

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 128

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO DEALERS AND SALESMEN LICENSING; AMENDING SECTION 49-1614,  
2 IDAHO CODE, TO REVISE PROVISIONS REGARDING TERMINATION, CANCELLATION,  
3 OR NONRENEWAL, AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION  
4 49-1617, IDAHO CODE, RELATING TO PROTESTS, HEARINGS, AND COSTS; AMEND-  
5 ING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
6 49-1617, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING PROTESTS, HEAR-  
7 INGS, AND COSTS; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE  
8 ADDITION OF A NEW SECTION 49-1617A, IDAHO CODE, TO ESTABLISH PROVISIONS  
9 REGARDING MEDIATION OF DISPUTES; AMENDING CHAPTER 16, TITLE 49, IDAHO  
10 CODE, BY THE ADDITION OF A NEW SECTION 49-1617B, IDAHO CODE, TO ESTAB-  
11 LISH PROVISIONS REGARDING STANDING TO BRING AN ACTION; AND DECLARING AN  
12 EMERGENCY.  
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 49-1614, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 49-1614. TERMINATION, CANCELLATION OR NONRENEWAL. (1) Notwithstand-  
18 ing the terms, provisions or conditions of any franchise agreement, or any  
19 waiver, a manufacturer shall not cancel, terminate or fail to renew any fran-  
20 chise agreement with a dealer unless the manufacturer has satisfied the no-  
21 tice requirement of subsection (2) of this section and has good cause for  
22 cancellation, termination or nonrenewal.

23 (2) Notwithstanding the terms, provisions or conditions of any fran-  
24 chise agreement prior to the termination, cancellation or nonrenewal of any  
25 franchise agreement, the manufacturer shall furnish notification of termi-  
26 nation, cancellation or nonrenewal to the department and the dealer:

27 (a) In the manner described in subsection (3) ~~(b)~~ of this section; and

28 (b) Not less than ninety (90) days prior to the effective date of termi-  
29 nation, cancellation or nonrenewal; or

30 (c) Not less than fifteen (15) days prior to the effective date of ter-  
31 mination, cancellation or nonrenewal with respect to any of the follow-  
32 ing:

33 (i) Insolvency of the dealership, or filing of any petition by or  
34 against the dealership under any bankruptcy or receivership law;

35 (ii) Failure of the dealership to conduct its customary sales and  
36 service operations during its customary business hours for seven  
37 (7) consecutive business days, except for acts of God or circum-  
38 stances beyond the direct control of the dealer;

39 (iii) Conviction of the dealer, or any owner or his operator, re-  
40 sulting in imprisonment exceeding thirty (30) days;

41 (iv) Revocation of any license ~~which~~ that the dealer is required  
42 to have to operate a dealership; and

1 (d) Not less than one hundred eighty (180) days prior to the effective  
2 date of termination or cancellation, where the manufacturer is discon-  
3 tinuing the sale of the product line.

4 (3) Notification under this section shall be in writing, by certified  
5 mail or personally delivered to the dealer, and shall contain a statement of  
6 intention to terminate, cancel or not to renew the franchise agreement, and a  
7 statement of the reasons for and the date on which termination, cancellation  
8 or nonrenewal takes effect.

9 ~~(4) Notwithstanding the terms, provisions or conditions of any fran-~~  
10 ~~chise agreement or of any waiver, good cause shall exist for the purposes~~  
11 ~~of a termination, cancellation or nonrenewal when there is a failure by~~  
12 ~~the dealer to comply with a provision of the franchise agreement, where the~~  
13 ~~provision is both reasonable and of material significance to the franchise~~  
14 ~~agreement relationship, and provided that the dealer has been notified in~~  
15 ~~writing of the failure within one hundred eighty (180) days prior to termina-~~  
16 ~~tion, cancellation or nonrenewal. A protest may be filed in accordance with~~  
17 ~~the provisions of section 49-1617, Idaho Code.~~

