2. The dealer is granted the right to offer and sell at retail new
7 ~~motor~~ vehicles, other than mopeds, farm tractors or special mobile
8 equipment.

9 3. The dealer constitutes a component of a distribution system
10 for new ~~motor~~ vehicles.

11 4. The operation of the dealer’s business is substantially
12 associated with the trademark, trade name, advertising or other
13 commercial symbol designating a manufacturer or distributor.

14 5. The operation of a portion of the dealer’s business is
15 substantially reliant on the manufacturer or distributor for a
16 continued supply of new ~~motor~~ vehicles, parts and accessories.

17 **Sec. 6.** NRS 482.135 is hereby amended to read as follows:

18 482.135 1. ~~“Vehicle”~~ *Except as otherwise provided in*
19 *section 3 of this act, “vehicle”* means every device in, upon or by
20 which any person or property is or may be transported or drawn
21 upon a public highway, excepting devices moved by human power
22 or used exclusively upon stationary rails or tracks.

23 2. The term does not include mobile homes or commercial
24 coaches as defined in chapter 489 of NRS.

25 **Sec. 7.** NRS 482.36311 is hereby amended to read as follows:

26 482.36311 As used in NRS 482.36311 to 482.36425, inclusive,
27 *and sections 2 and 3 of this act*, unless the context otherwise
28 requires, the words and terms defined in NRS 482.36319 to
29 482.36345, inclusive, *and section 2 and 3 of this act* have the
30 meanings ascribed to them in those sections.

31 **Sec. 8.** NRS 482.36319 is hereby amended to read as follows:

32 482.36319 “Distributor branch” means a branch office
33 maintained by a distributor for the sale of new ~~motor~~ vehicles to
34 dealers or which is maintained for directing and supervising
35 distributor branch representatives.

36 **Sec. 9.** NRS 482.3632 is hereby amended to read as follows:

37 482.3632 “Factory branch” means a branch office maintained
38 by a manufacturer for the sale of new ~~motor~~ vehicles to
39 distributors or dealers or which is maintained for directing and
40 supervising manufacturers’ representatives.

41 **Sec. 10.** NRS 482.36345 is hereby amended to read as
42 follows:

43 482.36345 “Representative” means any person regularly
44 employed by a manufacturer or distributor for the purpose of
45 negotiating or promoting the sale of the manufacturer’s or



1 distributor's new ~~motor~~ vehicles to dealers or for regularly
2 supervising or communicating with dealers or prospective dealers in
3 this state for any purpose.

4 **Sec. 11.** NRS 482.363521 is hereby amended to read as
5 follows:

6 482.363521 1. Upon the termination or refusal to continue a
7 franchise, the manufacturer or distributor shall compensate the
8 dealer for:

9 (a) The dealer's inventory of new vehicles, including new
10 vehicles not of the current model year. As used in this paragraph, a
11 "new vehicle" is one which has not been damaged or materially
12 altered and, *if it is equipped with an odometer*, registers 50 miles
13 or less on ~~its~~ *the* odometer.

14 (b) The dealer's inventory of parts and accessories which:

15 (1) Have been purchased by the dealer from the manufacturer
16 or distributor; and

17 (2) Are listed in a current parts catalog of the manufacturer
18 or distributor.

19 (c) Any special tools purchased by the dealer from the
20 manufacturer or distributor, less a reasonable allowance for
21 depreciation.

22 (d) Any equipment, furnishings or signs purchased by the dealer
23 from the manufacturer or distributor, less a reasonable allowance for
24 depreciation.

25 (e) Except as otherwise provided in subsection 4, the fair rental
26 value for 90 days, and any additional period allowed by the Director
27 after considering the difficulty of finding a new tenant for the
28 dealer's premises affected, after the effective date of the termination
29 or refusal to continue of the portion of the dealer's place of business
30 that was used by the dealer to sell or service ~~motor~~ vehicles or
31 other products of the manufacturer or distributor.

32 2. Compensation paid pursuant to paragraphs (a) to (d),
33 inclusive, of subsection 1 must be paid in an amount at least equal to
34 the greater of:

35 (a) The amount actually paid by the dealer for the vehicles,
36 parts, tools and equipment; or

37 (b) The amount currently paid by other dealers in this state for
38 the vehicles, parts, tools and equipment.

39 3. If compensation is paid pursuant to paragraph (e) of
40 subsection 1, the dealer shall allow the manufacturer or distributor
41 paying the compensation the use and possession of the premises
42 affected.

