

Reprinted 2/12/86

SENATE FILE 2084
BY COMMITTEE ON TRANSPORTATION
(formerly SSB 2043)
Approved 1/29 (p.181)

FILED JAN 28 1986

Passed Senate, Date 1-30-86 (p.196) Passed House, Date 4-16-86 (P.1632)
Vote: Ayes 42 Nays 3 Vote: Ayes 62 Nays 33

Approved May 28, 1986

Motion to reconsider 2/3 (p.217) passed 2-11

Repassed Senate 2-11-86 (p.285)

33-12

A BILL FOR

1 An Act prohibiting price discrimination in the sale or lease of
2 motor vehicles by motor vehicle manufacturers, distributors,
3 or wholesalers and providing for enforcement and penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2084

1 Section 1. NEW SECTION. 551.12 PRICE DISCRIMINATION --
2 SALE OR LEASE OF MOTOR VEHICLES.

3 1. A manufacturer, distributor, or wholesaler of motor
4 vehicles or any agent or representative of a manufacturer,
5 distributor, or wholesaler shall not discriminate in price
6 against Iowa purchasers or leasees of motor vehicles by
7 selling or leasing a new motor vehicle similarly equipped to
8 any dealer licensed pursuant to chapter 322 at a price, which
9 shall include rebates, interest assistance, fleet options, or
10 assistance pass throughs, higher than the lowest price at
11 which the manufacturer, distributor, wholesaler, agent, or
12 representative sells or leases or offers to sell or lease any
13 new motor vehicle of the same model similarly equipped to any
14 other motor vehicle dealer or user in this state or to any
15 other dealer or user who purchases or leases such new motor
16 vehicle in any other state or the District of Columbia for
17 ownership, registration, resale, re-lease, or principal use in
18 this state, other than sales to a motor vehicle dealer for
19 resale to local, state, or federal governments or for donation
20 to a driver education program.

21 2. If the attorney general determines that a person has
22 engaged in, is engaging in, or is about to engage in any
23 practice in violation of this section, the attorney general
24 may:

25 a. Require the person to file on forms as the attorney
26 general may prescribe a statement or report in writing under
27 oath or otherwise, as to all the facts and circumstances con-
28 cerning prohibited practices by the person, and any other in-
29 formation the attorney general may deem necessary.

30 b. Examine under oath any person in connection with the
31 prohibited activity.

32 c. Examine any record, book, document, account, or paper
33 or motor vehicle as the attorney general may deem necessary.

34 d. Pursuant to an order of a district court, impound any
35 record, book, document, account, paper, or motor vehicle that

1 is produced in accordance with this section, and retain
2 possession of same until completion of all proceedings in
3 connection with which the same are produced.

4 3. a. To accomplish the objectives and to carry out the
5 duties prescribed by this section, the attorney general, in
6 addition to other powers conferred, may issue subpoenas to any
7 person, administer an oath or affirmation to any person,
8 conduct hearings in aid of any investigation or inquiry,
9 prescribe forms and adopt rules as may be necessary.

10 b. Information or evidence provided the attorney general
11 by a person pursuant to subsections 2 and 3 shall not be ad-
12 mitted in evidence, or used in any criminal prosecution. If a
13 criminal prosecution under this section is initiated in a
14 state court against a person who has provided information pur-
15 suant to subsections 3 and 4, the state shall have the burden
16 of proof that the information so provided was not used in any
17 manner to further the criminal investigation or prosecution.

18 c. In any civil action brought under this section, the
19 attorney general shall have the right to require any defendant
20 to give testimony, and no criminal prosecution based upon
21 transactions or acts about which the defendant is questioned
22 and required to give testimony shall be brought against the
23 defendant.

24 4. Service by the attorney general of any notice requiring
25 a person to file a statement or report, or of a subpoena upon
26 any person, shall be made personally within this state, but if
27 it cannot be obtained, substituted service may be made in the
28 following manner:

29 a. Personal service outside this state.

30 b. The mailing by registered mail to the last known place
31 of business, residence, or abode within or without this state
32 of the person for whom the same is intended.

33 c. As to any person other than a natural person, in the
34 manner provided in the rules of civil procedure as if a
35 petition had been filed.

1 d. The service as a district court may direct in lieu of
2 personal service within this state.

3 5. If any person fails or refuses to file any statement or
4 report, or obey any subpoena issued by the attorney general,
5 the attorney general may, after notice, apply to a district
6 court and, after hearing, request an order:

7 a. Granting injunctive relief, restraining the sale or
8 advertisement of any merchandise by the person.

9 b. Dissolving a corporation created by or under the laws
10 of this state or revoking or suspending the certificate of
11 authority to do business in this state of a foreign corpora-
12 tion or revoking or suspending any other licenses, permits, or
13 certificates issued pursuant to law to such person which are
14 used to further the allegedly unlawful practice.

15 c. Granting any other relief as may be required until the
16 person files the statement or report, or obeys the subpoena.

17 6. Whenever it appears to the attorney general that a
18 person has engaged in, is engaging in or is about to engage in
19 any practice declared to be unlawful by this section, the
20 attorney general may seek and obtain in an action in a
21 district court an injunction prohibiting the person from
22 continuing the practices or engaging in or doing any other
23 acts.

24 7. In any action brought under this section, the attorney
25 general is entitled to recover costs for the use of this
26 state.

27 8. The state or a person which is injured or threatened
28 with injury by conduct prohibited under this section may bring
29 suit to:

30 a. Prevent or restrain conduct prohibited under this sec-
31 tion and remove the conduct's effect by injunction,
32 divestiture, divorcement, dissolution of domestic enterprises'
33 right to do business in this state, compelling the forfeiture
34 or restraint of the issuance of a certificate of
35 incorporation, permit to transact business, license, or

1 franchise, or granting other equitable relief. The state may
2 bring suit under this section without posting bond.

3 b. Recover actual damages resulting from conduct
4 prohibited under this chapter.

5 c. Recover the necessary costs of bringing suit, including
6 a reasonable attorney fee. However, the state may not recover
7 any attorney fee.

8 d. In addition, the court may assess a civil penalty
9 against an enterprise whose conduct is prohibited under this
10 section. The civil penalty assessed shall not exceed ten
11 percent of the total value of the motor vehicles which were
12 the subject of the prohibited conduct sold by the enterprise
13 in each year in which this conduct occurred, but this penalty
14 shall not exceed five hundred thousand dollars. In computing
15 this penalty, only the four most recent years after July 1,
16 1986, in which the prohibited conduct occurred, as of com-
17 mencement of suit under this section, shall be used in the
18 computation.

19

EXPLANATION

20 The bill prohibits the sale or lease of a motor vehicle by
21 a manufacturer, distributor, or wholesaler to any person at a
22 price which is less than the price charged to a retail dealer.
23 This bill also delegates enforcement authority to the office
24 of attorney general.

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SENATE FILE 2084

S-3055

1 Amend Senate File 2084 as follows:
2 1. Page 1, line 20, by inserting after the word
3 "program." the following: "For purposes of this
4 section, "motor vehicle" means a motor vehicle subject
5 to registration with a gross vehicle weight rating as
6 defined in 49 C.F.R. 567.4(g)(3) of less than fifteen
7 thousand pounds, but does not include a motor vehicle
8 which is not a completed motor vehicle as defined in
9 section 322.2, subsection 21, or a motor vehicle
10 chassis, either of which is sold to a person licensed
11 as a manufacturer pursuant to chapter 322."