18 ~~(5) Notwithstanding any franchise agreement, the following shall not~~  
19 ~~constitute good cause for a termination, cancellation or nonrenewal of a~~  
20 ~~franchise agreement: the fact that the dealer owns, has an investment in,~~  
21 ~~participates in the management of or holds a franchise agreement for the~~  
22 ~~sale or service of another make or line of motor vehicles; or that the dealer~~  
23 ~~has established another make or line of new motor vehicles or service in the~~  
24 ~~same dealership facilities as those of the manufacturer or distributor which~~  
25 ~~existed prior to January 1, 1997; or is approved in writing by the manufac-~~  
26 ~~turer.~~

27 (4) Notwithstanding the terms, provisions, or conditions of any  
28 franchise agreement or of any waiver, good cause for a termination, cancel-  
29 lation, or nonrenewal shall be determined in accordance with the standards  
30 set forth in section 49-1617(5) (a), Idaho Code, provided that the dealer has  
31 been notified in writing of the reasons for the intended termination, can-  
32 cancellation, or nonrenewal one hundred eighty (180) days prior to termina-  
33 tion, cancellation, or nonrenewal. A protest may be filed in accordance with the  
34 provisions of section 49-1617, Idaho Code.

35 (5) Notwithstanding the terms, provisions, or conditions of any fran-  
36 chise agreement, the factors set forth in section 49-1617(5) (b), Idaho Code,  
37 do not constitute good cause for a termination, cancellation, or nonrenewal  
38 of a franchise agreement.

39 (6) The manufacturer shall have the burden of proof under this section  
40 concerning the issue of good cause, which shall include, but not be limited  
41 to, termination, nonrenewal or cancellation of any franchise agreement  
42 by the manufacturer for insolvency, license revocation, conviction of a  
43 felony, fraud by a dealer or failure by a dealer to comply with a provision  
44 of the franchise agreement, where the provision is both reasonable and of  
45 material significance to the franchise agreement relationship.

46 (7) Notwithstanding the terms, provisions or conditions of any fran-  
47 chise agreement, other written contract or agreement or any waiver, a man-  
48 ufacturer shall not cancel, terminate or fail to renew any franchise agree-  
49 ment with a dealer unless the manufacturer has satisfied the requirements of  
50 this section.

1 (8) Upon the termination, cancellation, or nonrenewal of any franchise  
2 agreement by the manufacturer or dealer, the manufacturer shall repurchase  
3 from the dealer any new, undamaged and unused motor vehicles of the current  
4 model year and previous model year. Any new and unused motor vehicle re-  
5 purchased by the manufacturer shall be repurchased at the net cost to the  
6 dealer. Net cost means the dealer's cost for a new, undamaged, unsold, and  
7 complete motor vehicle of the current model year or any previous model year  
8 acquired by the dealer within twelve (12) months of the date of termination  
9 and in a dealer's inventory purchased from the manufacturer or acquired from  
10 another dealer of the same line make in the ordinary course of business:

11 (a) Plus any charges by the manufacturer, distributor, or representa-  
12 tive for distribution, delivery and taxes;

13 (b) Plus the dealer's cost of any manufacturer-approved accessories  
14 added on the vehicle, except only those recreational vehicle acces-  
15 sories that are listed in the manufacturer's wholesale product litera-  
16 ture as options for that vehicle shall be repurchased; and

17 (c) Less all allowances paid to the dealer by the manufacturer, dis-  
18 tributor or representative.

19 (9) (a) Upon the termination, cancellation, or nonrenewal of any fran-  
20 chise agreement by the manufacturer or dealer, the manufacturer shall  
21 repurchase from the dealer the following:

22 (i) Any unused, undamaged, and unsold parts ~~which~~ that have been  
23 acquired from the manufacturer, provided such parts are currently  
24 offered for sale by the manufacturer in its current parts catalog  
25 and are in salable condition. Such parts shall be repurchased by  
26 the manufacturer at the current catalog price, less any applicable  
27 discount;

28 (ii) Any supplies, equipment, and furnishings, including manu-  
29 facturer or line make signs, required by and purchased from the  
30 manufacturer or its approved source within three (3) years of the  
31 date of termination, cancellation, or nonrenewal; and

32 (iii) Any special tools or other equipment purchased from the man-  
33 ufacturer within three (3) years of the date of termination, can-  
34 cellation, or nonrenewal.