43 4. The manufacturer or distributor is not required to pay
44 compensation pursuant to paragraph (e) of subsection 1 if the dealer



1 has been convicted of a crime involving fraud in connection with his
2 application for or operation of the franchise.

3 5. This section does not relieve a dealer of his obligation to
4 mitigate damages resulting from the termination or refusal to
5 continue the franchise.

6 **Sec. 12.** NRS 482.363523 is hereby amended to read as
7 follows:

8 482.363523 Upon the termination or refusal to continue a
9 franchise, the dealer:

10 1. May not require reimbursement by the manufacturer or
11 distributor for any parts or services furnished by the dealer, after the
12 effective date of the termination or refusal to continue, to customers
13 pursuant to any warranties of the manufacturer or distributor;

14 2. Shall deliver to the manufacturer or distributor any invoices
15 and money deposited by customers for ~~motor~~ vehicles or other
16 products of the manufacturer or distributor that were not delivered
17 to the customers before the effective date of the termination or
18 refusal to continue; and

19 3. Shall furnish the manufacturer or distributor with copies of
20 all of his records concerning the servicing of any ~~motor~~ vehicle or
21 other product of the manufacturer or distributor. The manufacturer
22 or distributor shall reimburse the dealer for the reasonable cost of
23 compiling and copying the records and delivering the copies.

24 **Sec. 13.** NRS 482.36358 is hereby amended to read as
25 follows:

26 482.36358 In determining whether good cause has been
27 established for preventing a manufacturer or distributor from
28 establishing an additional dealership or relocating an existing
29 dealership within the relevant market area of another dealer in the
30 same line and make of vehicles, the Director shall consider, without
31 limitation:

32 1. The effect of the intended action on the business of selling
33 new ~~motor~~ vehicles at retail in the relevant market area.

34 2. Whether the establishment of an additional dealership or the
35 relocation of an existing dealership for ~~motor~~ vehicles of
36 the particular line and make would be injurious to the welfare of the
37 public.

38 3. Whether the dealers franchised to sell new ~~motor~~ vehicles
39 of the particular line and make in the relevant market area are
40 providing adequate competition, convenient customer service and
41 adequate personnel and facilities for sales of the vehicles to persons
42 in the area, as well as adequate equipment, spare parts and qualified
43 mechanics and other service personnel for repair and maintenance of
44 the vehicles.



1 4. Whether the establishment of an additional dealership or the
2 relocation of an existing dealership would increase constructive
3 competition and therefore be in the public interest.

4 5. Any other fact which the Director regards as relevant to the
5 decision required of him.

6 **Sec. 14.** NRS 482.3638 is hereby amended to read as follows:

7 482.3638 It is an unfair act or practice for any manufacturer,
8 distributor or factory branch, directly or through any representative,
9 to:

10 1. Require a dealer to agree to a release, assignment, novation,
11 waiver or estoppel which purports to relieve any person from
12 liability imposed by this chapter, or require any controversy
13 between a dealer and a manufacturer, distributor or representative to
14 be referred to any person or agency except as set forth in this
15 chapter if that referral would be binding on the dealer, except that
16 this section does not prevent the parties from mutually agreeing to
17 arbitration pursuant to law.

18 2. Require a dealer to agree to the jurisdiction, venue or
19 tribunal in which a controversy arising under the provisions of the
20 franchise agreement may or may not be submitted for resolution, or
21 prohibit a dealer from bringing an action in any forum allowed by
22 Nevada law.

23 3. Require a dealer to waive a trial by jury in actions involving
24 the manufacturer, distributor or factory branch.

25 4. Increase prices of new ~~motor~~ vehicles which the dealer had
26 ordered for private retail consumers before his receipt of the written
27 official notification of a price increase. A sales contract signed by a
28 retail consumer constitutes evidence of each order. Price changes
29 applicable to new ~~model~~ models or series ~~motor~~ of vehicles at
30 the time of the introduction of *the* new models or series shall not be
31 deemed a price increase. Price changes caused by:

32 (a) The addition to a ~~motor~~ vehicle of equipment formerly
33 optional as standard or required equipment pursuant to state or
34 federal law;

35 (b) Revaluation of the United States dollar in the case of
36 foreign-made vehicles; or

37 (c) Transportation cost increases,
38 are not subject to this subsection.

