MINUTES

ASSEMBLY COMMERCE COMMITTEE

April 18, 1977

MEMBERS PRESENT

Chairman Harmon
Vice Chairman Mello
Mr. Barengo
Mr. Demers
Mrs. Hayes
Mr. Moody
Mr. Price
Mr. Sena
Mr. Weise

GUESTS PRESENT

See Guest List Attached

The meeting was called to order by Chairman Harmon at 3:30 p.m.

Assembly Bill 351

Vernon B. Willis, Blyth Eastman Dillon & Company, was the first speaker in support of A.B. 351. Mr. Willis said the change in this section of the insurance code was requested by the securities business industry and they would request an amendment (Exhibit 1) which would delete certain sections that have to do with limited licenses. Mr. Willis explained that the 100 registered brokers in the state are involved at this time in selling limited annuity policies and they wish to be licensed to sell a type of annuity insurance.

Mr. F. R. Breen, Nevada Bankers Association, stated they would like a new section added to the bill which would in effect provide that banks that are writing only credit life insurance in connection with their loans would be exempt from the provisions of this act.

In answer to a question by Mr. Weise, Mr. Willis stated that the type of insurance the brokers are requesting limited licenses to sell is an investment product or annuity product. Mr. Weise further questioned why Mr. Willis felt that people should not be subject to continuing education. Mr. Willis explained that the people in their industry are extremely well

trained and do have a continuing education program. Mr. Willis felt it would not make economic sense to have all of their people take the full spectrum of examinations.

Don Heath, Nevada Association of Life Underwriters, appeared in opposition to A.B. 351. Mr. Heath said he was a registered representative of the National Association of Securities Dealers and it was not possible for him or any of his colleagues to get an exemption of the requirements. The Association is also in favor of the continuing education. Mr. Heath described the education necessary to be proficient in selling various types of insurance. He feels that the public should be protected by the agents being required to have continuing education and tests for licensing.

Mr. Dave Byington, Nevada State Life Underwriters Association, concurred with Mr. Heath's remarks in opposition to A.B. 351.

Assembly Bill 600

Chairman Harmon announced that this bill would be submitted to a subcommittee for study, but that he would hear brief testimony from both proponents and opponents.

Mr. Bob Cahill, Managing Director of the Nevada Resort Association, named the various people who were present from the large hotels in Las Vegas in support of A.B. 600. (See guest list attached)

Mr. Bill Gibbens of the Gibbens Company stated that his company represents employers in workmen compensation matters before the NIC. Mr. Gibbens felt it was very obvious that there is something wrong with the present NIC, and this is evidenced by the number of concerned people present and by the number of bills which have been introduced this session with respect to NIC.

Mr. Gibbens said it was apparent that A.B. 600 would need significant amendments before it would be a workable bill to set up a 3-way state program which would have the NIC in competition with private carriers and have meaningful self insurance available to those employers who are financially responsible. Mr. Gibbens further said that the present NIC self-rater plan has guidelines so high that it is virgually impossible for employers to qualify. Mr. Gibbens felt that the present medical plan also needs attention as with the present monopolistic state fund the employers and workmen are not getting the benefits to which they are entitled.

Mr. Weise asked if Mr. Gibbens would propose self insurance with

the idea that the entire actuarial liability for the workmen would have a fund set aside, or that just the assets of the individual companies would suffice as an asset and have a small fund set aside to handle immediate needs. Mr. Gibbens said each employer would be evaluated solely on the basis of its own balance sheet, assets, liabilities and financial ability to meet the potential obligation. Those who insure under a 3-way program are evaluated by the state agency and required, in most cases, to post a bond or other securities to secure the potential liability for their people.

Mr. Price asked if in the long run it would be less expensive for the same coverage for the employer. Mr. Gibbens said that it would. Mr. Gibbens also told Mr. Price that benefits would not be reduced under a self insured plan and there would be the same appeal procedure. In response to a question by Mr. Weise, Mr. Gibbens stated that the employee would still have the protection of the no fault feature of the basis workmen's compensation law.

Dick Garrod, Farmers Insurance Group, stated that he is familiar with the California law which is classed as a 3-way system and described how the law works in that state. Mr. Garrod feels that A.B. 600 is archaic and confusing and that the proper procedure would be to study laws in other states, draft complete new legislation and start out with a true 3-way system instead of trying to modify the NIC into A.B. 600.