35 (b) Except as provided in paragraph (a) (i) of this subsection, compen-  
36 sation shall be the fair market value on the effective date of the termi-  
37 nation, cancellation, or nonrenewal.

38 (10) The repurchase of any item under this section shall be accomplished  
39 within ninety (90) days of the effective date of the termination, cancella-  
40 tion, or nonrenewal, provided the dealer has clear title to the inventory and  
41 other items, or is able to convey such title to the manufacturer and does con-  
42 vey or transfer title and possession of the inventory and other items to the  
43 manufacturer.

44 (11) If the repurchase of any item under this section is subject to a se-  
45 curity interest, the manufacturer may make payment jointly to the dealer and  
46 to the holder of the security interest.

47 (12) This section shall not apply to a nonrenewal or termination that is  
48 implemented as a result of the sale of the assets or stock of the motor vehi-  
49 cle dealer.

1 (13) In the event the manufacturer does not pay the dealer the amounts  
2 due under this section and a court of competent jurisdiction finds the man-  
3 ufacturer in violation of this section, the manufacturer shall, in addition  
4 to any amounts due, pay the dealer:

5 (a) Interest on the amount due computed at the rate applicable to a  
6 judgment of a court; and

7 (b) Reasonable attorney's fees and costs.

8 (14) Within ninety (90) days of the termination, cancellation, or non-  
9 renewal of any franchise agreement by the manufacturer for the failure of a  
10 dealer to meet sales and service performance obligations or due to elimina-  
11 tion, cessation or termination of a line make, the manufacturer shall com-  
12 mence to reimburse the dealer for one (1) year of the dealer's cost to rent or  
13 lease the dealership's facility or location or for the unexpired term of the  
14 lease or rental period, whichever is less, or, if the dealer owns the facil-  
15 ity or location, for the equivalent of one (1) year of the reasonable rental  
16 value of the facilities or location as determined by an Idaho licensed com-  
17 mercial real estate appraiser. If more than one (1) franchise agreement is  
18 being terminated, canceled, or not renewed, the reimbursement shall be pro-  
19 rated equally among the different manufacturers. However, if a franchise  
20 agreement is terminated, canceled, or not renewed but the dealer continues  
21 in business at the same location under a different franchise agreement, the  
22 reimbursement required by this subsection shall not be required to be paid.  
23 In addition, any reimbursement due under this subsection shall be reduced by  
24 any amount received by the dealer by virtue of the dealer leasing, subleas-  
25 ing, or selling the facilities or location during the year immediately fol-  
26 lowing the termination, cancellation, or nonrenewal.

27 (15) All procedures and protections afforded to a motor vehicle dealer  
28 under this section shall be available to a recreational vehicle dealer. How-  
29 ever, the remedies afforded under this section shall only apply to recre-  
30 ational vehicle dealers where the manufacturer of recreational vehicles as  
31 defined in section 49-119, Idaho Code, terminates or fails to renew any fran-  
32 chise agreement without good cause.

33 SECTION 2. That Section [49-1617](#), Idaho Code, be, and the same is hereby  
34 repealed.

35 SECTION 3. That Chapter 16, Title 49, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
37 ignated as Section 49-1617, Idaho Code, and to read as follows:

38 49-1617. PROTESTS -- HEARINGS -- COSTS. (1) Within twenty (20) days  
39 of the completion of mediation, a dealer may file with the department to  
40 protest:

41 (a) The termination, cancellation, or nonrenewal of a franchise;

42 (b) The establishment or relocation of a dealership;

43 (c) A refusal to honor the appointment of a designated family member  
44 pursuant to section 49-1615, Idaho Code;

45 (d) A refusal to honor a proposed modification of a dealer sales and  
46 service agreement; or

1 (e) For the resolution of any other dispute between a manufacturer or  
2 distributor and a new vehicle dealer alleged to arise from a violation  
3 of Idaho law.