39 5. Deny the principal owner the opportunity to designate his
40 spouse, a member of his family, a qualified manager, or a trust or
41 other artificial person controlled by any of them as entitled to
42 participate in the ownership of:

43 (a) The franchised dealership;

44 (b) A successor franchised dealership for 2 years or a longer
45 reasonable time after the incapacity of the principal owner; or



1 (c) A successor franchised dealership after the death of the
2 principal in accordance with NRS 482.36396 to 482.36414,
3 inclusive.

4 6. Modify unilaterally, replace, enter into, relocate, terminate
5 or refuse to renew a franchise in violation of law.

6 7. Terminate or refuse to approve a transfer of a franchise for a
7 dealership, or honor the right of succession set forth in a franchise
8 agreement or refuse to approve the transfer of a controlling interest
9 in a dealership because the dealer has, before October 1, 1997,
10 established an additional franchise to sell or service another line or
11 make of new vehicles in the same facility as the existing dealership.

12 8. Prevent a dealer from establishing, on or after October 1,
13 1997, an additional franchise to sell or service another line or make
14 of new vehicles in the same facility as the existing dealership if the
15 dealer:

16 (a) Submits a written request for approval of the additional
17 franchise to the manufacturer, distributor or factory branch of the
18 existing dealership;

19 (b) Complies with the reasonable requirements for approval set
20 forth in the franchise of the existing dealership; and

21 (c) Obtains the approval of the manufacturer, distributor or
22 factory branch of the existing dealership.

23 The manufacturer, distributor or factory branch shall notify the
24 dealer in writing of its decision to approve or deny the request
25 within 90 days after receipt of the request. The manufacturer,
26 distributor or factory branch shall not unreasonably withhold its
27 approval. If the request is denied, the material reasons for the denial
28 must be stated. Failure to approve or deny the request, in writing,
29 within 90 days has the effect of approval.

30 **Sec. 15.** NRS 482.36385 is hereby amended to read as
31 follows:

32 482.36385 It is an unfair act or practice for any manufacturer,
33 distributor or factory branch, directly or through any representative,
34 to:

35 1. Compete with a dealer. A manufacturer or distributor shall
36 not be deemed to be competing when operating a previously
37 existing dealership temporarily for a reasonable period, or in a bona
38 fide retail operation which is for sale to any qualified person at a fair
39 and reasonable price, or in a bona fide relationship in which a
40 person has made a significant investment subject to loss in the
41 dealership and can reasonably expect to acquire full ownership of
42 the dealership on reasonable terms and conditions.

43 2. Discriminate unfairly among its dealers, or fail without good
44 cause to comply with franchise agreements, with respect to warranty



1 reimbursement or authority granted to its dealers to make warranty
2 adjustments with retail customers.

3 3. Fail to compensate a dealer fairly for the work and services
4 which he is required to perform in connection with the delivery and
5 preparation obligations under any franchise, or fail to compensate a
6 dealer fairly for labor, parts and other expenses incurred by him
7 under the manufacturer's warranty agreements. The manufacturer
8 shall set forth in writing the respective obligations of a dealer and
9 the manufacturer in the preparation of a vehicle for delivery, and as
10 between them a dealer's liability for a defective product is limited to
11 his obligation so set forth. Fair compensation includes diagnosis and
12 reasonable administrative and clerical costs. The dealer's
13 compensation for parts and labor to satisfy a warranty must not be
14 less than the amount of money charged to its various retail
15 customers for parts and labor that are not covered by a warranty. If
16 parts are supplied by the manufacturer, including exchanged parts
17 and assembled components, the dealer is entitled with respect to
18 each part to an amount not less than his normal retail markup for the
19 part. This subsection does not apply to compensation for any part,
20 system, fixture, appliance, furnishing, accessory or feature of a
21 motor home or recreational vehicle that is designed, used and
22 maintained primarily for nonvehicular, residential purposes.

23 4. Fail to pay all claims made by dealers for compensation for
24 delivery and preparation work, transportation claims, special
25 campaigns and work to satisfy warranties within 30 days after
26 approval, or fail to approve or disapprove such claims within 30
27 days after receipt, or disapprove any claim without notice to the
28 dealer in writing of the grounds for disapproval. Failure to approve
29 or disapprove or to pay within the specified time limits in an
30 individual case does not constitute a violation of this section if the
31 failure is because of reasons beyond the control of the manufacturer,
32 distributor or factory branch.

33 5. Sell a new ~~motor~~ vehicle to a person who is not licensed as
34 a new ~~motor~~ vehicle dealer under the provisions of this chapter.

35 6. Use false, deceptive or misleading advertising or engage in
36 deceptive acts in connection with the manufacturer's or distributor's
37 business.

