

3 1. By striking from line eighteen (18) the word "five" and insert-  
4 ing in lieu thereof the word "ten".

5 2. By striking from line twenty (20) the word "five" and inserting  
6 in lieu thereof the word "ten".

7 3. By striking from line twenty-two (22) the word "two" and in-  
8 serting in lieu thereof the word "five".

1 SEC. 2. Section three hundred twenty-two point five (322.5), Code  
2 1966, is hereby amended by striking from line three (3) the word  
3 "twenty-six" and inserting in lieu thereof the word "thirty-five".

1 SEC. 3. Section three hundred twenty-two point twelve (322.12),  
2 Code 1966, is hereby amended by striking from line thirteen (13)  
3 the word "fiscal" and inserting in lieu thereof the words "calendar  
4 year on account of fees applicable to that calendar".

Approved April 14, 1970.

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## CHAPTER 1160

### MOTOR VEHICLE FRANCHISORS

H. F. 1137

AN ACT to provide for fair trade practices by motor vehicle franchisors.

WHEREAS, the sale and distribution of motor vehicles is affected with a public interest, and it is recognized that a significant factor of inducement in the making of a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made, and the expectancy that he will remain in business to provide service for the motor vehicle purchased; and

WHEREAS, it is further recognized that proper motor vehicle service is important to highway safety, and the manufacturer and distributor of motor vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail dealers unless and until the manufacturer or distributor has first established good cause for termination or noncontinuance of any such agreement and in the event that good cause is established, then to also establish that on termination or noncontinuance another dealership in the same line-make will be opened in the same community to the end that there shall be no diminution of locally available service or in the alternative to establish that the community cannot reasonably be expected to support such a dealership; and

WHEREAS, it is also recognized that the opening of additional dealerships of any line-make which is at that time represented in a community may adversely affect the ability of all dealerships of all product lines to provide efficient and proper motor vehicle service in the community and, therefore, additional dealerships should not be opened in a community unless it is first established that there is good cause therefor; NOW  
THEREFORE,

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. When used in this Act, unless the context otherwise  
2 requires:

3 1. "Person" means a sole proprietor, partnership, corporation, or  
4 any other form of business organization.

5 2. "Franchisor" means a person who manufactures or distributes  
6 motor vehicles and who may enter into a franchise as hereinafter  
7 defined.

8 3. "Franchisee" means a person who receives motor vehicles from  
9 the franchisor under a franchise and who offers and sells such motor  
10 vehicles to the general public.

11 4. "Franchise" means a contract between two or more persons  
12 when all of the following conditions are included:

13 a. A commercial relationship of definite duration or continuing  
14 indefinite duration is involved.

15 b. The franchisee is granted the right to offer and sell motor ve-  
16 hicles manufactured or distributed by the franchisor.

17 c. The franchisee, as an independent business, constitutes a com-  
18 ponent of franchisor's distribution system.

19 d. The operation of franchisee's business is substantially associated  
20 with the franchisor's trademark, service mark, tradename, advertis-  
21 ing, or other commercial symbol designating the franchisor.

22 e. The operation of the franchisee's business is substantially reliant  
23 on franchisor for the continued supply of motor vehicles, parts, and  
24 accessories.

25 5. "Motor vehicle" means "motor vehicles" as defined in chapter  
26 three hundred twenty-one (321) of the Code which are subject to  
27 registration pursuant to the provisions thereof.

28 6. "Community" means the franchisee's area of responsibility as  
29 stipulated in the franchise.

30 7. "Commission" means the Iowa state commerce commission.

31 8. "Consumer care" means to perform, for the public, necessary  
32 maintenance and repairs to motor vehicles.

1 SEC. 2. Notwithstanding the terms, provisions or conditions of  
2 any agreement or franchise, no franchisor shall terminate or refuse  
3 to continue any franchise unless the franchisor has first established,  
4 in a hearing held under the provisions of this Act, that:

5 1. The franchisor has good cause for termination or noncontinu-  
6 ance, and

7 2. Upon termination or noncontinuance, another franchise in the  
8 same line-make will become effective in the same community, without  
9 diminution of the motor vehicle service formerly provided, or that  
10 the community cannot be reasonably expected to support such a dealer-  
11 ship; provided however, a franchisor may terminate a franchise for a  
12 particular line-make if the franchisor discontinues that line-make and  
13 a franchisor may terminate a franchise if the franchisee's license as  
14 a motor vehicle dealer is revoked pursuant to the provisions of chapter  
15 three hundred twenty-two (322) of the Code.

1 SEC. 3. In the event that a franchisor is permitted to terminate  
2 or not continue a franchise, and is further permitted not to enter into  
3 a franchise for the line-make in the community, no franchise shall

4 thereafter be entered into for the sale of motor vehicles of that line-  
5 make in the community, unless the franchisor has first established,  
6 in a hearing held under the provisions of this Act, that there has  
7 been a change of circumstances so that the community at that time can  
8 be reasonably expected to support the dealership.