4 (2) When a protest is filed, the department shall inform the manufac-  
5 turer or distributor that a timely protest has been filed and the manufac-  
6 turer or distributor shall have twenty (20) days to respond to the protest.

7 (3) All costs of the department, including the cost of the hearing offi-  
8 cer and the cost of preparing the record, shall be apportioned by the hearing  
9 officer. The hearing officer may in his discretion award costs to the pre-  
10 vailing party. A dealer suffering pecuniary loss because of a violation of  
11 this chapter, upon prevailing in a protest action for such violation, shall  
12 be entitled to costs and reasonable attorney's fees to be determined by the  
13 hearing officer. In the event of a willful violation, a dealer shall be en-  
14 titled to damages equal to three (3) times the pecuniary loss suffered to be  
15 awarded by the hearing officer or by the court.

16 (4) The office of administrative hearings shall appoint a hearing offi-  
17 cer to preside over and conduct the protest as a contested case hearing under  
18 the provisions of chapter 52, title 67, Idaho Code. In such a hearing:

19 (a) The manufacturer or distributor has the burden of proof to estab-  
20 lish good cause as provided in subsection (5) of this section. This  
21 shall include but not be limited to termination, cancellation, or non-  
22 renewal of any franchise agreement by the manufacturer or distributor  
23 for insolvency, license revocation, conviction of a felony, fraud by a  
24 dealer, or failure by a dealer to comply with a provision of the fran-  
25 chise agreement where the provision is both reasonable and of material  
26 significance to the franchise agreement relationship.

27 (b) The rules of evidence for a protest hearing are the same as those  
28 found in chapter 52, title 67, Idaho Code.

29 (c) The hearing officer may issue subpoenas, administer oaths, and com-  
30 pel the attendance of witnesses and production of books, papers, docu-  
31 ments, and all other evidence and may apply to the district court of the  
32 county in which the hearing is held for a court order enforcing this sec-  
33 tion.

34 (d) The hearing shall be conducted pursuant to chapter 52, title 67,  
35 Idaho Code.

36 (e) A transcript of the testimony of each witness taken at the hearing  
37 must be made and preserved.

38 (f) Within sixty (60) days after the hearing, the hearing officer shall  
39 issue a preliminary order pursuant to section 67-5245, Idaho Code. The  
40 preliminary order shall be deemed a final order upon issuance.

41 (g) Any party to a hearing before the department may appeal pursuant to  
42 the applicable provisions of chapter 52, title 67, Idaho Code.

43 (h) The manufacturer or distributor shall not terminate a dealership,  
44 establish a new dealership, relocate a dealership, discontinue an ex-  
45 isting franchise, or take any other proposed action described in this  
46 chapter until a final decision has been rendered and all appellate reme-  
47 dies available to the dealer have been exhausted. The manufacturer or  
48 distributor and the dealer shall abide by the terms of the franchise  
49 agreement and Idaho law during the appeals process.

1 (5) (a) In determining whether good cause has been established for ter-  
2 minating or not continuing a franchise agreement, all existing circum-  
3 stances shall be taken into account, including but not limited to:

4 (i) The dealer's sales in relation to the Idaho market that are  
5 essential, reasonable, and not discriminatory and that take into  
6 account the dealer's local market variations beyond adjusting for  
7 the local popularity of general vehicle types and whether the man-  
8 ufacturer or distributor has supplied the dealer with new vehi-  
9 cles or new vehicle parts or accessories in a reasonable time and  
10 in sufficient quantity to permit the dealer to meet the manufac-  
11 turer's or distributor's minimum sales requirements;

12 (ii) Investment necessarily made and obligations incurred by the  
13 dealer in the performance of the dealer's part of the franchise;

