

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 392

92ND GENERAL ASSEMBLY

Reported from the Committee on Transportation and Motor Vehicles, March 10, 2003, with recommendation that the House Committee Substitute for House Bill No. 392 Do Pass by Consent.

Perfectured by Consent March 17, 2003.

STEPHEN S. DAVIS, Chief Clerk

1255L.02P

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to motorcycle and all-terrain vehicle franchises.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto one new section, to be
2 known as section 407.1035, to read as follows:

407.1035. 1. For purposes of this section, "relevant market area" means:

2 **(1) For a proposed franchisee or franchisee who plans to relocate his or her place**
3 **of business in a county having a population which is greater than one hundred thousand,**
4 **the area within a radius of ten miles of the intended site of the proposed or relocated**
5 **franchisee. The ten-mile distance shall be determined by measuring the distance between**
6 **the nearest surveyed boundary of the existing franchisee's principal place of business and**
7 **the nearest surveyed boundary line of the proposed or relocated franchisee's principal**
8 **place of business; or**

9 **(2) For a proposed franchisee or a franchisee who plans to relocate his or her place**
10 **of business in a county having a population which is not greater than one hundred**
11 **thousand, the area within a radius of twenty-five miles of the intended site of the proposed**
12 **or relocated franchisee, or the county line, whichever is closer to the intended site. The**
13 **twenty-five mile distance shall be determined by measuring the distance between the**
14 **nearest surveyed boundary line of the existing franchisee's principal place of business and**
15 **the nearest surveyed boundary line of the proposed or relocated franchisee's principal**

16 place of business.

17 2. As used in this section, "relocate" and "relocation" shall not include the
18 relocation of a franchisee within two miles of its established place of business.

19 3. As used in this section, "motor vehicle" shall include motorcycles and all-terrain
20 vehicles as defined in section 407.1025, and personal watercraft as defined in section
21 306.010, RSMo.

22 4. Before a franchisor enters into a franchise establishing or relocating a franchisee
23 within a relevant market area where the same line-make is represented, the franchisor
24 shall give written notice to each franchisee of the same line-make in the relevant market
25 area of its intention to establish an additional franchisee or to relocate an existing
26 franchisee within that relevant market area.

27 5. Within thirty days after receiving the notice provided for in subsection 3 of this
28 section, or within thirty days after the end of any appeal procedure provided by the
29 franchisor, a franchisee may bring an action pursuant to section 407.1031 to determine
30 whether good cause exists for the establishing or relocating of a proposed franchisee.

31 6. This section shall not apply to the reopening or replacement in a relevant market
32 area of a closed dealership that has been closed within the preceding year, if the established
33 place of business of the reopened or replacement franchisee is within two miles of the
34 established place of business of the closed dealership.

35 7. In determining whether good cause exists for establishing or relocating an
36 additional franchisee for the same line-make, the court shall take into consideration the
37 existing circumstances, including but not limited to, the following:

38 (1) Permanency of the investment;

39 (2) Effect on the retail motor vehicle business and the consuming public in the
40 relevant market area;

41 (3) Whether it is injurious or beneficial to the public welfare;

42 (4) Whether the franchisees of the same line-make in that relevant market area are
43 providing adequate competition and convenient consumer care for the motor vehicles of
44 that line-make in the market area, including the adequacy of the motor vehicle sales and
45 qualified service personnel;

46 (5) Whether the establishment or relocation of the franchisee would promote
47 competition;

48 (6) Growth or decline of the population and the number of new motor vehicle
49 registrations in the relevant market area; and

50 (7) Effect on the relocating franchisee of a denial of its relocations into the relevant
51 market area.

52 **8. The remedies and relief available pursuant to section 407.1049 shall apply to this**
53 **section.**