1 SEC. 4. No franchisor shall enter into any franchise for the pur-  
2 pose of establishing an additional motor vehicle dealership in any  
3 community in which the same line-make is then represented, unless  
4 the franchisor has first established in a hearing held under the pro-  
5 visions of this Act that there is good cause for such additional motor  
6 vehicle dealership under such franchise, and that it is in the public  
7 interest.

1 SEC. 5. Every franchisor and franchisee shall fulfill the terms  
2 of any express or implied warranty concerning the sale of a motor  
3 vehicle to the public of the line-make which is the subject of a contract  
4 or franchise agreement between the parties. If it is determined by  
5 the district court that either the franchisor or franchisee, or both,  
6 have violated an express or implied warranty, the court shall add to  
7 any award or relief granted an additional award for reasonable attor-  
8 ney fees and other necessary expenses for maintaining the litigation.

1 SEC. 6. In the event that a franchisor seeks to terminate or not  
2 continue any franchise, or seeks to enter into a franchise establishing  
3 an additional motor vehicle dealership of the same line-make, the  
4 franchisor shall file an application with the commission for permission  
5 to terminate or not continue the franchise, or for permission to enter  
6 into a franchise for additional representation of the same line-make  
7 in that community.

1 SEC. 7. Upon receiving an application, the commission shall enter  
2 an order fixing a time, which shall be within ninety days of the date  
3 of such order, and place of hearing, and shall send by certified or  
4 registered mail, with return receipt requested, a copy of the order to  
5 the franchisee whose franchise the franchisor seeks to terminate or  
6 not continue. If the application requests permission to establish an  
7 additional motor vehicle dealership, a copy of the order shall be sent  
8 to all franchisees in the community who are then engaged in the busi-  
9 ness of offering to sell or selling the same line-make. Copies of orders  
10 shall be addressed to the franchisee at the place where the business is  
11 conducted. The commission may also give notice of franchisor's ap-  
12 plication to any other parties whom the commission may deem inter-  
13 ested persons, such notice to be in the form and substance and given  
14 in the manner the commission deems appropriate.

15 Any person who can show an interest in the application may become  
16 a party to the hearing, whether or not he receives notice; provided  
17 however, a party not receiving notice shall be limited to participation  
18 at the hearing on the question of the public interest in the termination  
19 or continuation of the franchise or in the establishment of an addi-  
20 tional motor vehicle dealership.

1 SEC. 8. If the commission finds it desirable it may upon request  
2 continue the date of hearing for a period of ninety days, and may

3 upon application, but not ex parte, continue the date of hearing for  
4 an additional period of ninety days.

1 SEC. 9. Upon hearing, the franchisor shall have the burden of  
2 proof to establish that under the provisions of this Act he should be  
3 granted permission to terminate or not continue the franchise, or  
4 to enter into a franchise establishing an additional motor vehicle  
5 dealership.

6 Nothing contained in this Act shall be construed to require or  
7 authorize any investigation by the commission of any matter before  
8 the commission under this Act. Upon hearing, the commission shall  
9 hear the evidence introduced by the parties and shall make its deci-  
10 sion solely upon the record so made.

1 SEC. 10. The rules of civil procedure relating to discovery and  
2 inspection shall apply to hearings held under the provisions of this  
3 Act, and the commission may issue orders to give effect to such rules.

4 In the event issues are raised which would involve violations of  
5 any state or federal antitrust or price-fixing law, all discovery and  
6 inspection proceedings which would be available under such issues in  
7 a state or federal court action shall be available to the parties to the  
8 hearing, and the commission may issue orders to give effect to such  
9 proceedings.

10 Evidence which would be admissible under the issues in a state or  
11 federal court action is admissible in a hearing held by the commis-  
12 sion. The commission shall apportion all costs between the parties.

1 SEC. 11. Notwithstanding the terms, provisions or conditions of  
2 any agreement or franchise, the following shall not constitute good  
3 cause for the termination or noncontinuation of a franchise, or for  
4 entering into a franchise for the establishment of an additional dealer-  
5 ship in a community for the same line-make:

6 1. The sole fact that franchisor desires further penetration of the  
7 market.

8 2. The change of ownership of the franchisee's dealership or the  
9 change of executive management of the franchisee's dealership, unless  
10 the franchisor, having the burden of proof, proves that such change  
11 of ownership or executive management will be substantially detri-  
12 mental to the distribution of franchisor's motor vehicles in the com-  
13 munity.

14 3. The fact that the franchisee refused to purchase or accept de-  
15 livery of any motor vehicle or vehicles, parts, accessories or any other  
16 commodity or service not ordered by the franchisee.

1 SEC. 12. Notwithstanding the terms, provisions or conditions of  
2 any agreement or franchise, subject to the provisions of subsection  
3 two (2) of section eleven (11) of this Act, in the event of the sale or  
4 transfer of ownership of the franchisee's dealership by sale or trans-  
5 fer of the business or by stock transfer or in the event of change in  
6 the executive management of the franchisee's dealership the franchisor  
7 shall give effect to such a change in the franchise unless the transfer  
8 of the franchisee's license under chapter three hundred twenty-two  
9 (322) of the Code is denied or the new owner is unable to obtain a  
10 license under chapter three hundred twenty-two (322) of the Code,  
11 as the case may be.