14 (iii) The permanency of the investment;

15 (iv) Whether it is injurious to the public welfare for the busi-  
16 ness of the dealer to be discontinued;

17 (v) Whether the dealer has adequate new motor vehicle facili-  
18 ties, equipment, parts, and qualified management, sales, and ser-  
19 vice personnel to reasonably provide consumer care for the new mo-  
20 tor vehicles sold at retail by the dealer and any other new motor  
21 vehicle of the same line make;

22 (vi) Whether the dealer refuses to honor warranties of the manu-  
23 facturer or distributor to be performed by the dealer if the man-  
24 ufacturer or distributor reimburses the dealer for warranty work  
25 performed by the dealer pursuant to this section; and

26 (vii) Actions by the dealer, which shall include but not be lim-  
27 ited to: insolvency, license revocation, conviction of a felony,  
28 or fraud by a dealer that result in a material breach of the writ-  
29 ten and uniformly applied requirements of the franchise agreement  
30 that are reasonable and material.

31 (b) Notwithstanding the terms, provisions, or conditions of the fran-  
32 chise agreement, the following do not constitute good cause for the ter-  
33 mination or noncontinuance of a franchise:

34 (i) A change in ownership arising from the retirement, death, or  
35 incapacity of an owner who is not listed in the franchise as one  
36 on whose expertise and abilities the manufacturer or distributor  
37 relied in the granting of the franchise;

38 (ii) The fact that the dealer:

39 1. Owns, has an investment in, participates in the manage-  
40 ment of, or holds a franchise agreement for the sale or ser-  
41 vice of another make or line of motor vehicles; or

42 2. Has established another make or line of new motor vehi-  
43 cles or service in the same dealership facilities as those of  
44 the manufacturer or distributor that existed prior to Jan-  
45 uary 1, 1997, or is approved in writing by the manufacturer  
46 or distributor;

47 (iii) The fact that the dealer refused to order, purchase, or ac-  
48 cept delivery of a new motor vehicle, part, accessory, or any other  
49 commodity or service not ordered by the dealer or refused to order,  
50 purchase, or accept delivery of any new vehicle with special fea-

1 tures, accessories, or equipment not included in the list price of  
2 such vehicles as publicly advertised by the manufacturer or dis-  
3 tributor;

4 (iv) The failure of a dealer to:

5 1. Establish or maintain exclusive facilities, personnel,  
6 or display space;

7 2. Expand facilities without a written guarantee of a suf-  
8 ficient supply of new vehicles so as to justify an expansion,  
9 in light of the market and economic conditions;

10 3. Make significant modifications to an existing dealership  
11 or to construct a new vehicle dealership facility without  
12 providing a written guarantee of a sufficient supply of new  
13 vehicles so as to justify modification or construction, in  
14 light of the market and economic conditions; or

15 (v) The desire of a manufacturer or distributor or a manufac-  
16 turer's or distributor's representative for greater market pene-  
17 tration or to alter the number of the manufacturer's or distrib-  
18 utor's or manufacturer's or distributor's representative's fran-  
19 chises or dealer locations.

20 (c) In making a determination of whether there is good cause for permit-  
21 ting a proposed modification of a dealer sales and service agreement or  
22 a dealer's relevant market area, the burden of proof shall be on the man-  
23 ufacturer or distributor, except that the burden of proof with regard to  
24 the factors set forth in this subsection shall be on the dealer, and the  
25 department shall consider any relevant factors, including:

26 (i) The reasons for the proposed modification;

27 (ii) Whether the proposed modification is applied to or affects  
28 all motor vehicle dealers in a nondiscriminatory manner;

29 (iii) The degree to which the proposed modification will have a  
30 substantial and adverse effect upon the motor vehicle dealer's  
31 rights, investment, or return on investment;

32 (iv) Whether the proposed modification is in the public interest;