S-3055 Filed and adopted Feb. 11, 1986 BY COLEMAN, WELSH
(p. 228)

SENATE FILE 2084

S-3058

1 Amend Senate File 2084 as follows:
2 1. Page 1, by striking lines 3 through 19 and
3 inserting the following:
4 "1. A manufacturer, distributor, or wholesaler
5 shall not offer to sell or sell any new motor vehicle
6 at a lower actual price than the actual price offered
7 to any other motor vehicle dealer for the same model
8 vehicle similarly equipped or utilize any device
9 including, but not limited to, sales promotion plans
10 or programs which result in a lesser actual price.
11 This subsection shall not be construed to prevent the
12 utilization of sales promotion plans or programs or
13 the offering of volume discounts through new motor
14 vehicle dealers for fleet or volume purchasers, if
15 such a program is available to all new motor vehicle
16 dealers in the state from the same manufacturer. This
17 subsection shall not apply so long as a manufacturer
18 or distributor offers to sell or sells new motor
19 vehicles to all motor vehicle dealers at an equal
20 price. However, this subsection shall not apply to
21 sales to a motor vehicle dealer for resale to any unit
22 of government, charitable organization, or employee of
23 a manufacturer or distributor, or to sales made
24 directly to a unit of government, charitable
25 organization or employee of a manufacturer or
26 distributor, or to sales to a motor vehicle dealer or
27 any motor vehicle ultimately sold or donated by the
28 dealer".

S-3058 Filed and lost February 11, 1986

(p. 228)

BY KINLEY

Transportation: Jay, Chair, Harbor and Woods.

Amend (5352) & To Pass 3/14 (p. 768)

SENATE FILE **2084**
BY COMMITTEE ON TRANSPORTATION

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 11, 1986)

_____ - New Language by the Senate

Re Passed Senate, Date 5-2-86 (p. 1553) Passed House, Date 4-16-86 (p. 1532)

Vote: Ayes 42 Nays 2 Vote: Ayes 62 Nays 33

Approved May 28, 1986

Proposed Senate 5-2-86 (p. 1602)
34-9

Motion to reconsider (p. 1532) 4/17 (p. 1545)
" w/d 4/25

A BILL FOR

1 An Act prohibiting price discrimination in the sale or lease of
2 motor vehicles by motor vehicle manufacturers, distributors,
3 or wholesalers and providing for enforcement and penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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5321

1 Section 1. NEW SECTION. 551.12 PRICE DISCRIMINATION --
2 SALE OR LEASE OF MOTOR VEHICLES.

3 1. A manufacturer, distributor, or wholesaler of motor
4 vehicles or any agent or representative of a manufacturer,
5 distributor, or wholesaler shall not discriminate in price
6 against Iowa purchasers or leasees of motor vehicles by
7 selling or leasing a new motor vehicle similarly equipped to
8 any dealer licensed pursuant to chapter 322 at a price, which
9 shall include rebates, interest assistance, fleet options, or
10 assistance pass throughs, higher than the lowest price at
11 which the manufacturer, distributor, wholesaler, agent, or
12 representative sells or leases or offers to sell or lease any
13 new motor vehicle of the same model similarly equipped to any
14 other motor vehicle dealer or user in this state or to any
15 other dealer or user who purchases or leases such new motor
16 vehicle in any other state or the District of Columbia for
17 ownership, registration, resale, re-lease, or principal use in
18 this state, other than sales to a motor vehicle dealer for
19 resale to local, state, or federal governments or for donation
20 to a driver education program. For purposes of this section,
21 "motor vehicle" means a motor vehicle subject to registration
22 with a gross vehicle weight rating as defined in 49 C.F.R.
23 567.4(g)(3) of less than fifteen thousand pounds, but does not
24 include a motor vehicle which is not a completed motor vehicle
25 as defined in section 322.2, subsection 21, or a motor vehicle
26 chassis, either of which is sold to a person licensed as a
27 manufacturer pursuant to chapter 322.

28 2. If the attorney general determines that a person has
29 engaged in, is engaging in, or is about to engage in any
30 practice in violation of this section, the attorney general
31 may:

- 32 a. Require the person to file on forms as the attorney
33 general may prescribe a statement or report in writing under
34 oath or otherwise, as to all the facts and circumstances con-
35 cerning prohibited practices by the person, and any other in-

1 formation the attorney general may deem necessary.

2 b. Examine under oath any person in connection with the
3 prohibited activity.

4 c. Examine any record, book, document, account, or paper
5 or motor vehicle as the attorney general may deem necessary.

6 d. Pursuant to an order of a district court, impound any
7 record, book, document, account, paper, or motor vehicle that
8 is produced in accordance with this section, and retain
9 possession of same until completion of all proceedings in
10 connection with which the same are produced.

11 3. a. To accomplish the objectives and to carry out the
12 duties prescribed by this section, the attorney general, in
13 addition to other powers conferred, may issue subpoenas to any
14 person, administer an oath or affirmation to any person,
15 conduct hearings in aid of any investigation or inquiry,
16 prescribe forms and adopt rules as may be necessary.

17 b. Information or evidence provided the attorney general
18 by a person pursuant to subsections 2 and 3 shall not be ad-
19 mitted in evidence, or used in any criminal prosecution. If a
20 criminal prosecution under this section is initiated in a
21 state court against a person who has provided information pur-
22 suant to subsections 3 and 4, the state shall have the burden
23 of proof that the information so provided was not used in any
24 manner to further the criminal investigation or prosecution.

25 c. In any civil action brought under this section, the
26 attorney general shall have the right to require any defendant
27 to give testimony, and no criminal prosecution based upon
28 transactions or acts about which the defendant is questioned
29 and required to give testimony shall be brought against the
30 defendant.

31 4. Service by the attorney general of any notice requiring
32 a person to file a statement or report, or of a subpoena upon
33 any person, shall be made personally within this state, but if
34 it cannot be obtained, substituted service may be made in the
35 following manner:

1 a. Personal service outside this state.

2 b. The mailing by registered mail to the last known place
3 of business, residence, or abode within or without this state
4 of the person for whom the same is intended.

5 c. As to any person other than a natural person, in the
6 manner provided in the rules of civil procedure as if a
7 petition had been filed.

8 d. The service as a district court may direct in lieu of
9 personal service within this state.

10 5. If any person fails or refuses to file any statement or
11 report, or obey any subpoena issued by the attorney general,
12 the attorney general may, after notice, apply to a district
13 court and, after hearing, request an order:

14 a. Granting injunctive relief, restraining the sale or
15 advertisement of any merchandise by the person.

16 b. Dissolving a corporation created by or under the laws
17 of this state or revoking or suspending the certificate of
18 authority to do business in this state of a foreign corpora-
19 tion or revoking or suspending any other licenses, permits, or
20 certificates issued pursuant to law to such person which are
21 used to further the allegedly unlawful practice.

22 c. Granting any other relief as may be required until the
23 person files the statement or report, or obeys the subpoena.

24 6. Whenever it appears to the attorney general that a
25 person has engaged in, is engaging in or is about to engage in
26 any practice declared to be unlawful by this section, the
27 attorney general may seek and obtain in an action in a
28 district court an injunction prohibiting the person from
29 continuing the practices or engaging in or doing any other
30 acts.

31 7. In any action brought under this section, the attorney
32 general is entitled to recover costs for the use of this
33 state.

