

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1288

92ND GENERAL ASSEMBLY

Reported from the Committee on Transportation and Motor Vehicles, March 9, 2004, with recommendation that the House Committee Substitute for House Bill No. 1288 Do Pass by Consent.

Taken up for Perfection March 17, 2004. House Committee Substitute for House Bill No. 1288 ordered Perfected and Printed by Consent.

STEPHEN S. DAVIS, Chief Clerk

4237L.04P

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to compensation agreements between franchisors and franchisees.

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 407.1047, to read as follows:

3 **407.1047. 1. The provisions of this section shall apply to franchisors and**
4 **franchisees engaged in the sale of motorcycles and all-terrain vehicles.**

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

9 **3. The franchisor shall provide the franchisee with the schedule of compensation**
10 **to be paid to the franchisee for parts, work, and service, and the time allowance for the**
11 **performance of the work and service. The schedule of compensation shall include**
12 **reasonable compensation for diagnostic work, as well as repair service and labor. Time**
13 **allowances for the diagnosis and performance of warranty work and service shall be**
14 **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

15 community in which the franchisee is doing business, and in no event shall the
16 compensation of a franchisee for warranty labor be less than the rates charged by the
17 franchisee for like service to retail customers for nonwarranty service and repairs,
18 provided that such rates are reasonable.

19 **4. A franchisor shall not:**

20 **(1) Fail to perform any warranty obligation;**

21 **(2) Fail to include in written notices of franchisor recalls to owners of new**
22 **motorcycles and all-terrain vehicles the expected date by which necessary parts and**
23 **equipment will be available to franchisees for the correction of the defects; or**

24 **(3) Fail to compensate any of the franchisees in this state for repairs effected by**
25 **the recall.**

26 **5. All claims made by a franchisee pursuant to this section for labor and parts**
27 **shall be paid within thirty days after their approval. All claims shall be either approved**
28 **or disapproved by the franchisor within thirty days after their receipt on a proper form**
29 **generally used by the franchisor and containing the usually required information therein.**

30 **Any claims not specifically disapproved in writing within thirty days after the receipt of**
31 **the form shall be considered to be approved and payment shall be made within thirty days.**

32 **A claim that has been approved and paid may not be charged back to the franchisee**
33 **unless the franchisor can show that the claim was fraudulent, false, or unsubstantiated,**
34 **except that a charge back for false or fraudulent claims shall not be made more than two**
35 **years after payment, and a charge back for unsubstantiated claims shall not be made more**
36 **than fifteen months after payment. A franchisee shall maintain all records of warranty**
37 **repairs, including the related time records of its employees, for at least two years following**
38 **payment of any warranty claim.**

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

42 **7. All claims made by a franchisee pursuant to subsection 5 of this section for**
43 **promotion events, programs, or activities shall be paid within ten days after their approval.**

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