Mr. Willard Meneley, representing the Nevada Workers' Compensation Committee, said they support the concept of the bill but not A.B. 600 as it is presently written. Mr. Meneley's statement is attached as Exhibit 2.

Lou Paley, Nevada AFL-CIO, was in opposition to A.B. 600. Mr. Paley said approximately 44 bills have been introduced this session regarding workmen's compensation and there is a Senate Concurrent Resolution to study NIC. He also feels that A.B.600 is going backward and is not workable.

Chairman Harmon said the committee would study A.B. 600.

Senate Bill 356

Daryl Capurro, Executive Director of the Nevada Franchised Dealers' Association, appeared in support of S.B. 356. Mr. Capurro stated this bill is the result of 3 years of research of constitutionality and of similar laws in other states. This bill is intended to regulate the dealer-manufacturer relationship. Mr. Capurro explained the three types of law in this

regard as they exist in California, Arizona and New Mexico. S.B. 356 essentially takes the straight court procedure approach of the New Mexico law. Mr. Capurro said that the primary opposition to this bill is one of a constitutional aspect and cited NRS 482.318, 482.320, Yale Law Journal and other references to prove the constitutionality. Mr. Capurro explained the various sections of S.B. 356 to the committee. The material submitted by Mr. Capurro is attached as Exhibit 3.

Archie Pozzi, Ford Mercury dealer, also appeared in support of S.B. 356 and described his personal experiences and problems as a franchised dealer under the present law. S.B. 356 is supported 100 percent by the franchised motor dealers in Nevada and it is needed for their protection.

S. G. Gilliatt, Director Marketing Legislation, General Motors Corporation, appeared in opposition to S.B. 356. Mr. Gilliatt said that General Motors is generally opposed to bills as stringent as this bill is. S.B. 356 is similar to legislation in other states but General Motors feels these bills are not in the public interest and they are questioning the constitutionality of the California law in Federal Court, the Georgia and Massachusetts laws. No decision has been reached on these cases as yet. The Federal Trade Commission is becoming concerned about this type of regulation because they do not feel is protects the consumer, according to Mr. Gilliatt, since it limits competition. Mr. Gilliatt stated they also object to the long delay in establishing new dealers that occurs under this type of legislation. A copy of a letter to Senator Wilson from General Motors Corporation is attached as Exhibit 4.

Assembly Bill 587

Irma Edwards, Nevada Insurance Division, appeared in support of A.B. 587 with one requested amendment. A copy of this amendment is attached as Exhibit 5.

H. E. Burton, Palm Memorial Estate Pines, Las Vegas, was in opposition to A.B. 587. In 1971, Mr. Burton said, two bills regarding funerals and cemeteries were passed by the legislature which have been extremely favorable to the consuming public as evidenced by the fact that more than 20,000 individuals in Nevada have participated in these plans since that time. If A.B. 587 were to pass it would void all the progress which has been made since the late '60s for without front money the pre-need industry would not be able to operate.

Mr. Burton said the amendment proposed to the bill may sound minor and it does have merit over the original, but the effect

of the bill even as amended could be extremely costly to the purchasing public.

Charles Knauss of Palm Mortuary and Dallas Bossard, Palm Mortuary in Henderson, Nevada, concurred with Mr. Burton's statements. John Lawton, Sierra Memorial Services, stated he was definitely against A.B. 587. The consumer receives more benefits from the present law than he would under this proposed legislation.

Assembly Bill 632

Clark Guild, an attorney representing Southwest Gas Corporation, stated that this bill was part of the appendix of the study committee during the interim and it is referred to generally as the New Mexico plan. The utility industry asked that this bill be introduced in order that there might be available a plan of cost of service index as it is described in the bill.

Heber Hardy, Public Service Commission, appeared in opposition to A.B. 632. He said that the interim study committee had hired a consultant, Hal Amens, who recommended to the committee that the New Mexico plan should be studied carefully since it was a new experiment and there had not been sufficient time to fully evaluate it. Mr. Hardy stated that Nevada jurisdictional rate payers should not be put in the position of guaranteeing the common equity stockholders a specific rate of return on their investment in nonjurisdictional or nonutility assets. Mr. Hardy feels that the adoption of A.B. 632 would be extremely improper at this time.