34 8. The state or a person which is injured or threatened
35 with injury by conduct prohibited under this section may bring

1 suit to:

2 a. Prevent or restrain conduct prohibited under this sec-
3 tion and remove the conduct's effect by injunction,
4 divestiture, divorcement, dissolution of domestic enterprises'
5 right to do business in this state, compelling the forfeiture
6 or restraint of the issuance of a certificate of
7 incorporation, permit to transact business, license, or
8 franchise, or granting other equitable relief. The state may
9 bring suit under this section without posting bond.

10 b. Recover actual damages resulting from conduct
11 prohibited under this chapter.

12 c. Recover the necessary costs of bringing suit, including
13 a reasonable attorney fee. However, the state may not recover
14 any attorney fee.

15 d. In addition, the court may assess a civil penalty
16 against an enterprise whose conduct is prohibited under this
17 section. The civil penalty assessed shall not exceed ten
18 percent of the total value of the motor vehicles which were
19 the subject of the prohibited conduct sold by the enterprise
20 in each year in which this conduct occurred, but this penalty
21 shall not exceed five hundred thousand dollars. In computing
22 this penalty, only the four most recent years after July 1,
23 1986, in which the prohibited conduct occurred, as of com-
24 mencement of suit under this section, shall be used in the
25 computation.

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SENATE FILE 2084

H-5831

1 Amend Senate File 2084, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 551.12 PRICE DIS-
6 CRIMINATION -- SALE OR LEASE OF MOTOR VEHICLES.

7 1. A manufacturer, distributor, or wholesaler of
8 motor vehicles shall not discriminate in price by
9 selling or leasing a new motor vehicle to any dealer
10 licensed pursuant to chapter 322 or other person
11 except to employees, retirees, officers or directors
12 of the manufacturer, distributor, or wholesaler or
13 their affiliated companies, to any unit of government,
14 to any charitable organization, or for any driver
15 education program, at a price lower than the lowest
16 price at which the manufacturer, distributor, or
17 wholesaler offers to sell or lease any new motor
18 vehicle of the same make, model, and equipment to any
19 motor vehicle dealer. Provided, this section shall
20 not be construed to prohibit a manufacturer,
21 distributor, or wholesaler from offering its dealers
22 marketing or incentive programs or other discounts as
23 long as such marketing or incentive programs or
24 discounts are available to all dealers of the same
25 line make on a nondiscriminatory basis. A
26 manufacturer, distributor, or wholesaler shall not
27 knowingly make such incentives or other discounts
28 available with respect to any motor vehicle that is to
29 be sold to a fleet operator for the purpose of
30 entering into a retail lease of such vehicle unless
31 the same or equivalent incentives or other discounts
32 are available to dealers for retail sales
33 transactions; provided, however, that a manufacturer,
34 distributor or wholesaler may make fleet incentives
35 available to dealers or dealer affiliated leasing
36 companies in connection with their retail leases
37 without having to grant equivalent incentives to
38 dealers for retail sales. For purposes of this
39 section, "motor vehicle" means a motor vehicle subject
40 to registration with a gross vehicle weight rating as
41 defined in 49 C.F.R. 567.4(g)(3) of less than five
42 thousand pounds manufactured for use in the
43 transportation of not more than ten persons, but does
44 not include a motor vehicle which is not a completed
45 motor vehicle as defined in section 322.2, subsection
46 21, a motor vehicle which is defined as a motor home
47 in section 321.1, subsection 68, paragraph "d", or a
48 motor vehicle chassis, either of which is sold to a
49 person licensed as a manufacturer pursuant to chapter
50 322.

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1 2. As used in this section, unless the context
2 otherwise requires:

3 a. "Fleet operator" means any person purchasing
4 and registering or leasing ten or more new motor
5 vehicles during any twelve-month period for use in the
6 person's business by the person, including for lease
7 or rental to another person.

8 b. "Retail lease" means a contract or other
9 agreement or any renewal for the use of a new motor
10 vehicle by any end user, other than a fleet operator
11 for use in its business, for a term other than a
12 daily, weekly, or other nonrenewable short-term period
13 in exchange for money or other valuable consideration.

14 c. "Retail sale" means a sale of a new motor
15 vehicle to any person other than a fleet operator.

16 3. If the attorney general determines that a
17 person has engaged in, is engaging in, or is about to
18 engage in any practice in violation of this section,
19 the attorney general may:

20 a. Require the person to file on forms as the
21 attorney general may prescribe a statement or report
22 in writing under oath or otherwise, as to all the
23 facts and circumstances concerning prohibited
24 practices by the person, and any other information the
25 attorney general may deem necessary.

26 b. Examine under oath any person in connection
27 with the prohibited activity.

28 c. Examine any record, book, document, account,
29 paper, or motor vehicles as the attorney general may
30 deem necessary.

31 d. Pursuant to an order of a district court,
32 impound any record, book, document, account, paper, or
33 motor vehicle that is produced in accordance with this
34 section, and retain possession of same until
35 completion of all proceedings in connection with which
36 the same are produced.

37 4. a. To accomplish the objectives and to carry
38 out the duties prescribed by this section, the
39 attorney general, in addition to other powers
40 conferred, may issue subpoenas to any person,
41 administer an oath or affirmation to any person,
42 conduct hearings in aid of any investigation or
43 inquiry, prescribe forms and adopt rules as may be
44 necessary.

45 b. Information or evidence provided the attorney
46 general by a person pursuant to subsections 3 and 4
47 shall not be admitted in evidence, or used in any
48 criminal prosecution. If a criminal prosecution under
49 this section is initiated in a state court against a
50 person who has provided information pursuant to

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1 subsections 4 and 5, the state shall have the burden
2 of proof that the information so provided was not used
3 in any manner to further the criminal investigation or
4 prosecution.

5 c. In any civil action brought under this section,
6 the attorney general shall have the right to require
7 any defendant to give testimony, and no criminal
8 prosecution based upon transactions or acts about
9 which the defendant is questioned and required to give
10 testimony shall be brought against the defendant.

11 5. Service by the attorney general of any notice
12 requiring a person to file a statement or report, or
13 of a subpoena upon any person, shall be made
14 personally within this state, but if it cannot be
15 obtained, substituted service may be made in the
16 following manner:

17 a. Personal service outside this state.

18 b. The mailing by registered mail to the last
19 known place of business, residence, or abode within or
20 without this state of the person for whom the same is
21 intended.

22 c. As to any person other than a natural person,
23 in the manner provided in the rules of civil procedure
24 as if a petition had been filed.

25 d. The service as a district court may direct in
26 lieu of personal service within this state.

27 6. If any person fails or refuses to file any
28 statement or report, or obey any subpoena issued by
29 the attorney general, the attorney general may, after
30 notice, apply to a district court and, after hearing
31 and upon meeting customary legal standards for
32 obtaining such relief, request an order:

33 a. Granting injunctive relief, restraining the
34 sale of any motor vehicle by the person.

35 b. Dissolving a corporation created by or under
36 the laws of this state, or revoking or suspending the
37 certificate of authority to do business in this state
38 of a foreign corporation, or revoking or suspending
39 any other licenses, permits, or certificates issued
40 pursuant to law to such person which are used to
41 further the allegedly unlawful practice.

42 c. Granting any other relief as may be required
43 until the person files the statement or report, or
44 obeys the subpoena.

