

SECOND REGULAR SESSION

# HOUSE BILL NO. 1286

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES GUEST (Sponsor), WHORTON,  
COOPER (155) AND ERVIN (Co-sponsors).

Read 1<sup>st</sup> time January 28, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3995L.011

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### AN ACT

To amend chapter 407, RSMo, by adding thereto six new sections relating to marine franchise dealers.

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

Section A. Chapter 407, RSMo, is amended by adding thereto six new sections, to be  
2 known as sections 407.1360, 407.1362, 407.1364, 407.1366, 407.1368, and 407.1370, to read  
3 as follows:

**407.1360. As used in sections 407.1360 to 407.1370, the following terms shall mean:**

- 2       **(1) "Boat dealer", any natural person, partnership, or corporation who, for a**  
3 **commission or with an intent to make a profit or gain of money or other thing of value,**  
4 **sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell,**  
5 **or negotiates the sale of any vessel or vessel trailer, whether the vessel or vessel trailer is**  
6 **owned by such person;**
- 7       **(2) "Boat manufacturer", any person engaged in the manufacture, assembling, or**  
8 **modification of any vessels or vessel trailers as a regular business, including a person,**  
9 **partnership, or corporation which acts for and is under the control of a manufacturer or**  
10 **assembly in connection with the distribution of vessels or vessel trailers;**
- 11       **(3) "Dealer", a person who is a grantee of a dealership situated in this state;**
- 12       **(4) "Dealer agreement", a contract or agreement, either expressed or implied,**  
13 **whether oral or written, between two or more persons, by which a person is granted the**  
14 **right to sell or distribute goods or services or use a trade name, trademark, service mark,**  
15 **logotype, advertising, or other commercial symbol in which there is a community of**  
16 **interest in the business of offering, selling, or distributing goods or services at wholesale,**  
17 **retail, by lease agreement or otherwise;**

18           **(5) "Good cause", for purposes of determining whether there is good cause for a**  
19 **proposed action, the following factors shall be considered:**

20           **(a) The extent of the affected dealer's penetration in the relevant market area;**

21           **(b) The nature and extent of the dealer's investment in its business;**

22           **(c) The adequacy of the dealer's service facilities, equipment, parts, supplies, and**  
23 **personnel;**

24           **(d) The effect of the proposed action on the community;**

25           **(e) The extent and quality of the dealer's service under warranties;**

26           **(f) The dealer's performance under the terms of its dealer agreement; and**

27           **(g) Any bad faith by the dealer in carrying out the terms of the dealership;**

28           **(6) "Grantor", a person who grants a dealership;**

29           **(7) "Marine dealer", any natural person, partnership, or corporation who, for a**  
30 **commission or with an intent to make a profit or gain of money or other thing of value,**  
31 **sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell,**  
32 **or negotiates the sale of any vessel or vessel trailer, whether the vessel or vessel trailer is**  
33 **owned by such person;**

34           **(8) "Marine manufacturer", a person who is a grantee of a dealership situated in**  
35 **this state.;**

36           **(9) "Person", a natural person, partnership, joint venture, corporation, or other**  
37 **entity;**

38           **(10) "Vessel", every motorboat and every description of motorized watercraft, and**  
39 **any watercraft more than twelve feet in length which is powered by sail alone or by a**  
40 **combination of sail and machinery, used or capable of being used as a means of**  
41 **transportation on water, but not any watercraft having as the only means of propulsion a**  
42 **paddle or oars.**

**407.1362. 1. No boat, marine, or vessel manufacturer, directly or through any**  
2 **officer, agent or employee may terminate, cancel or fail to renew a dealership agreement**  
3 **or substantially change the competitive circumstances of a boat, marine, or vessel**  
4 **dealership without good cause. In addition, good cause shall exist whenever:**

5           **(1) The boat, marine, or vessel dealer has transferred an interest in the dealership**  
6 **without the manufacturer's written consent;**

7           **(2) The boat, marine, or vessel dealer has filed a voluntary petition in bankruptcy**  
8 **or has had an involuntary petition in bankruptcy filed against it which has not been**  
9 **discharged within thirty days after the filing;**

10           **(3) There has been a closeout or sale of a substantial part of the dealer's assets**  
11 **related to the boat, marine, or vessel dealership or there has been a commencement or**

12 **dissolution or liquidation of the dealership;**

13 **(4) There has been a change without the prior written approval of the**  
14 **manufacturer in the location of the dealer's principal place of business under the**  
15 **dealership agreement;**

16 **(5) The boat, marine, or vessel dealer has defaulted under any chattel mortgage or**  
17 **other security agreement between the dealer and the boat, marine, or vessel manufacturer**  
18 **or there has been a revocation or discontinuance of any guarantee of the dealer's present**  
19 **or future obligations to the boat, marine, or vessel;**

