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## Business Associations and Professions; Motor Vehicle Franchises

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beginning of business.<sup>23</sup>

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23. N.R.S. §78.780 2.

## **Business Associations and Professions; motor vehicle franchises**

N.R.S. §§482.36351, 482.3636, 482.36365, 482.36415, 482.3642 (repealed); §§482.— - 482.— (new); §§482.36311, 482.3634, 482.36411, 482.36425 (amended).

SB 543 (Committee on Commerce and Labor); STATS 1981, Ch 383

Prior to the enactment of Chapter 383, a manufacturer<sup>1</sup> or distributor of motor vehicles could not terminate, refuse to continue, or modify a dealer's franchise<sup>2</sup> unless the dealer gave written consent<sup>3</sup> or was given notice.<sup>4</sup> Similarly, existing law provides that a manufacturer or distributor may not enter into a franchise establishing an additional dealership within the relevant market area<sup>5</sup> of another dealer of the same line and make of automobile without giving written notice to each dealer of that line and make within the relevant market area and the Director of the Department of Motor Vehicles (hereinafter referred to as the Director).<sup>6</sup> Prior law allowed the dealer to apply to the district court for an injunction restraining any change in the franchise agreement after receiving notice of the intended action from the manufacturer or the distributor.<sup>7</sup> At the hearing the manufacturer or distributor had the burden of proving that good cause existed for the termination, modification,<sup>8</sup> establishment, or relocation of a franchise.<sup>9</sup>

In *Desert Chrysler-Plymouth v. Chrysler Corporation*,<sup>10</sup> the Nevada Supreme Court found that various statutory provisions allowing the district courts to determine whether good cause existed for a manufacturer's or distributor's intended termination, modification, establish-

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1. N.R.S. §482.060 (definition of manufacturer).

2. *Id.* §482.36323 (definition of franchise).

3. *See* STATUTES OF NEVADA 1977, c. 295, §9, at 554 (enacting N.R.S. §482.36351).

4. *See id.*

5. *See* N.R.S. §482.3634 (definition of relevant market area). *Compare id.* with STATUTES OF NEVADA 1977, c. 295, §7, at 554 (enacting N.R.S. §482.3634) (Chapter 383 restricts the relevant market area to the area within a radius of 10 miles of an existing dealer who sells vehicles of the same line and make).

6. N.R.S. §482.— 1(a), (b).

7. *See* STATUTES OF NEVADA 1977, c. 295, §11, at 554 (enacting N.R.S. §482.3636).

8. *See id.*

9. *See id.* 1977, c. 295, §12, at 555 (enacting N.R.S. §482.36365).

10. 95 Nev. 640, 600 P.2d 1189 (1979).

ment, or relocation of a franchise<sup>11</sup> delegated a licensing function to the courts<sup>12</sup> and thus were unconstitutional as violating the separation of powers doctrine of the Nevada Constitution.<sup>13</sup> In an apparent attempt to conform the rules and regulations relating to automobile franchise agreements to the separation of powers doctrine, Chapter 383 establishes new termination or modification requirements.<sup>14</sup> Chapter 383 also removes the district court from the role of fact-finder and instead authorizes the Director to conduct the fact-finding process.<sup>15</sup>

### *Termination or Modification*

Chapter 383 provides that a manufacturer or distributor may not terminate, refuse to continue, modify, or replace a franchise without giving written notice to the dealer and Director.<sup>16</sup> Furthermore, after giving proper notice, the manufacturer or distributor may not proceed with the intended action until either the dealer fails to file a timely protest or, if the dealer protests, the Director holds a hearing on the matter and issues an order authorizing the action.<sup>17</sup>

Existing law enumerates specific grounds for termination of or refusal to grant a franchise.<sup>18</sup> If the intended action is based on any of those grounds, notice must be given to the Director and the dealer at least fifteen days before the effective date of the proposed action.<sup>19</sup> Any grounds for termination or refusal of a franchise not specifically enumerated requires at least sixty days notice.<sup>20</sup> In either case the notice must state the particular reason for the intended action.<sup>21</sup> A dealer who is notified may file a protest with the Director within ten days of receipt of the notice if the reason for the intended termination is one of those enumerated.<sup>22</sup> In all other cases the dealer has thirty days to file

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11. STATUTES OF NEVADA 1977, c. 295, §§9, 11, 12, at 554.