45 7. Whenever it appears to the attorney general
46 that a person has engaged in, is engaging in, or is
47 about to engage in any practice declared to be
48 unlawful by this section, and the proceedings would be
49 in the public interest, the attorney general may seek
50 and obtain in an action in a district court an

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1 injunction prohibiting the person from continuing the
 2 practices or engaging in or doing any such unlawful
 3 acts upon meeting customary legal standards for
 4 obtaining such relief.

5 8. In any action brought under this section, the
 6 attorney general is entitled to recover costs for the
 7 use of this state.

8 9. This section shall not bar any claim of a
 9 person who suffers damages as a result of violations
 10 of this Act against such person committing or inducing
 11 the violations. The court in its discretion may award
 12 actual damages or any other relief the court deems
 13 proper. In any action brought by a person under this
 14 section, the court may award reasonable attorneys'
 15 fees and costs to the prevailing party. However, the
 16 state may not recover any attorneys' fees."

BY SHERZAN of Polk

SULLIVAN of Van Buren

PAVICH of Pottawattamie

H-5831 FILED APRIL 15, 1986

Law 4/16 (p 1528)

SENATE FILE 2084

H-5352

1 Amend Senate File 2084, as amended, passed, and
 2 reprinted by the Senate, as follows:

3 1. Page 1, line 25, by inserting after the figure
 4 "21," the following: "a motor vehicle which is
 5 defined as a motor home in section 321.1, subsection
 6 68, paragraph "d",".

H-5352 FILED MARCH 17, 1986

BY COMMITTEE ON TRANSPORTATION

Blaine etc 4/16 (p 1532)

SENATE FILE 2084

H-5833

1 Amend Senate File 2084, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 551.12 PRICE
6 DISCRIMINATION -- SALE OR LEASE OF MOTOR VEHICLES.

7 1. As used in this section, unless the context
8 otherwise requires:

9 a. "Motor vehicle" means a motor vehicle subject
10 to registration under chapter 321 with a gross vehicle
11 weight rating as defined in 49 C.F.R. 567.4(g)(3) of
12 less than nine thousand pounds, but does not include a
13 motor vehicle which is not a completed motor vehicle
14 as defined in section 322.2, subsection 21, or a motor
15 vehicle chassis, either of which is sold to a
16 manufacturer and does not include a motor vehicle
17 which is defined as a motor home in section 321.1,
18 subsection 68, paragraph "d".

19 b. "Fleet buyer" means any person, except a rental
20 company, which purchases and registers or leases ten
21 or more new motor vehicles during any twelve-month
22 period for use in the person's business.

23 c. "Rental company" means any person, except a
24 dealer or dealer affiliated leasing company, in the
25 primary business of the rental, retail lease or retail
26 sale of motor vehicles.

27 d. "Retail buyer" means a person who buys a motor
28 vehicle but does not include a fleet buyer, a rental
29 company, or a dealer.

30 e. "Retail lease" means a contract for the use of
31 a motor vehicle by any person for a term of more than
32 sixty days but does not include sales or leases to a
33 fleet buyer.

34 f. "Rental" means a contract for the use of a
35 motor vehicle by any person for a period of sixty days
36 or less.

37 g. "Dealer" means a motor vehicle dealer licensed
38 under chapter 322.

39 h. "Manufacturer" means a manufacturer,
40 distributor, or wholesaler licensed under chapter 322.

41 i. "Incentive" means a discount, rebate, interest
42 assistance, option, assistance pass through, and any
43 other benefit provided to a dealer with respect to the
44 acquisition, sale, or lease of a motor vehicle or to a
45 motor vehicle purchaser by a manufacturer.

46 j. "Price" means the dollar purchase price of a
47 motor vehicle, including incentives.

48 2. A manufacturer shall not knowingly discriminate
49 in price against Iowa purchasers or lessees of motor
50 vehicles by selling or leasing a new motor vehicle to

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1 any dealer at a price lower than the lowest price at
2 which the manufacturer offers to sell or lease any new
3 motor vehicle of the same make and model similarly
4 equipped to any other dealer.

5 This section does not apply to sales by
6 manufacturers to dealers for resale to employees,
7 retirees, officers or directors of a manufacturer or
8 its affiliated companies, to any unit of government,
9 to any charitable organization, or for any driver
10 education program.

11 This section shall not be construed to prohibit a
12 manufacturer from offering incentives to its (dealers,
13 dealer-affiliated leasing companies, fleet buyers or
14 to retail buyers so long as the same or equivalent
15 incentives are available to all dealers of the same
16 line make on a nondiscriminatory basis. If the
17 manufacturer makes any incentive available to a dealer
18 for resale or re-lease to a rental company, the same
19 or equivalent incentive must be made available to
20 dealers for resale to retail buyers.

21 3. A person shall not knowingly provide, induce or
22 receive a discrimination in price which is prohibited
23 by this section.

24 4. If the attorney general determines that a
25 person has engaged in, is engaging in, or is about to
26 engage in any practice in violation of this section,
27 the attorney general may:

28 a. Require the person to file on forms as the
29 attorney general may prescribe a statement or report
30 in writing under oath or otherwise, as to all the
31 facts and circumstances concerning prohibited
32 practices by the person, and any other information the
33 attorney general may deem necessary.

34 b. Examine under oath any person in connection
35 with the prohibited activity.

36 c. Examine any record, book, document, account, or
37 paper or motor vehicle as the attorney general may
38 deem necessary.

39 d. Pursuant to an order of a district court,
40 impound any record, book, document, account, paper, or
41 motor vehicle that is produced in accordance with this
42 section, and retain possession of same until
43 completion of all proceedings in connection with which
44 the same are produced.

45 5. a. To accomplish the objectives and to carry
46 out the duties prescribed by this section, the
47 attorney general, in addition to other powers
48 conferred, may issue subpoenas to any person,
49 administer an oath or affirmation to any person,
50 conduct hearings in aid of any investigation or

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inquiry, prescribe forms and adopt rules as may be
2 necessary.

3 b. Information or evidence provided the attorney
4 general by a person pursuant to subsections 3 and 4
5 shall not be admitted in evidence, or used in any
6 criminal prosecution. If a criminal prosecution under
7 this section is initiated in a state court against a
8 person who has provided information pursuant to
9 subsections 4 and 5, the state shall have the burden
10 of proof that the information so provided was not used
11 in any manner to further the criminal investigation or
12 prosecution.

13 c. In any civil action brought under this section,
14 the attorney general shall have the right to require
15 any defendant to give testimony, and no criminal
16 prosecution based upon transactions or acts about
17 which the defendant is questioned and required to give
18 testimony shall be brought against the defendant.

19 6. Service by the attorney general of any notice
20 requiring a person to file a statement or report, or
21 of a subpoena upon any person, shall be made
22 personally within this state, but if it cannot be
23 obtained, substituted service may be made in the
24 following manner:

25 a. Personal service outside this state.

26 b. The mailing by registered mail to the last
27 known place of business, residence, or abode within or
28 without this state of the person for whom the same is
29 intended.

30 c. As to any person other than a natural person,
31 in the manner provided in the rules of civil procedure
32 as if a petition had been filed.

33 d. The service as a district court may direct in
34 lieu of personal service within this state.

35 7. If any person fails or refuses to file any
36 statement or report, or obey any subpoena issued by
37 the attorney general, the attorney general may, after
38 notice, apply to a district court and, after hearing,
39 and upon meeting customary legal standards for
40 obtaining relief, request an order:

41 a. Granting injunctive relief, restraining the
42 sale of any motor vehicle by the person.