Noel Clark, Public Service Commission, also pointed out that this bill would allow public accountants to make examinations and public accounting firms do not go into the depth of audit that the Public Service Commission does. Mr. Clark thinks this bill is premature.

Mr. Weise asked if A.B. 631 could be discussed again regarding amendments. Mr. Weise suggested that the bill be gutted entirely, retaining only Section 5 which is existing law. On line 24, page 3, Mr. Weise suggests deleting the words "any increased investment in facilities" and say, "the increased net investment of facilities with associated rate of return and depreciation, taxes and insurance computed on an annual basis." Mr. Hardy did not agree and discussed the present practice of taking depreciation. He felt Mr. Weise's suggestion would be estimating the expense for the future year and adding it. Mr. Weise then asked if it could read "computed on a pro rated basis". Mr. Hardy felt the Commission already does this. There was discussion on this question between Mr. Hardy, Mr. Clark and Mr. Weise. Acting Chairman Mello suggested that this discussion might take place later.

Assembly Bill 678

Assemblyman Robert Price stated that he had requested the bill drafter to prepare a bill requiring the Public Service Commission to study and adopt a so-called consumer's bill of rights following the Michigan legislation. A.B. 678 is not exactly as he requested it. The Michigan Consumer Bill of Rights works to the advantage of the utilities as well as the consumers, according to Mr. Price, and he feels this bill would be advantageous to Nevada. He would, however, like to have the Public Service Commission set up the rules and regulations.

Mr. Weise questioned that a doctor would sign a certificate and also how a service man could distinguish what was adequate proof of payment of a bill.

Noel Clark said he didn't know whether the Public Service Commission was in favor or against. The concept of the bill is fine but there are problems such as the continuing doctor's certification. He also questioned the credit history and what the word penalty means as it pertains to this bill. Mr. Clark does not think this legislation is necessary since the Commission can make proper rules and regulations after public hearings.

Richard L. Miolini, Assistant Treasurer of Sierra Pacific Power Company, appeared with Robert Pullman, Credit Manager. A copy of Mr. Miolini's statement in opposition to A.B. 678 is attached as Exhibit 6.

Southwest Gas Corporation and Nevada Power Company supported the testimony of Sierra Pacific Power Company in opposition to A.B. 678.

Assembly Bill 708

Richard Denton, Continental Telephone Company of Nevada, appeared in support of A.B. 708. This bill would revise and clarify sections of Chapter 704 of NRS. One revisions would provide for publication on a yearly basis of a volume of all the Public Service Commission's significant opinions. Mr. Denton said they felt there would be more and more participation by the public at rate hearings and they would be educated by these published decisions. The bill would also require the PSC to specifically spell out its reasons for doing as it did. It would also speed up judicial review of PSC's orders. Mr. Denton further explained the provisions set forth in A.B. 708.

Glade Hall, attorney for Continental Telephone, stated that he formerly worked for PSC as Administrative Assistant and their Attorney General. He feels that requiring the PSC to publish

their opinions is extremely important to assist consumer advocates. He also feels the PSC should make findings of fact and conclusions of law for each item considered by them in a rate proceeding.

Clark Guild, representing Southwest Gas, said he could see no reasons for any objections to A.B. 708. On March 18, 1977, Mr. Guild said, the Senate Commerce and Labor Committee sent a letter to PSC stating that their rules of practice were badly outdated and not followed in many respects. The letter further stated that as a result of this it is impossible for a member of the general public , a subscriber of service or any interested person to have available in current and complete form any compilation of rules, regulations and orders affecting their interest. The Senate committee recommended that the PSC publish its present regulations and rules of practice. Mr. Guild said this bill also allows venue which is very important. Mr. Guild strongly recommended the passage of A.B. 708.

Heber Hardy, Public Service Commission, appeared in opposition to the bill. The bill may have merit according to Mr. Hardy, but there would have to be a fiscal note attached as it would be of considerable expense to publish the orders. Mr. Hardy stated that next session they would probably introduce such a bill with the proper fiscal note and providing for payment by those who subscribed to the publication of such orders. Mr. Hardy also said they do make findings of fact and conclusions of law although in some cases they may not be as adequate as desired. Mr. Hardy felt this bill contained some of the same provisions as A.B. 631. Mr. Weise felt this was a different situation. Mr. Clark felt that as far as refunds were concerned, it would be the same situation exactly.