1 SEC. 13. The commission may issue subpoenas, administer oaths,  
2 compel the attendance of witnesses and production of books, papers,  
3 documents, and all other evidence. The commission may apply to the  
4 district court of the county wherein the hearing is being held for a  
5 court order enforcing this section.

1 SEC. 14. In the event that a franchisor enters into or attempts to  
2 enter into a franchise, whether upon termination or refusal to con-  
3 tinue another franchise or upon the establishment of an additional  
4 motor vehicle dealership in a community where the same line-make  
5 is then represented, without first complying with the provisions of  
6 this Act, no license under chapter three hundred twenty-two (322) of  
7 the Code shall be issued to that franchisee or proposed franchisee to  
8 engage in the business of selling motor vehicles manufactured or  
9 distributed by that franchisor.

1 SEC. 15. In determining whether good cause has been established  
2 for terminating or not continuing a franchise, the commission shall  
3 take into consideration the existing circumstances, including, but not  
4 limited to:

- 5 1. Amount of business transacted by the franchisee.
- 6 2. Investment necessarily made and obligations incurred by the  
7 franchisee in the performance of his part of the franchise.
- 8 3. Permanency of the investment.
- 9 4. Whether it is injurious to the public welfare for the business of  
10 of the franchisee to be disrupted.
- 11 5. Whether the franchisee has adequate motor vehicle service facil-  
12 ities, equipment, parts and qualified service personnel to reasonably  
13 provide consumer care for the motor vehicles sold at retail by the  
14 franchisee and any other motor vehicles of the same line-make.
- 15 6. Whether the franchisee refuses to honor warranties of the fran-  
16 chisor to be performed by the franchisee, provided that the franchisor  
17 reimburses the franchisee for such warranty work performed by the  
18 franchisee.
- 19 7. Except as provided in section eleven (11) of this Act, failure by  
20 the franchisee to substantially comply with those requirements of  
21 the franchise which are determined by the commission to be reasonable  
22 and material.
- 23 8. Except as provided in section eleven (11) of this Act, bad faith  
24 by the franchisee in complying with those terms of the franchise  
25 which are determined by the commission to be reasonable and  
26 material.

1 SEC. 16. In determining whether good cause has been established  
2 for entering into an additional franchise for the same line-make, the  
3 commission shall take into consideration the existing circumstances,  
4 including, but not limited to:

- 5 1. Amount of business transacted by other franchisees of the same  
6 line-make in that community.
- 7 2. Investment necessarily made and obligations incurred by other  
8 franchisees of the same line-make, in that community, in the per-  
9 formance of their part of their franchises.
- 10 3. Permanency of the investment.

11 4. Effect on the retail motor vehicle business as a whole in that  
12 community.

13 5. Whether it is injurious to the public welfare for an additional  
14 franchise to be established.

15 6. Whether the franchisees of the same line-make in that commu-  
16 nity are providing adequate consumer care for the motor vehicles of  
17 the line-make which shall include the adequacy of motor vehicle serv-  
18 ice facilities, equipment, supply of parts and qualified service per-  
19 sonnel.

1 SEC. 17. Any party to a hearing before the commission may take  
2 an appeal from any final order entered in such hearing in the man-  
3 ner provided for appeals in section three hundred twenty-two point  
4 ten (322.10) of the Code.

1 SEC. 18. If any provision of this Act or the application of the  
2 Act to any person or circumstance is held invalid, such invalidity  
3 shall not affect provisions or applications of the Act which can be  
4 given effect without the invalid provision and to this end the provi-  
5 sions of this Act are declared to be severable.

Approved March 20, 1970.

## CHAPTER 1161

### MARINE FUEL TAX FUND

#### H. F. 1232

AN ACT relating to motor fuel used in watercraft, the creation of a marine fuel tax fund, and the allocation and appropriation of such fund to the use of the conservation commission.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Chapter two hundred thirteen (213), section one (1),  
2 Acts of the Sixty-third General Assembly, First Session, which re-  
3 peals section three hundred twenty-four point seventy-eight (324.78),  
4 Code 1966, and enacted a substitute therefor, is hereby amended by  
5 adding the following:

6 "Before the preceding credits are made for the fiscal year begin-  
7 ning July 1, 1970, the amount of thirty-five thousand (35,000) dollars,  
8 which it is hereby determined represents the net proceeds of motor  
9 fuel tax attributable to motor fuel used in watercraft, shall be placed  
10 in a separate fund, which is hereby created and designated as the  
11 'marine fuel tax fund'. All moneys derived from the excise tax on  
12 the sale of motor fuel used in watercraft after July 1, 1971, shall be  
13 deposited in the marine fuel tax fund. Moneys in such fund shall  
14 be subject to appropriation by the general assembly to the state  
15 conservation commission for use in its recreational boating program,  
16 which may include but shall not be limited to:

17 1. Dredging and renovation of natural lakes of this state.

18 2. Acquisition, development and maintenance of access to public  
19 boating waters.