43 b. Dissolving a corporation created by or under
44 the laws of this state or revoking or suspending the
45 certificate of authority to do business in this state
46 of a foreign corporation or revoking or suspending any
47 other licenses, permits, or certificates issued
48 pursuant to law to such person which are used to
49 further the allegedly unlawful practice.

50 c. Granting any other relief as may be required

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Page Four

1 until the person files the statement or report, or
2 obeys the subpoena.

3 8. Whenever it appears to the attorney general
4 that a person has engaged in, is engaging in or is
5 about to engage in any practice declared to be
6 unlawful by this section, and the proceedings would be
7 in the public interest, the attorney general may seek
8 and obtain in an action in a district court an
9 injunction prohibiting the person from continuing the
10 practices or engaging in or doing any unlawful acts
11 upon meeting customary legal standards for obtaining
12 relief.

13 9. In any action brought under this section, the
14 attorney general is entitled to recover costs for the
15 use of this state.

16 10. A person who is injured or threatened with
17 injury by conduct prohibited under this section may
18 bring suit to:

19 a. Prevent or restrain the conduct and remove the
20 conduct's effect by injunction or other equitable
21 relief.

22 b. Recover actual damages resulting from the
23 conduct.

24 c. Recover, at the court's discretion, exemplary
25 damages which do not exceed twice the actual damages
26 awarded under paragraph "b" of this subsection if the
27 trier of fact determines that the prohibited conduct
28 is willful or flagrant.

29 d. Recover the necessary costs of bringing suit,
30 including a reasonable attorney fee."

H-5833 FILED APRIL 16, 1986 BY JAY of Appanoose

ADOPTED (p. 1532)

SENATE FILE 2084

H-5839

1 Amend the Sherzan et al amendment, H-5831, to
2 Senate File 2084, as amended, passed and reprinted by
3 the Senate, as follows:

4 1. Page 2, line 29, by striking the word
5 "vehicles" and inserting the word "vehicle".

6 2. Page 3, line 1, by striking the word and
7 figures "4 and 5" and inserting the word and figures
8 "3 and 4".

H-5839 FILED APRIL 16, 1986 BY SHERZAN of Polk

Adopted 4/16 (p. 1527)

HOUSE AMENDMENT TO
SENATE FILE 2084

S-5757

1 Amend Senate File 2084, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 551.12 PRICE
6 DISCRIMINATION -- SALE OR LEASE OF MOTOR VEHICLES.

7 1. As used in this section, unless the context
8 otherwise requires:

9 a. "Motor vehicle" means a motor vehicle subject
10 to registration under chapter 321 with a gross vehicle
11 weight rating as defined in 49 C.F.R. 567.4(g)(3) of
12 less than nine thousand pounds, but does not include a
13 motor vehicle which is not a completed motor vehicle
14 as defined in section 322.2, subsection 21, or a motor
15 vehicle chassis, either of which is sold to a
16 manufacturer and does not include a motor vehicle
17 which is defined as a motor home in section 321.1,
18 subsection 68, paragraph "d".

19 b. "Fleet buyer" means any person, except a rental
20 company, which purchases and registers or leases ten
21 or more new motor vehicles during any twelve-month
22 period for use in the person's business.

23 c. "Rental company" means any person, except a
24 dealer or dealer affiliated leasing company, in the
25 primary business of the rental, retail lease or retail
26 sale of motor vehicles.

27 d. "Retail buyer" means a person who buys a motor
28 vehicle but does not include a fleet buyer, a rental
29 company, or a dealer.

30 e. "Retail lease" means a contract for the use of
31 a motor vehicle by any person for a term of more than
32 sixty days but does not include sales or leases to a
33 fleet buyer.

34 f. "Rental" means a contract for the use of a
35 motor vehicle by any person for a period of sixty days
36 or less.

37 g. "Dealer" means a motor vehicle dealer licensed
38 under chapter 322.

39 h. "Manufacturer" means a manufacturer,
40 distributor, or wholesaler licensed under chapter 322.

41 i. "Incentive" means a discount, rebate, interest
42 assistance, option, assistance pass through, and any
43 other benefit provided to a dealer with respect to the
44 acquisition, sale, or lease of a motor vehicle or to a
45 motor vehicle purchaser by a manufacturer.

46 j. "Price" means the dollar purchase price of a
47 motor vehicle, including incentives.

48 2. A manufacturer shall not knowingly discriminate
49 in price against Iowa purchasers or lessees of motor
50 vehicles by selling or leasing a new motor vehicle to

S-5757 Page 2

1 any dealer at a price lower than the lowest price at
2 which the manufacturer offers to sell or lease any new
3 motor vehicle of the same make and model similarly
4 equipped to any other dealer.

5 This section does not apply to sales by
6 manufacturers to dealers for resale to employees,
7 retirees, officers or directors of a manufacturer or
8 its affiliated companies, to any unit of government,
9 to any charitable organization, or for any driver
10 education program.

11 This section shall not be construed to prohibit a
12 manufacturer from offering incentives to its dealers,
13 dealer-affiliated leasing companies, fleet buyers or
14 to retail buyers so long as the same or equivalent
15 incentives are available to all dealers of the same
16 line make on a nondiscriminatory basis. If the
17 manufacturer makes any incentive available to a dealer
18 for resale or re-lease to a rental company, the same
19 or equivalent incentive must be made available to
20 dealers for resale to retail buyers.

21 3. A person shall not knowingly provide, induce or
22 receive a discrimination in price which is prohibited
23 by this section.

24 4. If the attorney general determines that a
25 person has engaged in, is engaging in, or is about to
26 engage in any practice in violation of this section,
27 the attorney general may:

28 a. Require the person to file on forms as the
29 attorney general may prescribe a statement or report
30 in writing under oath or otherwise, as to all the
31 facts and circumstances concerning prohibited
32 practices by the person, and any other information the
33 attorney general may deem necessary.

34 b. Examine under oath any person in connection
35 with the prohibited activity.

36 c. Examine any record, book, document, account, or
37 paper or motor vehicle as the attorney general may
38 deem necessary.

39 d. Pursuant to an order of a district court,
40 impound any record, book, document, account, paper, or
41 motor vehicle that is produced in accordance with this
42 section, and retain possession of same until
43 completion of all proceedings in connection with which
44 the same are produced.

45 5. a. To accomplish the objectives and to carry
46 out the duties prescribed by this section, the
47 attorney general, in addition to other powers
48 conferred, may issue subpoenas to any person,
49 administer an oath or affirmation to any person,
50 conduct hearings in aid of any investigation or

S-5757 Page 3

1 inquiry, prescribe forms and adopt rules as may be
2 necessary.

3 b. Information or evidence provided the attorney
4 general by a person pursuant to subsections 3 and 4
5 shall not be admitted in evidence, or used in any
6 criminal prosecution. If a criminal prosecution under
7 this section is initiated in a state court against a
8 person who has provided information pursuant to
9 subsections 4 and 5, the state shall have the burden
10 of proof that the information so provided was not used
11 in any manner to further the criminal investigation or
12 prosecution.

13 c. In any civil action brought under this section,
14 the attorney general shall have the right to require
15 any defendant to give testimony, and no criminal
16 prosecution based upon transactions or acts about
17 which the defendant is questioned and required to give
18 testimony shall be brought against the defendant.

19 6. Service by the attorney general of any notice
20 requiring a person to file a statement or report, or
21 of a subpoena upon any person, shall be made
22 personally within this state, but if it cannot be
23 obtained, substituted service may be made in the
24 following manner:

25 a. Personal service outside this state.