33 (v) The traffic patterns between consumers and the same line make  
34 franchised dealers of the affected manufacturer, distributor, or  
35 factory branch who are located within the market;

36 (vi) The pattern of new vehicle sales and registrations of the af-  
37 fected manufacturer, distributor, or factory branch within vari-  
38 ous portions of the area of sales effectiveness and within the mar-  
39 ket as a whole;

40 (vii) The growth or decline in population, density of population,  
41 and new car registrations in the market;

42 (viii) The presence or absence of natural geographical obstacles  
43 or boundaries, such as rivers;

44 (ix) The proximity of census tracts or other geographic units used  
45 by the affected manufacturer or distributor in determining the  
46 same line make dealer's respective relevant market area; and

47 (x) The reasonableness of the change or proposed change to the  
48 dealer's area of sales effectiveness, considering the benefits  
49 and harm to the petitioning dealer, other same line make dealers,  
50 and the manufacturer, distributor, or factory branch.

1 (d) In determining whether good cause exists for a refusal to accept  
2 a dealer successor appointed pursuant to section 49-1615, Idaho Code,  
3 the manufacturer or distributor has the burden of proving that the ap-  
4 pointed successor is not of good moral character or does not meet the  
5 manufacturer's or distributor's existing, reasonable, and uniformly  
6 applied standards and, considering the volume of sales and service of  
7 the dealership, uniformly applied minimum business experience stan-  
8 dards in the consumer consumption channel.

9 (e) In determining whether good cause was established for not entering  
10 into an agreement or relocating an additional franchise for the same  
11 line make, the department shall take into consideration the existing  
12 circumstances within the existing franchise's relevant market area,  
13 including:

14 (i) Permanency of the investment of both the existing and pro-  
15 posed franchises;

16 (ii) Investment necessarily made and obligations incurred by  
17 other existing franchisees of the same line make in that relevant  
18 market area in the performance of their part of their franchise  
19 agreements and the date of such investment made and obligations  
20 incurred by such franchisees in relation to the date of appoint-  
21 ment of the additional franchisee;

22 (iii) Growth or decline in population and new car registrations in  
23 the consumer consumption area and whether the population and demo-  
24 graphic characteristics of that relevant market area have changed  
25 since appointment of the other existing franchisees sufficiently  
26 to support the economic viability of both the other existing fran-  
27 chisees and the additional franchisee;

28 (iv) Effect on the consuming public in the relevant market area  
29 and whether the other existing franchisees of the same line make  
30 in that relevant market area are substantially compliant with  
31 reasonable manufacturer or distributor requirements in providing  
32 adequate consumer care, including satisfactory new vehicle dealer  
33 sales and service facilities, special and essential tools and  
34 equipment, replacement parts supply, and qualified management,  
35 sales, and service personnel, for the new motor vehicle products  
36 of the line make and whether sufficient qualified management,  
37 sales, and trained service personnel to satisfy the reasonable  
38 requirements of the manufacturer or distributor for the other ex-  
39 isting franchisees and the additional franchisee are available in  
40 that relevant market area;

41 (v) Whether it is injurious or beneficial to the public welfare  
42 for an additional franchise to be established;

43 (vi) Whether the franchises for the same line make in that rele-  
44 vant consumption area are providing adequate competition and con-  
45 venient customer care for the vehicles of the line make in the mar-  
46 ket area, which shall include the adequacy of vehicle sales and  
47 service facilities, equipment, supply of vehicle parts, and qual-  
48 ified service personnel;

49 (vii) Whether the establishment of an additional franchise would  
50 increase competition and be in the public interest; and



1 (viii) Whether the manufacturer's or distributor's action is in  
2 good faith.

