

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1288

92ND GENERAL ASSEMBLY

4237L.10T

2004

AN ACT

To repeal section 301.566, RSMo, and to enact in lieu thereof eight new sections relating to contractual agreements between manufacturers and other merchants.

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

Section A. Section 301.566, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 301.566, 407.1047, 407.1360, 407.1362, 407.1364, 407.1366, 407.1368, and 407.1370, to read as follows:

301.566. 1. A motor vehicle dealer may participate in any motor vehicle show or sale and conduct sales of motor vehicles away from the dealer's usual, licensed place of business if either the requirements of subsection 2 or 3 of this section are met or the event is conducted for not more than ten days, and if a majority of the motor vehicle dealers within a class of dealers described pursuant to subsection 3 of section 301.550 in a city or town participate or are invited and have the opportunity to participate in the event, except that a recreational motor vehicle dealer classified in subdivision (5) of subsection 3 of section 301.550 may participate in such a show or sale even if a majority of recreational motor vehicle dealers in a city or town do not participate in the event. The department shall consider such events to be proper in all respects and as if each dealer participant was conducting business at the dealer's usual business location. Nothing contained in this section shall be construed as applying to the sale of motor vehicles or trailers through either a wholesale motor vehicle auction or public motor vehicle auction.

2. Any person, partnership, corporation or association disposing of vehicles used and titled solely in its ordinary course of business as provided in section 301.570 may sell at retail

15 such vehicles away from that person's bona fide established place of business, thus constituting
16 an off-site sale, by adhering to each of the following conditions with regard to each and every
17 off-site sale conducted:

18 (1) Have in effect a valid license, pursuant to sections 301.550 to 301.575, from the
19 department for the sale of used motor vehicles;

20 (2) No off-site sale may exceed ten days in duration, and only one sale may be held per
21 year, per county, in counties of the third and fourth classification;

22 (3) Pay to the motor vehicle commission fund, pursuant to section 301.560, a permit fee
23 of two hundred fifty dollars for each off-site sale event;

24 (4) Advise the department, at least ten days prior to the sale, of the date, location and
25 duration of each off-site sale;

26 (5) The sale of vehicles at off-site sales shall be limited to sales by a seller of vehicles
27 used and titled solely in its ordinary course of business, and such sales shall be held in
28 conjunction with a credit union and limited to members of the credit union, thus constituting a
29 private sale to be advertised to members only;

30 (6) Off-site sales by a seller of vehicles used and titled solely in its ordinary course of
31 business may also be held in conjunction with other financial institutions provided that any such
32 sale event shall be held on the premises of the financial institution, and sales shall be limited to
33 persons who were customers of the financial institution prior to the date of the sale event.
34 Off-site sales held with such other financial institutions shall be limited to one sale per year per
35 institution;

36 (7) The sale of motor vehicles which have the designation of the current model year,
37 except discontinued models, is prohibited at off-site sales until subsequent model year designated
38 vehicles of the same manufacture and model are offered for sale to the public.

39 3. A recreational vehicle dealer, as that term is defined in section 700.010, RSMo, who
40 is licensed in another state may participate in recreational vehicle shows or exhibits with
41 recreational vehicles within this state, in which less than fifty dealers participate as exhibitors
42 with permission of the dealer's licensed manufacturer if all of the following conditions exist:

43 (1) The show or exhibition has a minimum of ten recreational vehicle dealers licensed
44 as motor vehicle dealers in this state;

45 (2) More than fifty percent of the participating recreational vehicle dealers are licensed
46 motor vehicle dealers in this state; and

47 (3) The state in which the recreational vehicle is licensed is a state contiguous to
48 Missouri and the state permits recreational vehicle dealers licensed in Missouri to participate in
49 recreational vehicle shows in such state pursuant to conditions substantially equivalent to the
50 conditions which are imposed on dealers from such state who participate in recreational vehicle
51 shows in Missouri.

52 4. A recreational vehicle dealer licensed in another state may participate in a vehicle
53 show or exhibition in Missouri which has, when it opens to the public, at least fifty dealers
54 displaying recreational vehicles if the show or exhibition is trade-oriented and is predominantly
55 funded by recreational vehicle manufacturers. All of the participating dealers who are not
56 licensed in Missouri shall be licensed as recreational vehicle dealers by the state of their
57 residence.