26 b. The mailing by registered mail to the last
27 known place of business, residence, or abode within or
28 without this state of the person for whom the same is
29 intended.

30 c. As to any person other than a natural person,
31 in the manner provided in the rules of civil procedure
32 as if a petition had been filed.

33 d. The service as a district court may direct in
34 lieu of personal service within this state.

35 7. If any person fails or refuses to file any
36 statement or report, or obey any subpoena issued by
37 the attorney general, the attorney general may, after
38 notice, apply to a district court and, after hearing,
39 and upon meeting customary legal standards for
40 obtaining relief, request an order:

41 a. Granting injunctive relief, restraining the
42 sale of any motor vehicle by the person.

43 b. Dissolving a corporation created by or under
44 the laws of this state or revoking or suspending the
45 certificate of authority to do business in this state
46 of a foreign corporation or revoking or suspending any
47 other licenses, permits, or certificates issued
48 pursuant to law to such person which are used to
49 further the allegedly unlawful practice.

50 c. Granting any other relief as may be required

1 until the person files the statement or report, or
2 obeys the subpoena.

3 8. Whenever it appears to the attorney general
4 that a person has engaged in, is engaging in or is
5 about to engage in any practice declared to be
6 unlawful by this section, and the proceedings would be
7 in the public interest, the attorney general may seek
8 and obtain in an action in a district court an
9 injunction prohibiting the person from continuing the
10 practices or engaging in or doing any unlawful acts
11 upon meeting customary legal standards for obtaining
12 relief.

13 9. In any action brought under this section, the
14 attorney general is entitled to recover costs for the
15 use of this state.

16 10. A person who is injured or threatened with
17 injury by conduct prohibited under this section may
18 bring suit to:

19 a. Prevent or restrain the conduct and remove the
20 conduct's effect by injunction or other equitable
21 relief.

22 b. Recover actual damages resulting from the
23 conduct.

24 c. Recover, at the court's discretion, exemplary
25 damages which do not exceed twice the actual damages
26 awarded under paragraph "b" of this subsection if the
27 trier of fact determines that the prohibited conduct
28 is willful or flagrant.

29 d. Recover the necessary costs of bringing suit,
30 including a reasonable attorney fee."

S-5757 Filed April 25, 1986 REC'D FROM THE HOUSE

Amended (5773) + concurred 5/2 (p. 1553)

SENATE FILE 2084

5761

Amend the House amendment, S- 5757 to Senate File
2 2084, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. By striking page 1, line 48 through page 2,
5 line 20 and inserting the following:

6 "2. It is unlawful for any manufacturer or
7 distributor to:

8 a. Offer to sell or to sell any new motor vehicle
9 at a lower actual price than the actual price offered
10 to any other motor vehicle dealer for the same model
11 vehicle similarly equipped or utilize any device
12 including, but not limited to, sales promotion plans
13 or programs, rebates, interest assistance, or
14 assistance pass throughs which result in a lesser
15 actual price. However, this paragraph shall not apply
16 to sales to a motor vehicle dealer for resale to any
17 unit of government, charitable organization or
18 employee of a manufacturer or distributor, nor to
19 sales to a motor vehicle dealer or any motor vehicle
20 ultimately sold, donated, or used by such dealer in a
21 driver education program. This paragraph shall not
22 apply so long as a manufacturer or distributor makes
23 such incentives available to all motor vehicle dealers
on a nondiscriminatory basis.

24 b. Offer, sell, or lease any new motor vehicle to
25 any person, except a distributor, at a lower actual
26 price than the actual price offered and charged a
27 motor vehicle dealer for the same model vehicle
28 similarly equipped or utilize any device which results
29 in such less actual price. However, this paragraph
30 shall not apply to sales to a motor vehicle dealer for
31 resale to any unit of government, charitable
32 organization or employee of a manufacturer or
33 distributor, to sales made directly to a unit of
34 government, charitable organization or employee of a
35 manufacturer or distributor, nor to sales to a motor
36 vehicle dealer or any motor vehicle ultimately sold,
37 donated, or used by the dealer in a driver education
38 program."

39
40 2. Page 4, by striking lines 13 through 30 and
41 inserting the following:

42 "9. This section shall not bar any claim of a
43 person who suffers damages as a result of violations
44 of this Act against such person committing the
45 violation or making the violation. The court in its
46 discretion may award actual damages or any other
47 relief the court deems proper. In any action brought
48 by a person under this section, the court may award
reasonable attorneys' fees and costs to the prevailing
party. However, the state may not recover any

April 29, 1986

S-5761 Page 2

1 attorneys' fees or costs."
2 3. Renumber sections and correct internal
3 references as necessary in accordance with this
4 amendment.

S-5761 Filed April 28, 1986

BY PALMER
Placed o/c 4/29 (p. 1433)

SENATE FILE 2084

S-5762

1 Amend the House amendment, S-5757, to Senate File
2 2084, as amended, passed and reprinted by the Senate,
3 as follows:
4 1. Page 4, by inserting after line 30 the
5 following new section:
6 "Sec. ____ . Section 322.3, subsection 9, Code 1985,
7 is amended by striking the subsection."
8 2. Renumber sections and correct internal
9 references as necessary in accordance with this
10 amendment.

S-5762 Filed April 28, 1986

BY COLTON
Revised not germane 4/29 (p. 1434) SENATE FILE 2084

S-5773

1 Amend the House amendment, S-5757, to Senate File
2 2084, as amended, passed and reprinted by the Senate,
3 as follows:
4 1. Page 1, lines 19 and 20, by striking the words
5 ", except a rental company, which" and inserting the
6 word "who".
7 2. Page 1, lines 23 and 24, by striking the words
8 ", except a dealer or dealer affiliated leasing
9 company,".
10 3. Page 2, lines 12 and 13, by striking the words
11 "dealers, dealer-affiliated leasing companies" and
12 inserting the following: "dealers for sale or lease
13 to dealer-affiliated leasing companies, rental
14 companies".
15 4. Page 2, by striking lines 16 through 20 and
16 inserting the words "line make on a nondiscriminatory
17 basis. A manufacturer shall not knowingly make an
18 incentive available with respect to any motor vehicle
19 that is to be sold to a fleet buyer for the purpose of
20 entering into a retail lease unless the same or
21 equivalent incentives are available to dealers for
22 retail sales transactions; provided however, that a
23 manufacturer may make incentives available to dealers
24 or dealer-affiliated leasing companies in connection
25 with their retail leases without having to grant the
26 same or equivalent incentives to dealers for retail
27 sales."

S-5773 Filed April 29, 1986 *Adopted (p. 1433) Motion to reconsider (p. 1437) Res 5/2 (p. 1522)*
BY GRONSTAL, WALDSTEIN, KINLEY, VANDE HOEF

H-5845

1 Amend the amendment, H-5833, to Senate File 2084,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. By striking page 1, line 48 through page 2,
5 line 20 and inserting the following:

6 "2. It is unlawful for any manufacturer or
7 distributor to:

8 a. Offer to sell or to sell any new motor vehicle
9 at a lower actual price than the actual price offered
10 to any other motor vehicle dealer for the same model
11 vehicle similarly equipped or utilize any device
12 including, but not limited to, sales promotion plans
13 or programs, rebates, interest assistance, or
14 assistance pass throughs which result in a lesser
15 actual price. However, this paragraph shall not apply
16 to sales to a motor vehicle dealer for resale to any
17 unit of government, charitable organization or
18 employee of a manufacturer or distributor, nor to
19 sales to a motor vehicle dealer or any motor vehicle
20 ultimately sold, donated, or used by such dealer in a
21 driver education program. This paragraph shall not
22 apply so long as a manufacturer or distributor offers
23 to sell or sells new motor vehicles to all motor
24 vehicle dealers on a nondiscriminatory basis.