38 7. Perform an audit to confirm a warranty repair, sales
39 incentive or rebate more than 12 months after the date of the
40 transaction.

41 **Sec. 16.** NRS 482.36386 is hereby amended to read as
42 follows:

43 482.36386 It is an unfair act or practice for a manufacturer or
44 distributor to:



1 1. Sell or offer to sell a new ~~motor~~ vehicle to a dealer at a
2 lower actual price than the actual price offered to another dealer for
3 the same model similarly equipped or to use a promotion or other
4 device that results in a lower actual price. This subsection does not
5 apply to a sale to a governmental unit or to a dealer for resale to a
6 governmental unit, or to a sale to a dealer of a vehicle ultimately
7 sold, donated or used by the dealer or in a program of driver's
8 education.

9 2. Offer, sell or lease a new ~~motor~~ vehicle to any person,
10 except a distributor, at a lower actual price than the price offered or
11 charged a dealer for the same model similarly equipped, or use any
12 device that results in a lower actual price.

13 3. Offer or sell parts or accessories to a dealer for his own use
14 in repairing or replacing the same or a comparable part or accessory
15 at a lower actual price than the actual price charged to another
16 dealer for his own similar use, but a lower price may be charged to a
17 dealer who buys as a distributor for resale to retail outlets than is
18 charged to a dealer who does not buy for that purpose.

19 **Sec. 17.** NRS 482.36387 is hereby amended to read as
20 follows:

21 482.36387 A manufacturer or distributor, or an agent, officer,
22 parent, subsidiary or enterprise under common control with a
23 manufacturer or distributor shall not own or operate a facility for the
24 repair or maintenance of ~~motor~~ vehicles except:

25 1. Vehicles owned or operated by the manufacturer, distributor
26 or a related person; or

27 2. Service required to comply with a statute or regulation or the
28 order of a court.

29 **Sec. 18.** NRS 482.36388 is hereby amended to read as
30 follows:

31 482.36388 A manufacturer, importer or distributor shall not:

32 1. Adopt or put into effect a method for the allocation,
33 scheduling or delivery of new ~~motor~~ vehicles, parts or accessories
34 to its dealers that is not fair, reasonable and equitable or change an
35 existing method so as to be unfair, unreasonable or inequitable.
36 Upon the request of a dealer, a manufacturer, importer or distributor
37 shall disclose in writing to the dealer the method by which new
38 ~~motor~~ vehicles, parts and accessories are allocated, scheduled or
39 delivered to its dealers handling the same line or make of vehicles.

40 2. Refuse or fail to deliver, in reasonable quantities and within
41 a reasonable time after receipt of an order, to a dealer holding a
42 franchise for a line or make of ~~motor~~ vehicle sold or distributed by
43 the manufacturer, importer or distributor any new vehicle sold under
44 the same name, trademark, service mark or brand, or parts or
45 accessories for the new vehicle, if the vehicle, parts or accessories



1 are being delivered to others or advertised as available for delivery,
2 or require a dealer to purchase unreasonable advertising displays or
3 other materials, or require a dealer to remodel or renovate his
4 existing facilities as a prerequisite to receiving a model or series of
5 vehicles. Compliance with this subsection is excused if prevented by
6 an act of God, strike or labor dispute, embargo or other cause
7 beyond the control of the manufacturer, importer or distributor.

8 **Sec. 19.** NRS 482.36391 is hereby amended to read as
9 follows:

10 482.36391 No ~~motor-vehicle~~ manufacturer, distributor,
11 factory branch or representative thereof may induce by means of
12 coercion, intimidation or discrimination any dealer to:

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

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

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

22 **Sec. 20.** NRS 482.36395 is hereby amended to read as
23 follows:

24 482.36395 No ~~motor-vehicle~~ manufacturer, distributor,
25 factory branch or representative thereof may:

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

29 2. Refuse to deliver an order of a dealer within 60 days after
30 the order is received in writing unless the inability to deliver the
31 order is caused by shortage or curtailment of material, labor,
32 production capacity, transportation or utility services, or to any labor
33 or production difficulty, or to any cause beyond the reasonable
34 control of the ~~motor-vehicle~~ manufacturer or distributor.

35 3. Coerce, compel or otherwise require any dealer to pay over
36 or to repay any amount of money or other consideration which is in
37 substantiation of or repayment for any advertising, promotional
38 activity or scheme, or method of implementing the sale or lease of
39 ~~motor~~ vehicles.