58 **5. A recreational vehicle dealer licensed in another state who intends to participate**
59 **in a vehicle show or exhibition in this state, shall send written notification of such intended**
60 **participation to the department of revenue at least thirty days prior to the vehicle show or**
61 **exhibition. Upon receipt of such written notification, the department of revenue shall**
62 **make a determination regarding compliance with the provisions of this section. If such**
63 **recreational vehicle dealer would be unable to participate in the vehicle show or exhibition**
64 **in this state pursuant to this section, the department of revenue shall notify the recreational**
65 **vehicle dealer at least fifteen days prior to the vehicle show or exhibition of the inability**
66 **to participate in the vehicle show or exhibition in this state, a violation of this section shall**
67 **result in a fine of one thousand dollars to be assessed by the department of revenue.**

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

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

7 **3. The franchisor shall provide the franchisee with the schedule of compensation**
8 **to be paid to the franchisee for parts, work, and service, and the time allowance for the**
9 **performance of the work and service. The schedule of compensation shall include**
10 **reasonable compensation for diagnostic work, as well as repair service and labor. Time**
11 **allowances for the diagnosis and performance of warranty work and service shall be**
12 **reasonable and adequate for the work performed. In the determination of what**
13 **constitutes reasonable compensation under this section, the principal factor to be given**
14 **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 the
25 recall.

26 5. All claims made by a franchisee pursuant to this section for labor and parts shall
27 be paid within thirty days after their approval. All claims shall be either approved or
28 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 unless
33 the franchisor can show that the claim was fraudulent, false, or unsubstantiated, except
34 that a charge back for false or fraudulent claims shall not be made more than two years
35 after payment, and a charge back for unsubstantiated claims shall not be made more than
36 fifteen months after payment. A franchisee shall maintain all records of warranty repairs,
37 including the related time records of its employees, for at least two years following payment
38 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 twenty-five days after their
44 approval or program close, whichever comes later. All claims except those of the type set
45 forth in subparagraphs (1) and (2) of this subsection shall be either approved or
46 disapproved by the franchisor within thirty days after their receipt on a proper form
47 generally used by the franchisor and containing the usually required information therein.

48 Any claim not specifically disapproved in writing within thirty days after the receipt of
49 this form shall be considered to be approved, and payment shall be made within thirty
50 days. The franchisor has the right to charge back any claim for twelve months after the
51 later of either the close of the promotion event, program, or activity, or the date of the
52 payment. The provisions of this subsection shall not apply to:

53 (1) Claims related to holdbacks, retail sales bonuses, or similar programs in which
54 the franchisor accrues a certain portion of the vehicle sales price for the franchisee and
55 then, at a later point in time pays that amount to the franchisee, in which event the
56 franchisor shall compensate a franchisee no later than forty-five days following the
57 payment date that the franchisor specified in the program;

58 (2) Claims related to franchisor's use of a "balance forward account" to make

59 reimbursement, in which event the franchisor shall compensate a franchisee no later than
60 seventy-five days following the date that the franchisee properly registered the
61 manufacturer's limited warranty for the vehicle.

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 may include but not be limited to:
 - 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;
 - 32 (f) The dealer's compliance with the contractual requirements under the terms of
33 the dealer agreement; or
 - 34 (g) The factors as provided in section 407.1362;

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

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

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

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

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

51 (12) "Vessel", every motorboat and every description of motorized watercraft, and
52 any watercraft more than twelve feet in length which is powered by sail alone or by a
53 combination of sail and machinery, used or capable of being used as a means of
54 transportation on water, but not any watercraft having as the only means of propulsion a
55 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 of a boat, marine, or vessel dealership without good cause. In
4 addition, good cause shall exist whenever:

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

7 (2) The boat, marine, vessel, or personal watercraft dealer has filed a voluntary
8 petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it
9 which has not been 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, vessel, or personal watercraft dealership or there has been a
12 commencement or 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, vessel, or personal watercraft dealer has defaulted under any