25 b. Offer, sell, or lease any new motor vehicle to
26 any person, except a distributor, at a lower actual
27 price than the actual price offered and charged a
28 motor vehicle dealer for the same model vehicle
29 similarly equipped or utilize any device which results
30 in such less actual price. However, this paragraph
31 shall not apply to sales to a motor vehicle dealer for
32 resale to any unit of government, charitable
33 organization or employee of a manufacturer or
34 distributor, to sales made directly to a unit of
35 government, charitable organization or employee of a
36 manufacturer or distributor, nor to sales to a motor
37 vehicle dealer or any motor vehicle ultimately sold,
38 donated, or used by the dealer in a driver education
39 program."

40 2. Page 4, by striking lines 13 through 30 and
41 inserting the following:

42 "9. This section shall not bar any claim of a
43 person who suffers damages as a result of violations
44 of this Act against such person committing the
45 violation or making the violation. The court in its
46 discretion may award actual damages or any other
47 relief the court deems proper. In any action brought
48 by a person under this section, the court may award
49 reasonable attorneys' fees and costs to the prevailing
50 party. However, the state may not recover any

1 attorneys' fees."

2 3. Renumber sections and correct internal
3 references as necessary in accordance with this
4 amendment.

BY SHERZAN of Polk

RUNNING of Linn

PEICK of Linn

SHOULTZ of Black Hawk

H-5845 FILED APRIL 17, 1986

TEAFORD of Black Hawk

Shoultz 4/25 (p 1771)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 2084
H-6131

1 Amend the House amendment, S-5757, to Senate File
2 2084, as amended, passed and reprinted by the Senate,
3 as follows:

4 1. Page 1, lines 19 and 20, by striking the words
5 ", except a rental company, which" and inserting the
6 word "who".

7 2. Page 1, lines 23 and 24, by striking the words
8 ", except a dealer or dealer affiliated leasing
9 company,".

10 3. Page 2, lines 12 and 13, by striking the words
11 "dealers, dealer-affiliated leasing companies" and
12 inserting the following: "dealers for sale or lease
13 to dealer-affiliated leasing companies, rental
14 companies".

15 4. Page 2, by striking lines 16 through 20 and
16 inserting the words "line make on a nondiscriminatory
17 basis. A manufacturer shall not knowingly make an
18 incentive available with respect to any motor vehicle
19 that is to be sold to a fleet buyer for the purpose of
20 entering into a retail lease unless the same or
21 equivalent incentives are available to dealers for
22 retail sales transactions; provided however, that a
23 manufacturer may make incentives available to dealers
24 or dealer-affiliated leasing companies in connection
25 with their retail leases without having to grant the
26 same or equivalent incentives to dealers for retail
27 sales."

H-6131 FILED MAY 2, 1986

RECEIVED FROM THE SENATE

REFUSED TO CONCUR (p. 2058)

Senate received (p. 1601)

SSB 2043

TRANSPORTATION: Coleman, Chair; Nystrom and Doyle

Transportation
SSB 2043
Coleman
Nystrom
Doyle

New
SF 2084

SENATE/HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act prohibiting price discrimination in the sale or lease of
2 motor vehicles by motor vehicle manufacturers, distributors,
3 or wholesalers and providing for enforcement and penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 551.12 PRICE DISCRIMINATION --
2 SALE OR LEASE OF MOTOR VEHICLES.

3 1. A manufacturer, distributor, or wholesaler of motor
4 vehicles or any agent or representative of a manufacturer,
5 distributor, or wholesaler shall not discriminate in price
6 against Iowa purchasers or leasees of motor vehicles by
7 selling or leasing a new motor vehicle similarly equipped to
8 any dealer licensed pursuant to chapter 322 at a price, which
9 shall include rebates, interest assistance, fleet options, or
10 assistance pass throughs, higher than the lowest price at
11 which the manufacturer, distributor, wholesaler, agent, or
12 representative sells or leases or offers to sell or lease any
13 new motor vehicle of the same model similarly equipped to any
14 other motor vehicle dealer or user in this state or to any
15 other dealer or user who purchases or leases such new motor
16 vehicle in any other state or the District of Columbia for
17 ownership, registration, resale, re-lease, or principal use in
18 this state, other than sales to a motor vehicle dealer for
19 resale to local, state, or federal governments or for donation
20 to a driver education program.

21 2. If the attorney general determines that a person has
22 engaged in, is engaging in, or is about to engage in any
23 practice in violation of this section, the attorney general
24 may:

25 a. Require the person to file on forms as the attorney
26 general may prescribe a statement or report in writing under
27 oath or otherwise, as to all the facts and circumstances con-
28 cerning prohibited practices by the person, and any other in-
29 formation the attorney general may deem necessary.

30 b. Examine under oath any person in connection with the
31 prohibited activity.

32 c. Examine any record, book, document, account, or paper
33 or motor vehicle as the attorney general may deem necessary.

34 d. Pursuant to an order of a district court, impound any
35 record, book, document, account, paper, or motor vehicle that

1 is produced in accordance with this section, and retain
2 possession of same until completion of all proceedings in
3 connection with which the same are produced.

4 3. a. To accomplish the objectives and to carry out the
5 duties prescribed by this section, the attorney general, in
6 addition to other powers conferred, may issue subpoenas to any
7 person, administer an oath or affirmation to any person,
8 conduct hearings in aid of any investigation or inquiry,
9 prescribe forms and adopt rules as may be necessary.

10 b. Information or evidence provided the attorney general
11 by a person pursuant to subsections 2 and 3 shall not be ad-
12 mitted in evidence, or used in any criminal prosecution. If a
13 criminal prosecution under this section is initiated in a
14 state court against a person who has provided information pur-
15 suant to subsections 3 and 4, the state shall have the burden
16 of proof that the information so provided was not used in any
17 manner to further the criminal investigation or prosecution.

18 c. In any civil action brought under this section, the
19 attorney general shall have the right to require any defendant
20 to give testimony, and no criminal prosecution based upon
21 transactions or acts about which the defendant is questioned
22 and required to give testimony shall be brought against the
23 defendant.

24 4. Service by the attorney general of any notice requiring
25 a person to file a statement or report, or of a subpoena upon
26 any person, shall be made personally within this state, but
27 if it cannot be obtained, substituted service may be made in
28 the following manner:

29 a. Personal service outside this state.

30 b. The mailing by registered mail to the last known place
31 of business, residence, or abode within or without this state
32 of the person for whom the same is intended.

33 c. As to any person other than a natural person, in the
34 manner provided in the rules of civil procedure as if a
35 petition had been filed.

1 d. The service as a district court may direct in lieu of
2 personal service within this state.

3 5. If any person fails to refuses to file any statement or
4 report, or obey any subpoena issued by the attorney general,
5 the attorney general may, after notice, apply to a district
6 court and, after hearing, request an order:

7 a. Granting injunctive relief, restraining the sale or
8 advertisement of any merchandise by the person.

9 b. Dissolving a corporation created by or under the laws
10 of this state or revoking or suspending the certificate of
11 authority to do business in this state of a foreign corpora-
12 tion or revoking or suspending any other licenses, permits, or
13 certificates issued pursuant to law to such person which are
14 used to further the allegedly unlawful practice.