20 **(6) The boat, marine, or vessel dealer has failed to operate in the normal course of**  
21 **business for fifteen consecutive days or has otherwise abandoned his or her business;**

22 **(7) The boat, marine, or vessel dealer has pleaded guilty to or has been convicted**  
23 **of a felony affecting the relationship between the dealer and manufacturer;**

24 **(8) The dealer has engaged in conduct which is injurious or detrimental to the**  
25 **dealer's customers or to the public welfare.**

**407.1364. 1. Except as provided in this section, a boat, marine, or vessel**  
2 **manufacturer shall provide a boat, marine, or vessel dealer at least one hundred twenty**  
3 **days prior written notice of termination, cancellation, or nonrenewal of the dealership**  
4 **agreement. The notice shall state all the reasons constituting good cause for termination,**  
5 **cancellation, or nonrenewal of the dealership agreement and shall provide the said dealer**  
6 **one hundred twenty days in which to cure any claimed deficiency. If the deficiency is**  
7 **rectified within one hundred twenty days, the manufacturer's notice shall be void.**  
8 **However, if the dealer fails to provide the notice of intent to cure deficiencies in the**  
9 **prescribed time period, the termination shall take effect thirty days after the dealer's**  
10 **receipt of the manufacturer's notice unless the dealer has new and untitled inventory on**  
11 **hand, in which case, if requested by the dealer, it will take effect upon the sale of the**  
12 **remaining inventory but in no event later than one hundred twenty days from the**  
13 **manufacturer's notice of termination.**

14 **2. The notice and right to cure provisions in this section shall not apply if the**  
15 **reason for termination, cancellation, or nonrenewal is for good cause as defined in section**  
16 **407.1360.**

17 **3. A dealer may terminate its dealer agreement at any time by giving written notice**  
18 **of said intentions to the manufacturer at least ninety days prior to the effective date**  
19 **specified for termination.**

20 **4. In the event of termination, cancellation, or nonrenewal the manufacturer shall**  
21 **have the burden in showing just cause.**

22 **5. The one hundred twenty day notice may be reduced to thirty days' notice if the**

23 grounds for termination are due to:

24 (1) Conviction of or pleas of nolo contendere to a felony of a dealer, or one of its  
25 owners;

26 (2) The business operations of the dealer have been abandoned or closed for ten  
27 consecutive business days unless the closing is due to an act of God, strike or labor  
28 difficulty, or other cause over which the dealer has no control;

29 (3) A material misrepresentation by the dealer; or

30 (4) The suspension, revocation, or refusal to renew the dealer's license.

31 6. The provisions of this section regarding notice shall not apply if the reason for  
32 termination is insolvency, the occurrence of an assignment for the benefit of creditors, or  
33 bankruptcy.

34 7. A dealer may terminate its dealer agreement at any time by giving written notice  
35 of such intention to the manufacturer at least thirty days prior to the effective date  
36 specified for termination.

407.1366. 1. If a boat, marine, or vessel dealer desires to make a change in its  
2 ownership by the sale of the business assets, stock transfer, or otherwise, the dealer must  
3 give the manufacturer thirty days' written notice prior to the closing including all  
4 supporting documentation as may be required by the manufacturer. The manufacturer  
5 shall not refuse to agree to such proposed change or sale and may not disapprove or  
6 withhold approval of such change or sale unless the manufacturer can show that its  
7 decision is based on the manufacturer's reasonable criteria, which may include the  
8 prospective transferee's business experience, moral character, financial qualifications, and  
9 any criminal record.

10 2. If the manufacturer rejects a proposed change or sale, the manufacturer shall  
11 give written notice of its reasons to the boat, marine, or vessel dealer within thirty days  
12 after receipt of the dealer notification and complete documentation. If no such notice is  
13 given to the recreation vehicle dealer, the change or sale shall be deemed approved.

14 3. The manufacturer shall have the burden in showing that its rejection of the  
15 transfer or sale is reasonable.

407.1368. 1. If a manufacturer unlawfully terminated or fails to renew, as stated  
2 above, a retailer may bring an action against such manufacturer in any court of competent  
3 jurisdiction for damages sustained by the retailer as a consequence of the violation,  
4 together with the actual costs of the action, including reasonable attorney fees, and the  
5 retailer also may be granted injunctive relief against unlawful termination, cancellation,  
6 nonrenewal, or substantial change of competitive circumstances. The remedies set forth  
7 above shall not be deemed exclusive and shall be in addition to any other remedies

8 permitted by law.

9           **2. In the event of lawful termination, at the dealer's option, the manufacturer or**  
10 **distributor shall repurchase any and all inventory purchased by the dealer from the**  
11 **manufacturer or distributor at the current dealer invoice price plus freight expense. All**  
12 **repurchased items shall be in new, unused condition.**

**407.1370. The provisions of sections 407.1360 to 407.1370 shall apply to all**  
2 **dealership agreements entered into on or after August 28, 2003.**