COMMITTEE ACTION

Senate Bill 356: Mrs. Hayes moved Do Pass, Mr. Barengo seconded. Motion carried. Mr. Moody and Mr. Sena not present.

Assembly Bill 632: Mr. Barengo moved to Indefinitely Postpone, seconded by Mr. Price. Motion carried. Mr. Moody and Mr. Sena not present.

Assembly Bill 624: Chairman Harmon stated that the insurance industry had requested this bill be killed. Mr. Mello moved Indefinite Postponement, seconded by Mrs. Hayes. Motion carried.

Assembly Bill 631: Mr. Weise moved to amend in accordance with his earlier recommendations as to page 3, line 24. Mr. Demers said he would second the motion with the understanding that the amendment be returned to the committee so they could study it. Motion carried unanimously. Mr. Weise to prepare amendment.

Assembly Bill 351: Mr. Mello moved to adopt the amendment as suggested by Chairman Harmon, seconded by Mr. Weise. Carried unanimously.

Mr. Demers moved Do Pass A.B. 351 as amended, seconded by Mr. Mello. Motion carried with Mr. Weise and Mr. Barengo voting no.

Assembly Bill 708: Mr. Weise moved Do Pass and explained his reasons for the motion. Motion died for lack of a second. Mr. Demers asked the Chairman to hold A.B. 708 until it could be studied further.

Assembly Bill 642: Mr. Mello moved Do Pass, seconded by Mr. Demers. Motion carried with Mr. Barengo and Mr. Harmon not voting.

Assembly Bill 598: Mr. Demers moved Do Pass, seconded by Mr. Barengo. Carried unanimously.

Assembly Bill 620: Mr. Barengo moved Do Pass as Amended, seconded by Mr. Mello. Motion carried. Mr. Weise abstaining.

Assembly Bill 607: Mr. Price reported on the subcommittee meeting. A copy of the minutes of such meeting are in the Committee's minute book. The subcommittee recommends deletion of everything beyond Line 8. Mr. Price had other suggestions which he will discuss with the bill drafter. He would recommend that the Committee accept the subcommittee's recommendations for proposed amendments. Mr. Barengo moved the proposed amendments be accepted. Mr. Sena seconded. Unanimously carried. Mr. Demers moved Do Pass A.B. 607 as amended, seconded by Mr. Sena. Unanimously carried.

The meeting was adjourned at 6 p.m.

Jane Dunne
Assembly Attache

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
EDWARD B. BURR, CLU	ANCHOR NATIONAL LIFE INS CO	X	
Jim Lloyd - Dean Witter			
VERNON E. WILLIS	SIERRA PACIFIC POWER CO	X	
TIM ANDREWS	PAINE WEBBER JACKSON & CURTIS		
JOHN R. DELONG	MERRILL LYNCH		
STEVEN R BROWN	PAINE, WEBBER JACKSON & CURTIS		
VICTOR C KOCH	DEAN WITTER & CO INC		
DAVID DEMING	DEAN WITTER & CO		
D. W. Foster	Nevada National Bank		
D W HOCKNER	FNB		
Donald W. Hockner, CLU	Nevada ASSN LIFE UNDERWRITERS		
T. C. McCANN	GENERAL MOTORS CORP	X	
S. G. GILLIATT	GENERAL MOTORS CORP	X	
RICHARD L. MIOLINI	SIERRA PACIFIC POWER CO	X	
Robert R. Pullman	Sierra Pacific Power	X	
DON DELANEY	DELANEY'S EMPLOYMENT	X	
Patricia Delaney	Delaney Employment		X
DALLAS BOSSARD	PALM MORTUARY	X	
CHARLES KNAUSS	PALM MORTUARY	X	
R. E. Rustong	Palm Mortuary	X	
John Santos	Sierra Memorial	X	
J K Campbell	MGM Grand Hotel		X
Bill Champion	" " "		X
C. L. BRADFORD	CALUMET WATER CORP		X

