

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1286 & 1175
92ND GENERAL ASSEMBLY

Reported from the Committee on Small Business on March 8, 2004, with recommendation that the House Committee Substitute for House Bill Nos. 1286 & 1175 Do Pass.

Taken up for Perfection April 20, 2004. House Committee Substitute for House Bill Nos. 1286 & 1175 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

3995L.03P

AN ACT

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

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, except for any**
11 **person so engaged in the manufacture, assembly, or modification of any vessel or vessel**
12 **trailer which is headquartered in this state and not a wholly owned subsidiary of a person**
13 **not headquartered in this state;**
- 14 **(3) "Dealer", a person who is a grantee of a dealership situated in this state;**

15 (4) "Dealer agreement", a contract or agreement, either expressed or implied,
16 whether oral or written, between two or more persons, by which a person is granted the
17 right to sell or distribute goods or services or use a trade name, trademark, service mark,
18 logotype, advertising, or other commercial symbol in which there is a community of
19 interest in the business of offering, selling, or distributing goods or services at wholesale,
20 retail, by lease agreement or otherwise;

21 (5) "Designated family member", the designated successor nominated by a boat
22 dealer in a written document filed by the dealer with a manufacturer;

23 (6) "Good cause", for purposes of determining whether there is good cause for a
24 proposed action, factors shall include:

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

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

27 (c) The adequacy of the dealer's service facilities, equipment, parts, supplies, and
28 personnel;

29 (d) The extent and quality of the dealer's service;

30 (e) The dealer's performance under the terms of its dealer agreement with the
31 manufacturer; and

32 (f) The dealer's compliance with the contractual requirements under the terms of
33 the dealer agreement;

34 (7) "Grantor", a person who grants a dealership;

35 (8) "Marine dealer", any natural person, partnership, or corporation who, for a
36 commission or with an intent to make a profit or gain of money or other thing of value,
37 sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell,
38 or negotiates the sale of any vessel or vessel trailer, whether the vessel or vessel trailer is
39 owned by such person;

40 (9) "Marine manufacturer", a person who is a grantee of a dealership situated in
41 this state, except for any person so engaged in the manufacture, assembly, or modification
42 of any vessel or vessel trailer which is headquartered in this state and not a wholly owned
43 subsidiary of a person not headquartered in this state;

44 (10) "Person", a natural person, partnership, joint venture, corporation, or other
45 entity;

46 (11) "Personal watercraft", a class of vessel, which is less than sixteen feet in length,
47 propelled by machinery which is designed to be operated by a person sitting, standing or
48 kneeling on the vessel, rather than being operated by a person sitting or standing inside the
49 vessel;

50 (12) "Vessel", every motorboat and every description of motorized watercraft, and

51 any watercraft more than twelve feet in length which is powered by sail alone or by a
52 combination of sail and machinery, used or capable of being used as a means of
53 transportation on water, but not any watercraft having as the only means of propulsion a
54 paddle or oars.

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

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

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

11 (3) There has been a closeout or sale of a substantial part of the dealer's assets
12 related to the boat, marine, vessel, or personal watercraft dealership or there has been a
13 commencement or dissolution or liquidation of the dealership;

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

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

22 (6) The boat, marine, vessel, or personal watercraft dealer has failed to operate in
23 the normal course of business for thirty consecutive days or has otherwise abandoned his
24 or her business, unless otherwise provided for in the dealer agreement;

25 (7) The boat, marine, vessel, or personal watercraft dealer has pleaded guilty to or
26 has been convicted of a felony affecting the relationship between the dealer and
27 manufacturer;

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

407.1364. 1. Except as provided in this section, a boat, marine, vessel, or personal
2 watercraft manufacturer shall provide a boat, marine, vessel, or personal watercraft dealer
3 at least ninety days prior written notice of termination, cancellation, or nonrenewal of the

4 dealership agreement. The notice shall state all the reasons for termination, cancellation,
5 or nonrenewal of the dealership agreement and shall provide the said dealer ninety days
6 in which to cure any claimed deficiency. If the deficiency is rectified within ninety days,
7 the manufacturer's notice shall be void. However, if the dealer fails to provide the notice
8 of intent to cure deficiencies in the prescribed time period, the termination shall take effect
9 sixty days after the dealer's receipt of the manufacturer's notice unless the dealer has new
10 and untitled inventory on hand, in which case, if requested by the dealer, it will take effect
11 upon the sale of the remaining inventory but in no event later than ninety days from the
12 manufacturer's notice of termination.

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

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

19 4. In the event of termination, cancellation, or nonrenewal the manufacturer shall
20 have the burden in showing good cause.

21 5. The ninety day notice may be reduced to sixty days' notice if the grounds for
22 termination are due to:

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

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

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

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

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

407.1366. 1. If a boat, marine, vessel, or personal watercraft dealer desires to make
2 a change in its ownership by the sale of the business assets, stock transfer, or otherwise, the
3 dealer must give the manufacturer ninety days' written notice prior to the closing including
4 all 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 but is not

8 limited to the prospective transferee's business experience, moral character, financial
9 qualifications, and any criminal record.

10 2. The provisions of subsection 1 of this section shall not apply in the case of a
11 transfer of the dealership agreement to a designated family member made on behalf of a
12 deceased dealer who has named the designated family member as a successor to the
13 agreement. The manufacturer shall not refuse to agree to such proposed change and shall
14 not disapprove or withhold approval of such change unless the manufacturer can show
15 that its decision is based solely on the business experience, moral character, financial
16 qualification, or criminal record of the designated family member.

17 3. If the manufacturer rejects a proposed change or sale, the manufacturer shall
18 give written notice of its reasons to the boat, marine, vessel, or personal watercraft dealer
19 within sixty days after receipt of the dealer notification and complete documentation. If
20 no such notice is given to the boat, marine, vessel, or personal watercraft dealer, the change
21 or sale shall be deemed approved.

407.1368. 1. In the event of termination by the manufacturer, at the dealer's
2 option, the manufacturer or distributor shall repurchase any new, unused current or
3 immediate prior model year vessels that have not been materially altered or substantially
4 damaged in inventory purchased by the dealer prior to notice of termination from the
5 manufacturer or distributor at the dealer's original purchase price minus freight and
6 restocking expenses.

7 2. If any manufacturer shall fail or refuse to purchase new, unused current or
8 immediate model year vessels he or she shall be held civilly liable for not only the dealer's
9 original purchase price minus freight and restocking expenses but also the dealer's
10 reasonable attorney's fees, court costs, and interest on the amount due for such inventory
11 computed at the legal interest rate from the one hundred fifty-first day after the notice of
12 termination or from the sixty-first day after termination.

13 3. If a manufacturer unlawfully terminated or fails to renew as stated in this section
14 a retailer may bring an action against such manufacturer in any court of competent
15 jurisdiction for damages sustained by the retailer as a consequence of the violation together
16 with the actual costs of the action including reasonable attorney fees. The remedies set
17 forth in this subsection shall not be deemed exclusive and shall be in addition to any other
18 remedies provided by law.

407.1370. The provisions of sections 407.1360 to 407.1370 shall apply to all
2 dealership agreements entered into on or after January 1, 2005.