12. *See* *Desert Chrysler-Plymouth v. Chrysler Corp.*, 95 Nev. 640, 644, 600 P.2d 1189, 1191 (1979).

13. *See id.* at 644-45, 600 P.2d at 1191-92. *See* NEV. CONST. art. III, §1, art. VI, §6.

14. *Compare* N.R.S. §§482.— 482.— *with* STATUTES OF NEVADA 1977, c. 295, §§9, 11, 12, at 554.

15. *Compare* N.R.S. §§482.— and 482.— *with* STATUTES OF NEVADA 1977, c. 295, §§11, 12, at 554.

16. *See* N.R.S. §§482.— 1, 482.—.

17. *See id.*

18. *See id.* §482.— 2(a)(1)-(7). Chapter 383 adds the following three grounds to those previously enumerated: (1) any unfair business practice by the dealer after the manufacturer or distributor has issued a written warning to the dealer to desist from this practice; (2) conviction of the dealer for a felony; and (3) closure by the dealer for longer than 14 days, unless the closure was caused by a force beyond the control of the dealer. *See id.* §§482.— 2(a) (4), 482.— 2(a) (6)-(7).

19. *See id.* §482.— 2(a).

20. *See id.* §482.— 2(b).

21. *See id.* §482.— 2.

22. *See id.* §482.— 3(a).

a protest.<sup>23</sup>

In the case of a proposed modification, Chapter 383 requires that the manufacturer or distributor give sixty days written notice to the dealer and the Director when the proposed modification would be substantially adverse to the dealer's investment or obligation to provide sales and service.<sup>24</sup> Once notice is received, the dealer has thirty days to file a protest with the Director.<sup>25</sup> Prior law also enumerated factors to be considered by the district court in determining whether good cause existed for termination or modification of a franchise.<sup>26</sup> Chapter 383 provides that these same factors are to be considered by the Director in making this determination.<sup>27</sup>

### *Protection of the Relevant Market Area*

When a dealer receives proper notice that a manufacturer or distributor intends to establish an additional dealership or relocate an existing dealership within the dealer's relevant market area,<sup>28</sup> Chapter 383 provides that an affected dealer must file a protest with the Director within fifteen days of receipt of the notice.<sup>29</sup> The proposed action will be approved at the hearing on the protest if the Director determines that there is not good cause to prevent the establishment or relocation of the dealership.<sup>30</sup> Thus, Chapter 383 apparently imposes the burden of proving that there is good cause to prevent the intended establishment or relocation on the dealer.<sup>31</sup>

Prior law enumerated factors to be considered by the district court in determining whether good cause existed for the intended establishment or relocation of an automobile franchise within the relevant market area.<sup>32</sup> Chapter 383 provides that the Director may consider all of

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23. *See id.* §482.— 3(b).

24. *See id.* §482.—

25. *See id.* §482.— 1(b)(1).

26. *See* STATUTES OF NEVADA 1977, c. 295, §11, at 554.

27. Some of the factors enumerated in N.R.S. §482.— are: (1) the amount of business transacted by the dealer, as compared to the business available to the dealer, but only if there was merchandise available to the dealer in sufficient quantities of models to match competitive makes and models available in the relevant market area; (2) the investment necessarily made and obligations incurred by the dealer to perform its part of the franchise; and (3) the permanency of the dealer's investment.

28. The requirements for establishing an additional dealership or relocating an existing dealership under Chapter 383 do not apply to the following: (1) the relocation of an existing dealership within 2 miles of its former location and within the same city and relevant market area; (2) the establishment of a branch office of the manufacturer or distributor at a fair, exhibition, or similar event which is not intended to operate for more than 30 days; and (3) the reopening of a dealership which has been closed for less than 2 years. *See* N.R.S. §§482.— 2(a)-482.— 2(c).

29. *See id.* §482.— 1(b)(1).

30. *See id.* §482.— 1(b)(2).