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
John Crossley	LCB - Asst SB 238	✓	
Bill Gibbens	The Gibbens Co. Inc.	✓	
W. S. Wheeler	Gov. Ind. Ins. Agents	✓	
Donald Muller	" " "		✓
Robert PIDCOCK	Self		✓
CLARK GUILD, JR	Southwest Gas	✓	
RICHARD DENTON	CONTINENTAL TELEPHONE OF NEV	✓	
Glade Hall	"	✓	
[illegible]	[illegible]		
Frank Johnson	Hilton Hotels Corp.		✓
SAM BOYD	CALIF. HOTEL	✓	
JOHN ALDERFER	Summa Corp		✓
GINO DEL CARLO	F.N.B		X
F. R. BRFFN	N.B.A.	X	

AN ACT relating to insurance; enabling certain agents with limited license to be licensed to write additional types of coverage; 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. NRS 683A.260 is hereby amended to read as follows:

683A.260 1. The commissioner may issue a limited agent's license [to: applicants,

(a) An applicant qualified therefor under this chapter and representing one or more public carriers, who in the course of such representation solicit or sell insurance incidentally to the transportation of persons or to the storage or transportation of property, and limited to insurance so transacted. No person so licensed shall hold concurrently another license under this chapter.

2. The fee for a limited license is specified in NRS 680B.010 (fee schedule)] for any line of insurance he determines the interest of the public will be served thereby.

2. The commissioner shall adopt regulations to provide for the issuance of such a license except that there shall not be required a second examination or continuing educational requirement for any line of limited agents license.

3. A person to whom a license is issued pursuant to this section may not hold concurrently any other type of license authorized by this chapter.

SEC. 2. This act shall become effective upon passage and approval.

Exhibit 1

April 18, 1977

My name is Willard Meneley, representing the Nevada Worker's Compensation Committee which is sponsored by the Nevada Independent Insurance Agents and includes representives from several employer associations.

Our committee commissioned a consultant, at our expense, to determine if 3-way worker's compensation would be feasable at this time. The conclusion was that a 3-way system could be feasable and could be beneficial for both employees and employers. A limited number of these reports are available.

We then attempted to draft suggested legislation with the help of our consultant and industry experts. We finally concluded that sufficient data was not available to draft responsible legislation without additional research which was beyond our capabilities. Much of this stems from Nevada's unusual position in the worker's compensation field. First, being one of only 3 states with a completely monopolistic system and second, using a unique employee classification system not in use by any other state.

As a result we drafted suggested legislation which would mandate 3-way worker's compensation and an accepted standard of employee classification, but left determination of actual implementing legislation to an independent consultant who would make specific recommendations to the 1979 legislature.

When this session opened, we were told by at least some legislators that a bill with a study provision had little chance for success. We therefore did not ask that our prepared bill be introduced, but instead suggested that legislation be drafted following the Council of State Governments model worker's compensation bill. The result of this effort is AB600 as amended. Unfortunately, the model bill was not drafted with Nevada's unique operations in mind and consequently does not touch on areas that need to be changed. Therefore we cannot support AB600.

We do feel that ACR52 is the first step that must be taken sooner or later in Nevada and the sooner the better. Our committee found very widespread employer support for a "3-way plan".

Exhibit A

Exhibit. 3

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.

Exhibit 3
4-18-77 Minutes

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.

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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 effecte 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 agree ment 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. Nevertheless, 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.

GENERAL MOTORS CORPORATION

April 4, 1977

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.

Exhibit 4

General Motors Building 3044 West Grand Boulevard Detroit, Michigan 48202

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
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Attorney

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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:

[(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.

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 anti-trust 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 privileg 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 infr 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:

716

(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 licens 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 effe 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.

3065. Warranty reimbursement

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

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

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

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

(Added by Stats.1973, c. 996, p. 1970, § 16, operative July 1, 1974.)

Library references

Contracts ⇨205.
C.J.S. Contracts §§ 327, 342.

§ 3066. Hearings on protests

(a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, the board shall fix a time, which shall be within 60 days of such order, a place of hearing and send by registered mail a copy of the order to the franchis the protesting franchisee, and all individuals and groups which have request notification by the board of protests and decisions of the board. The board, a hearing officer designated by the board, shall hear and consider the oral a documented evidence introduced by the parties and other interested individu and groups, and the board shall make its decision solely on the record so ma Government Code Sections 11507.6, 11507.7, except subdivision (c), 11510, 115 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, t franchisor shall have the burden of proof to establish that there is good cause modify, replace, terminate, or refuse to continue a franchise. The franchisee sh * have the burden of proof to establish there is good cause not to enter into a fr chise establishing or relocating an additional motor • • • vehicle dealership.

