

SECOND REGULAR SESSION

HOUSE BILL NO. 1288

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE THRELKELD.

Read 1st time January 28, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4237L.021

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to compensation agreements between franchisors and franchisees who engage in the sale of motorcycles, all-terrain vehicles and personal watercraft.

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 known as section 407.1047, to read as follows:

407.1047. 1. The provisions of this section shall apply to franchisors and franchisees engaged in the sale of motorcycles, all-terrain vehicles, and personal watercraft, as that term is defined in section 306.010, RSMo.

2. Each franchisor shall specify in writing to each of its franchisees in this state the franchisee's obligations for preparation, delivery, and warranty service on its products. The franchisor shall compensate the franchisee for warranty service required of the franchisee by the franchisor.

3. The franchisor shall provide the franchisee with the schedule of compensation to be paid to the franchisee for parts, work, and service, and the time allowance for the performance of the work and service. The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by the franchisees in the community in which the franchisee is doing business, and in no event shall the compensation of a franchisee for warranty labor be less than the rates charged by the

18 franchisee for like service to retail customers for nonwarranty service and repairs,
19 provided that such rates are reasonable.

20 4. A franchisor shall not:

21 (1) Fail to perform any warranty obligation;

22 (2) Fail to include in written notices of franchisor recalls to owners of new
23 motorcycles, all-terrain vehicles, and personal watercraft, as that term is defined in section
24 306.010, RSMo, the expected date by which necessary parts and equipment will be
25 available to franchisees for the correction of the defects; or

26 (3) Fail to compensate any of the franchisees in this state for repairs effected by
27 the recall.

28 5. All claims made by a franchisee pursuant to this section for labor and parts
29 shall be paid within thirty days after their approval. All claims shall be either approved
30 or disapproved by the franchisor within thirty days after their receipt on a proper form
31 generally used by the franchisor and containing the usually required information therein.
32 Any claims not specifically disapproved in writing within thirty days after the receipt of
33 the form shall be considered to be approved and payment shall be made within thirty days.
34 A claim that has been approved and paid may not be charged back to the franchisee unless
35 the franchisor can show that the claim was fraudulent, false, or unsubstantiated, except
36 that a charge back for false or fraudulent claims shall not be made more than two years
37 after payment, and a charge back for unsubstantiated claims shall not be made more than
38 fifteen months after payment. A franchisee shall maintain all records of warranty repairs,
39 including the related time records of its employees, for at least two years following payment
40 of any warranty claim.

41 6. A franchisor shall compensate the franchisee for franchisor-sponsored sales or
42 service promotion events, programs, or activities in accordance with established guidelines
43 for such events, programs, or activities.

44 7. All claims made by a franchisee pursuant to subsection 5 of this section for
45 promotion events, programs, or activities shall be paid within ten days after their approval.
46 All claims shall be either approved or disapproved by the franchisor within thirty days
47 after their receipt on a proper form generally used by the franchisor and containing the
48 usually required information therein. Any claim not specifically disapproved in writing
49 within thirty days after the receipt of this form shall be considered to be approved, and
50 payment shall be made within thirty days. The franchisor has the right to charge back any
51 claim for twelve months after the later of either the close of the promotion event, program,
52 or activity, or the date of the payment.