31. *Compare* N.R.S. §482.— 2 with STATUTES OF NEVADA 1977, c. 295, §12, at 555.

32. *See* STATUTES OF NEVADA 1977, c. 295, §12, at 555.

these factors in making the determination with the exception of whether the action is for the sole purpose of coercing any existing dealer.<sup>33</sup> In addition to those factors previously specified, Chapter 383 allows the Director to consider whether the proposed establishment or relocation would increase constructive competition and therefore be in the public interest,<sup>34</sup> and any other fact that is relevant to the decision.<sup>35</sup>

### *Hearing and Notice*

If a franchised dealer protests a proposed action by the manufacturer or distributor, Chapter 383 requires the Director to schedule a hearing within sixty days of receipt of the protest.<sup>36</sup> In addition, the Director must notify the dealer,<sup>37</sup> the manufacturer or distributor,<sup>38</sup> and any other dealer who has requested notification or who may be affected adversely by the intended action.<sup>39</sup> The notice must set forth the date, time, and place of the hearing on the protest.<sup>40</sup> Furthermore, the Director is required to notify the manufacturer or distributor that the intended action which gave rise to the protest may not proceed until an authorizing order is issued.<sup>41</sup> The Director may consolidate hearings if two or more protests are filed concerning a particular intended action<sup>42</sup> and may assess costs against the parties.<sup>43</sup> In addition, Chapter 383 provides for the payment of witness fees to all those who appear in a hearing by order of the Director except officers or employees of the state.<sup>44</sup> The decision of the Director is a final one<sup>45</sup> and may not be

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33. The factors enumerated in N.R.S. §482.— 1-6 are: (1) the permanency of the investment of each affected dealer; (2) the effect of the intended action on the business of selling new motor vehicles at retail in the relevant market area; (3) whether the establishment of an additional dealership or the relocation of an existing dealership for motor vehicles of the particular line and make would be injurious to the welfare of the public; (4) whether the dealers franchised to sell new motor vehicles of the particular line and make in the relevant market area are providing adequate competition, convenient customer service, and adequate personnel and facilities for sales of the vehicles to persons in the area, as well as adequate equipment, spare parts and qualified mechanics and other service personnel for repair and maintenance of the vehicles; (5) whether the establishment of an additional dealership to the relocation of an existing dealership would increase constructive competition and therefore be in the public interest; and (6) any other fact which the Director regards as relevant to the decision required of him.

34. *See* N.R.S. §482.— 5.

35. *See id.* §482.— 6.

36. *See id.* §482.— 1.

37. *See id.* §482.— 1(b).

38. *See id.* §482.— 1(a).

39. *See id.* §482.— 1(c).

40. *See id.* §482.—.

41. *See id.* §§482.— 1(a), 482.— 2.

42. *See id.* §482.— 3.

43. *See id.* §482.— 2.

44. *See id.* §482.— 1.

45. *See id.* §482.— 1.

reconsidered after it is received by the parties.<sup>46</sup> Copies of the decision of the Director, accompanied by the findings of fact and the determination of issues, must be delivered to all persons who have requested notice of the decision.<sup>47</sup>

### *Conclusion*

Chapter 383 requires that a manufacturer or distributor notify a dealer prior to any intended termination or modification of the dealer's franchise.<sup>48</sup> Notice must also be given prior to the establishment or relocation of an automobile franchise within the relevant market area of a dealer of the same line and make.<sup>49</sup> Once notified, a dealer may apply to the Director for a hearing to determine whether good cause exists for the intended action.<sup>50</sup> Finally, Chapter 383 sets forth the procedures to be followed by the Director in conducting the hearing<sup>51</sup> and the factors to be considered in determining whether good cause for the intended action exists.<sup>52</sup>

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46. *See id.* §482.— 2.

47. *See id.* §482.— 3.

48. *See id.* §§482.—, 482.—.

49. *See id.* §482.— 1.

50. *See id.* §§482.— 3, 482.— 1(b)(1), 482.— 1(b)(1).

51. *See id.* §§482.—, 482.—, 482.—.

52. *See id.* §§ 482.—, 482.—.