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

(Added by Stats.1973, c. 996, p. 1970, § 16, operative July 1, 1974. Amended by Sta 1974, c. 384, p. —, § 6, 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 subd. (a).

EVELLE J. YOUNGER
ATTORNEY GENERAL

HAROLD A. DARNETT
DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA

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

August 3, 1973

CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF ADMINISTRATION

SANFORD N. GREENFIELD
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF SPECIAL OPERATIONS

EDWARD A. HINZ, JR.
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF CRIMINAL LAW

WILEY W. MANUEL
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF CIVIL LAW

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

APPENDIX C

§ 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, service, 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.

APPENDIX C

(h) To increase prices of motor vehicles which the dealer had ordered for pu retail consumers prior to the dealer's receipt of the written official price inc notification. A sales contract signed by a private retail consumer shall cons evidence of each such order. In the event of manufacturer price reduction: amount of any such reduction received by a dealer shall be passed on to the pu retail consumer by the dealer if the retail price was negotiated on the basis o previous higher price to the dealer. Price reductions shall apply to all ve in the dealer's inventory which were subject to the price reduction. Price d ences applicable to new model or series motor vehicles at the time of the intr tion of new models or series shall not be considered a price increase or pric crease. Price changes caused by either (1) the addition to a motor vehicle o quired or optional equipment pursuant to state or federal law, or (2) revaluati the United States dollar in the case of foreign-make vehicles, shall not be su to the provisions of this subdivision.

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

(j) To deny the widow or heirs designated by a deceased owner of a dealer the opportunity to participate in the ownership of such dealership or succ dealership under a valid franchise for a reasonable time after the death of owner.

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

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

(m) To employ a person as a representative who has not been licensed pur 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 d for any lawful purpose.

(o) To compete with a dealer in the same line make operating under an a ment or franchise from a manufacturer or distributor in the relevant market A manufacturer or distributor shall not, however, be deemed to be competing operating a dealership either temporarily for a reasonable period, or in a fide retail operation which is for sale to any qualified independent person fair and reasonable price, or in a bona fide relationship in which an indepe person has made a significant investment subject to loss in the dealership an reasonably expect to acquire full ownership of such dealership on reasonable and conditions. A distributor shall not be deemed to be competing when a w owned subsidiary corporation of such distributor sells motor vehicles at reta for at least three years prior to January 1, 1973, such subsidiary corporatio been a wholly owned subsidiary of such distributor and engaged in the sale o hicles at retail.

(p) To unfairly discriminate among its franchisees with respect to warranty bursement or authority granted its franchisees to make warranty adjustments retail customers.

APPENDIX C

AMEND PAGE 2, SECTION 4, § 2, commencing line 33, TO READ AS FOLLOWS:

The seller shall maintain unimpaired and shall deposit in the trust fund, within 15 days following the end of the month in which payment was received, all installments received on pre-paid contracts minus the earned sales commission, which shall not be greater than 25 percent of each payment received. The seller is required to return only the monies held in trust if the buyer requests the purchase price under the contract to be returned as provided in this chapter.

Page 2, commencing on line 15, delete the proposed new language.

Page 3, Section 5, commencing on line 9, delete proposed new language.

AB 587

Exhibit 5

AB678

Nevada utilities are in a rather unique position since one of our major industries is tourism.

Sierra's customer turnover rate is in excess of 100% per year--well over the national average. We are able to maintain our uncollectible percentage within the national average of 3/10 of 1% only with the use of efficient collection procedures and effective deposit procedures.

Naturally, all costs of uncollectibles are borne by Nevada ratepayers, and in our Company this currently amounts to just over $400,000. per year.

We feel that generally this proposed Bill No. 678 would effect increased costs to our consumers, and we would like to just briefly go through the bill itself.

> 1. A public utility which furnishes electricity or gas to residential customers shall not:
>
> (a) Require any applicant for such services to make a cash deposit as security of future services unless the applicant's credit history indicates that he has been continually late or deficient in making payments for public utility services.

1.(a) We follow this procedure today for customers who have had prior service with our Company. Those coming from the service area of another utility would require us contacting that utility for customer information. This would create additional costs for both utilities affected. Also, the time delay in getting the information could benefit any customer not intending to pay.