3 SECTION 4. That Chapter 16, Title 49, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
5 ignated as Section 49-1617A, Idaho Code, and to read as follows:

6 49-1617A. MEDIATION OF DISPUTES. (1) All disputes between a manufac-  
7 turer or a distributor and a new vehicle dealer alleging a violation of any  
8 provision of this chapter or any other provision of Idaho law are subject to  
9 mediation as provided for in this section. A demand for mediation must be  
10 served on the adverse party before the filing of the objection, protest, com-  
11 plaint, or petition or the bringing of the action. A demand for mediation  
12 must be in writing and served on the adverse party by certified mail, return  
13 receipt requested, or by overnight delivery service that provides proof of  
14 delivery at an address designated for the party in the records of the com-  
15 plainant. The demand for mediation must contain a brief statement of the  
16 dispute and the relief sought by the complainant filing the demand.

17 (2) Within twenty (20) days after the date a demand for mediation is  
18 served, the parties shall mutually select an independent mediator and meet  
19 with that mediator for the purpose of attempting to resolve the dispute. If  
20 the parties are unable to agree on a mediator, a party may apply to a district  
21 judge of the district court for the county in which the dealership is located  
22 for appointment of a mediator. The meeting place must be within this state in  
23 a location selected by the mediator in proximity to the place of business of a  
24 party domiciled in this state. The mediator may extend the date of the meet-  
25 ing for good cause shown by either party or on the stipulation of both par-  
26 ties.

27 (3) The service of a demand for mediation under subsection (1) stays the  
28 time for the filing of any objection, protest, complaint, or petition with  
29 the department or for bringing an action until the representatives of both  
30 parties have met with a mutually selected or appointed mediator for the pur-  
31 pose of attempting to resolve the dispute. If an objection, protest, com-  
32 plaint, or petition is filed before the meeting, the department or the court  
33 shall enter an order suspending the proceeding or action until the meeting  
34 has occurred and may, on the written stipulation of all parties to the pro-  
35 ceeding or action that they wish to continue to mediate under this section,  
36 enter an order suspending the proceeding or action for as long a period as the  
37 department or court considers to be appropriate. A suspension order issued  
38 under this subsection may be revoked on motion of any party or on motion of  
39 the department or the court.

40 (4) The department shall encourage dealers, manufacturers, and dis-  
41 tributors to establish a panel of mediators who have the character, ability,  
42 and training to serve as mediators and who have knowledge of the motor vehi-  
43 cle industry.

44 (5) A mediator shall be immune from civil liability for any good faith  
45 act or omission within the scope of the mediator's performance of the medi-  
46 ator's powers and duties under this chapter. An act or omission of a mediator  
47 is presumed to be a good faith act or omission. This presumption may be over-  
48 come only by clear and convincing evidence.

1 SECTION 5. That Chapter 16, Title 49, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 49-1617B, Idaho Code, and to read as follows:

4 49-1617B. STANDING TO BRING AN ACTION. (1) The following entities have  
5 standing to seek redress for violations of this chapter or of any other pro-  
6 vision of Idaho law relating to or affecting the relationship between a manu-  
7 facturer or a distributor and a new vehicle dealer:

8 (a) A new vehicle dealer; and

9 (b) Any corporation or association that is primarily owned by or com-  
10 posed of new vehicle dealers and that primarily represents the inter-  
11 ests of new vehicle dealers if at least one (1) of the corporation or  
12 association members would have standing on its own, the interests that  
13 the action seeks to protect are germane to the corporation's or associa-  
14 tion's purpose, and the claim asserted or the relief requested does not  
15 require the participation of individual members in the action.

16 (2) Entities that have standing pursuant to this section may:

17 (a) File a petition and request the department handle the matter as an  
18 administrative proceeding;

19 (b) File a demand for mediation pursuant to section 49-1617A, Idaho  
20 Code; or

21 (c) Bring a civil action in a court of competent jurisdiction.

22 (3) An action filed pursuant to this section may seek:

23 (a) Recovery of actual damages;

24 (b) Declaratory or injunctive relief; or

25 (c) Reasonable costs of the suit and attorney's fees to a prevailing  
26 party.

27 SECTION 6. An emergency existing therefor, which emergency is hereby  
28 declared to exist, this act shall be in full force and effect on and after its  
29 passage and approval.