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

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

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

27 **(8) The dealer has engaged in conduct which is injurious or detrimental to the**
28 **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 the aforesaid**
6 **ninety days in which to cure any claimed deficiency. If the deficiency is rectified within the**
7 **aforesaid ninety days, the manufacturer's notice shall be void. However, if the dealer fails**
8 **to provide the notice of intent to cure deficiencies in the prescribed time period, the**
9 **termination shall take effect sixty days after the dealer's receipt of the manufacturer's**
10 **notice unless the dealer has new and untitled inventory on hand, in which case, if requested**
11 **by the dealer, it will take effect upon the sale of the remaining inventory but in no event**
12 **later than ninety days from the 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. The ninety day notice may be reduced to sixty days' notice if the grounds for**
20 **termination are due to:**

21 **(1) Conviction of or pleas of nolo contendere to a felony of a dealer, or one of its**
22 **owners;**

23 **(2) The business operations of the dealer have been abandoned or closed for thirty**
24 **consecutive days unless the closing is due to an act of God or other cause over which the**
25 **dealer has no control;**

26 **(3) A material misrepresentation by the dealer; or**

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

28 **5. The provisions of this section regarding notice shall not apply if the reason for**
29 **termination is insolvency, the occurrence of an assignment for the benefit of creditors, or**
30 **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. It is unlawful for any manufacturer to fail to provide a boat, marine, vessel, or**
11 **personal watercraft dealer an opportunity to designate, in writing, a member of the**
12 **dealer's family as a successor to the dealership in the event of the death, incapacity, or**
13 **retirement of the boat, marine, vessel, or personal watercraft dealer. It shall be unlawful**
14 **to prevent or refuse to honor the succession to a dealership by a member of the family of**
15 **the deceased, retired or incapacitated dealer unless the manufacturer has provided to the**
16 **dealer written notice of its objections. Grounds for objection shall be lack of**
17 **creditworthiness, conviction of a felony, lack of required licenses or business experience**
18 **or other conditions which make such succession unreasonable under the circumstances, but**
19 **the manufacturer shall bear the burden of showing the unreasonableness of such**
20 **succession. However, no member of the family may succeed to a boat, marine, vessel, or**
21 **personal watercraft dealer if the succession to the boat, marine, vessel, or personal**
22 **watercraft dealer involves, without the manufacturer's consent, a relocation of the business**
23 **or an alteration of the terms and conditions of the written agreement.**

24 **3. If the manufacturer rejects a proposed change or sale, the manufacturer shall**
25 **give written notice of its reasons to the boat, marine, vessel, or personal watercraft dealer**
26 **within sixty days after receipt of the dealer notification and complete documentation. If**
27 **no such notice is given to the boat, marine, vessel, or personal watercraft dealer, the change**
28 **or sale shall be deemed approved.**

407.1368. If the boat, marine, vessel, or personal watercraft dealer agreement is
2 **terminated, canceled or not renewed by the manufacturer for cause, the manufacturer**
3 **shall, at the election of the boat, marine, vessel, or personal watercraft dealer, within thirty**
4 **days of termination, repurchase:**

5 **(1) (a) All new, untitled current model year inventory, acquired from the**
6 **manufacturer, which has not been used (except for demonstration purposes), altered or**
7 **damaged to the extent that such damage must be disclosed to the consumer pursuant to**
8 **section 407.1343, at one hundred percent of the net invoice cost, less transportation,**
9 **applicable rebates, and discounts to the dealer;**

10 **(b) All new, untitled inventory of the prior model year, acquired from the**
11 **manufacturer, provided the prior model year vessels have not been altered, used (except**
12 **for demonstration purposes) or damaged to the extent that such damage must be disclosed**
13 **to the consumer pursuant to section 407.1343, and were drafted on the dealer's financing**
14 **source or paid within one hundred twenty days prior to the effective date of the**
15 **termination, cancellation, or nonrenewal;**

16 **(c) Any other existing inventory provided the boat, marine, vessel, or personal**
17 **watercraft dealer and the manufacturer have agreed on a wholesale value for such**
18 **inventory.**

19

20 **In the event any of the vessels repurchased pursuant to this subdivision are damaged, but**
21 **do not trigger the consumer disclosure requirement, the amount due the dealer shall be**
22 **reduced by the cost to repair the vessels. Damage prior to delivery to dealer that is**
23 **disclosed at the time of delivery will not disqualify repurchase under this provision;**

24 **(2) All current and undamaged manufacturer's accessories and proprietary parts**
25 **sold to the dealer for resale, if accompanied by the original invoice, at one hundred percent**
26 **of the original net price paid to the manufacturer minus a ten percent freight and**
27 **restocking expenses; and**

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