15 c. Granting any other relief as may be required until the
16 person files the statement or report, or obeys the subpoena.

17 6. Whenever it appears to the attorney general that a
18 person has engaged in, is engaging in or is about to engage in
19 any practice declared to be unlawful by this section, the
20 attorney general may seek and obtain in an action in a
21 district court an injunction prohibiting the person from
22 continuing the practices or engaging in or doing any other
23 acts.

24 7. In any action brought under this section, the attorney
25 general is entitled to recover costs for the use of this
26 state.

27 8. The state or a person which is injured or threatened
28 with injury by conduct prohibited under this section may bring
29 suit to:

30 a. Prevent or restrain conduct prohibited under this sec-
31 tion and remove the conduct's effect by injunction,
32 divestiture, divorcement, dissolution of domestic enterprises
33 right to do business in this state, compelling the forfeiture
34 or restraint of the issuance of a certificate of
35 incorporation, permit to transact business, license, or

1 franchise, or granting other equitable relief. The state may
2 bring suit under this section without posting bond.

3 b. Recover actual damages resulting from conduct
4 prohibited under this chapter.

5 c. Recover the necessary costs of bringing suit, including
6 a reasonable attorney fee. However, the state may not recover
7 any attorney fee.

8 d. In addition, the court may assess a civil penalty
9 against an enterprise whose conduct is prohibited under this
10 section. The civil penalty assessed shall not exceed ten
11 percent of the total value of the motor vehicles which were
12 the subject of the prohibited conduct sold by the enterprise
13 in each year in which this conduct occurred, but this penalty
14 shall not exceed five hundred thousand dollars. In computing
15 this penalty, only the four most recent years after July 1,
16 1985, in which the prohibited conduct occurred, as of com-
17 mencement of suit under this section, shall be used in the
18 computation.

19 EXPLANATION

20 The bill prohibits the sale or lease of a motor vehicle by
21 a manufacturer, distributor, or wholesaler to any person at a
22 price which is less than the price charged to a retail dealer.
23 This bill also delegates enforcement authority to the office
24 of attorney general.

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SENATE FILE 2084

AN ACT

PROHIBITING PRICE DISCRIMINATION IN THE SALE OR LEASE OF
MOTOR VEHICLES BY MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS,
OR WHOLESALERS AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 551.12 PRICE DISCRIMINATION --
SALE OR LEASE OF MOTOR VEHICLES.

1. As used in this section, unless the context otherwise requires:

a. "Motor vehicle" means a motor vehicle subject to registration under chapter 321 with a gross vehicle weight rating as defined in 49 C.F.R. 567.4(g)(3) of less than nine thousand pounds, but does not include a motor vehicle which is

not a completed motor vehicle as defined in section 322.2, subsection 21, or a motor vehicle chassis, either of which is sold to a manufacturer and does not include a motor vehicle which is defined as a motor home in section 321.1, subsection 68, paragraph "d".

b. "Fleet buyer" means any person, except a rental company, which purchases and registers or leases ten or more new motor vehicles during any twelve-month period for use in the person's business.

c. "Rental company" means any person, except a dealer or dealer affiliated leasing company, in the primary business of the rental, retail lease or retail sale of motor vehicles.

d. "Retail buyer" means a person who buys a motor vehicle but does not include a fleet buyer, a rental company, or a dealer.

e. "Retail lease" means a contract for the use of a motor vehicle by any person for a term of more than sixty days but does not include sales or leases to a fleet buyer.

f. "Rental" means a contract for the use of a motor vehicle by any person for a period of sixty days or less.

g. "Dealer" means a motor vehicle dealer licensed under chapter 322.

h. "Manufacturer" means a manufacturer, distributor, or wholesaler licensed under chapter 322.

i. "Incentive" means a discount, rebate, interest assistance, option, assistance pass through, and any other benefit provided to a dealer with respect to the acquisition, sale, or lease of a motor vehicle or to a motor vehicle purchaser by a manufacturer.

j. "Price" means the dollar purchase price of a motor vehicle, including incentives.

2. A manufacturer shall not knowingly discriminate in price against Iowa purchasers or lessees of motor vehicles by selling or leasing a new motor vehicle to any dealer at a price lower than the lowest price at which the manufacturer

offers to sell or lease any new motor vehicle of the same make and model similarly equipped to any other dealer.

This section does not apply to sales by manufacturers to dealers for resale to employees, retirees, officers or directors of a manufacturer or its affiliated companies, to any unit of government, to any charitable organization, or for any driver education program.

This section shall not be construed to prohibit a manufacturer from offering incentives to its dealers, dealer-affiliated leasing companies, fleet buyers or to retail buyers so long as the same or equivalent incentives are available to all dealers of the same line make on a nondiscriminatory basis. If the manufacturer makes any incentive available to a dealer for resale or re-lease to a rental company, the same or equivalent incentive must be made available to dealers for resale to retail buyers.

3. A person shall not knowingly provide, induce or receive a discrimination in price which is prohibited by this section.

4. If the attorney general determines that a person has engaged in, is engaging in, or is about to engage in any practice in violation of this section, the attorney general may:

a. Require the person to file on forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning prohibited practices by the person, and any other information the attorney general may deem necessary.

b. Examine under oath any person in connection with the prohibited activity.

c. Examine any record, book, document, account, or paper or motor vehicle as the attorney general may deem necessary.

d. Pursuant to an order of a district court, impound any record, book, document, account, paper, or motor vehicle that is produced in accordance with this section, and retain possession of same until completion of all proceedings in connection with which the same are produced.

5. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and adopt rules as may be necessary.

b. Information or evidence provided the attorney general by a person pursuant to subsections 3 and 4 shall not be admitted in evidence, or used in any criminal prosecution. If a criminal prosecution under this section is initiated in a state court against a person who has provided information pursuant to subsections 4 and 5, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

c. In any civil action brought under this section, the attorney general shall have the right to require any defendant to give testimony, and no criminal prosecution based upon transactions or acts about which the defendant is questioned and required to give testimony shall be brought against the defendant.

6. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if it cannot be obtained, substituted service may be made in the following manner:

a. Personal service outside this state.

b. The mailing by registered mail to the last known place of business, residence, or abode within or without this state of the person for whom the same is intended.

c. As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a petition had been filed.

d. The service as a district court may direct in lieu of personal service within this state.

7. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing, and upon meeting customary legal standards for obtaining relief, request an order:

a. Granting injunctive relief, restraining the sale of any motor vehicle by the person.

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice.

c. Granting any other relief as may be required until the person files the statement or report, or obeys the subpoena.

8. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this section, and the proceedings would be in the public interest, the attorney general may seek and obtain in an action in a district court an injunction prohibiting the person from continuing the practices or engaging in or doing any unlawful acts upon meeting customary legal standards for obtaining relief.

9. In any action brought under this section, the attorney general is entitled to recover costs for the use of this state.

10. A person who is injured or threatened with injury by conduct prohibited under this section may bring suit to:

a. Prevent or restrain the conduct and remove the conduct's effect by injunction or other equitable relief.

b. Recover actual damages resulting from the conduct.

c. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under paragraph "b" of this subsection if the trier of fact determines that the prohibited conduct is willful or flagrant.

d. Recover the necessary costs of bringing suit, including a reasonable attorney fee.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2084, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved _____, 1986

TERRY E. BRANSTAD
Governor