40 4. Demand or require, directly or indirectly, a dealer to pay any
41 amount of money which is projected or proposed for the
42 advertisement, display or promotion of any ~~motor~~ vehicle which is
43 being sold or leased pursuant to a franchise, unless the dealer has
44 agreed thereto in writing.



1 5. Demand or require, directly or indirectly, a dealer to comply
2 with standards which exceed commonly accepted business practices
3 within the ~~automotive~~ *vehicle* industry relating to sales, leases or
4 service of ~~motor~~ vehicles.

5 6. Based solely upon the results of a survey of a dealer's
6 customers conducted by or on behalf of a ~~motor-vehicle~~
7 manufacturer which is intended or otherwise purports to measure the
8 performance of a dealer:

- 9 (a) Discriminate, directly or indirectly, against a dealer;
10 (b) Take any action to terminate a dealer's franchise; or
11 (c) Refuse to consent to the designation of a successor, refuse to
12 honor a right of succession set forth in a franchise or refuse to
13 approve the transfer of a controlling interest in a dealership.

14 This subsection does not prohibit a ~~motor-vehicle~~ manufacturer,
15 distributor, factory branch or representative thereof from conducting
16 a contest or other award program to recognize the performance of a
17 dealer based on reasonable criteria relating to sales, leases or service
18 of ~~motor~~ vehicles.

19 **Sec. 21.** NRS 482.36423 is hereby amended to read as
20 follows:

21 482.36423 1. Whenever it appears that a person has violated ,
22 ~~or~~ is violating or is threatening to violate any provision of NRS
23 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of this act*,
24 any person aggrieved thereby may apply to the district court in the
25 county where the defendant resides, or in the county where the
26 violation or threat of violation occurs, for injunctive relief to restrain
27 the person from continuing the violation or threat of violation.

28 2. In addition to any other judicial relief, any dealer or person
29 who assumes the operation of a franchise pursuant to NRS
30 482.36396 to 482.36414, inclusive, who is injured in his business or
31 property by reason of a violation of NRS 482.36311 to 482.36425,
32 inclusive, *and sections 2 and 3 of this act* may bring an action in
33 the district court in which the dealership is located, and may recover
34 three times the pecuniary loss sustained by him, and the cost of suit,
35 including a reasonable attorney's fee. The amount of pecuniary loss
36 sustained by a dealer, pursuant to subsection 6 of NRS 482.3638, is
37 the fair market value of the franchised dealership at the time of
38 notification of termination, refusal to continue or unilateral
39 modification of a franchise.

40 3. Any artificial person created and existing under the laws of
41 any other state, territory, foreign government or the government of
42 the United States, or any person residing outside the State, who
43 grants a franchise to any dealer in this state may be served with any
44 legal process in any action for injunctive relief or civil damages in
45 the following manner:



1 (a) By delivering a copy of the process to the Director; and
2 (b) By mailing to the last known address of the manufacturer or
3 distributor, by certified mail, return receipt requested, a copy of the
4 summons ~~and~~ *and* a copy of the complaint, together with copies of
5 any petition or order for injunctive relief.

6 4. The defendant has 30 days, exclusive of the day of service,
7 within which to answer or plead.

8 5. The method of service provided in this section is cumulative
9 and may be utilized with, after or independently of all other methods
10 of service.

11 **Sec. 22.** NRS 482.36425 is hereby amended to read as
12 follows:

13 482.36425 1. Any manufacturer or distributor who willfully
14 violates any provision of NRS 482.36311 to 482.36425, inclusive,
15 *and sections 2 and 3 of this act* is subject to a civil penalty of not
16 less than \$50 nor more than \$1,000 for each day of violation and for
17 each act of violation. All civil penalties recovered ~~shall~~ *must* be
18 paid to the State of Nevada.

19 2. Whenever it appears that a manufacturer or distributor has
20 violated, ~~or~~ is violating or is threatening to violate any provision
21 of NRS 482.36311 to 482.36425, inclusive, *and sections 2 and 3 of*
22 *this act*, the Attorney General may institute a civil suit in any district
23 court of this state for injunctive relief to restrain the violation or
24 threat of violation, or if the violation or threat is willful, for the
25 assessment and recovery of the civil penalty, or both.

26 **Sec. 23.** NRS 482.36331 is hereby repealed.

TEXT OF REPEALED SECTION

482.36331 “Manufacturer” defined. “Manufacturer”
includes any person who assembles new motor vehicles.