> (b) Give any discount for early payment or impose any penalty for late payment of any bill for such services.

1.(b) We have no problem with this.

> 2. Before such a public utility discontinues service to a residential customer without the customer's request or consent, the utility shall give the customer a reasonable notice of the utility's intent to discontinue the service. The notice shall include the reason for the discontinuance and the date on which it will occur. A disconnection may be carried out only between the hours of 8 a.m. and 4 p.m. The disconnection shall not be made unless an employee of the public utility will be available to reconnect the service on the following day.

Exhibit 6

2. As a general operating procedure, we follow this guideline today; we do have 24-hour coverage. However, in serious cases of detection of current diversion (theft) or damage to our metering equipment, we feel we need the right to discontinue service without notice.

> 3. When any employee of the public utility is dispatched to disconnect service of a residential customer the employee shall have a copy of the customer's bill, and if the customer presents satisfactory evidence of payment or pays the bill in full, the service shall not be disconnected. A personal check shall be accepted unless the customer has paid the utility with a bad check within the past 3 years.

3. Again, as a general operating procedure, we basically follow this guideline today. Our employee has a disconnect order which contains the total amount owing and the customer's past 12 month payment history. However, this proposed bill is more restrictive to the consumer than is our policy. We do not require full payment to be made--we require partial payment or a reasonable payment date. This information is returned to our Credit Department and the customer is advised to contact our Credit Department to work out a plan to clear up the debt.

> 4. If a residential customer presents to the public utility a physician's certificate or a certificate of a public health officer, stating that a discontinuance of service will adversely affect the health of the customer or a member of his household, the utility shall postpone the disconnection for the period requested in the certificate up to 21 days. The postponement may be extended by renewal of the certificate by the physician or public health officer.

4. We feel that administratively our Company would have to verify the doctors' signatures. We do not presently disconnect service if it would adversely affect the health of a customer or a member of his family. We would question: (1) How many 21 day extensions should be allowed?; and (2) Who would qualify as a member of the household?

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 607

MOTION: Do Pass as Amended

Do Pass ___ Amend ___ Indefinitely Postpone ___ Reconsider ___

Moved by Mr. Demers Seconded by Mr. Sena

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A. B. 620

MOTION: Do Pass as amended

Do Pass ___ Amend ___ Indefinitely Postpone ___ Reconsider ___

Moved by Mr. Barengo Seconded by Mr. Mello

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise	Abstaining					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 598

MOTION: _____

Do Pass x Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved by Mr. Demers Seconded by Mr. Barengo

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 642

MOTION: _____

Do Pass x Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved by Mr. Mello Seconded by Mr. Demers

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

VOTE:	MOTION Yes	MOTION No	AMEND Yes	AMEND No	AMEND Yes	AMEND No
Harmon	Not voting					
Mello	x					
Barengo	Not voting					
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 351

MOTION: Do Pass as Amended

Do Pass ___ Amend ___ Indefinitely Postpone ___ Reconsider ___

Moved by Mr. Demers Seconded by Mr. Mello

AMENDMENT _____

Moved by _____ Seconded by _____

AMENDMENT _____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo		x				
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise		x				
TALLY:	7	2				

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 624

MOTION: _____

Do Pass ___ Amend ___ Indefinitely Postpone x Reconsider ___

Moved by Mr. Mello Seconded by Mrs. Hayes

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	x					
Price	x					
Sena	x					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT A.B. 632

MOTION: _____

Do Pass ___ Amend ___ Indefinitely Postpone x Reconsider ___

Moved by Mr. Barengo Seconded by Mr. Price

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	Not present					
Price	x					
Sena	Not present					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date

59TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATIVE ACTION

DATE April 18, 1977

SUBJECT S.B. 356

MOTION: _____

Do Pass x Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved by Mrs. Hayes Seconded by Mr. Barengo

AMENDMENT _____

_____

Moved by _____ Seconded by _____

AMENDMENT _____

_____

Moved by _____ Seconded by _____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
Harmon	x					
Mello	x					
Barengo	x					
Demers	x					
Hayes	x					
Moody	Not present					
Price	x					
Sena	Not present					
Weise	x					

TALLY:

Original Motion: Passed x Defeated ___ Withdrawn ___

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes April 18, 1977
Date