

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILLS NOS. 1286 & 1175

92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, May 6, 2004, with recommendation that the Senate Committee Substitute do pass.

3995S.04C

TERRY L. SPIELER, Secretary.

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Section A. Section 301.566, RSMo, is repealed and eight new sections enacted in
2 lieu thereof, to be known as sections 301.566, 407.1047, 407.1360, 407.1362, 407.1364,
3 407.1366, 407.1368, and 407.1370, to read as follows:

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

15 2. Any person, partnership, corporation or association disposing of vehicles used
16 and titled solely in its ordinary course of business as provided in section 301.570 may
17 sell at retail such vehicles away from that person's bona fide established place of
18 business, thus constituting an off-site sale, by adhering to each of the following

19 conditions with regard to each and every off-site sale conducted:

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

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

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

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

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

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

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

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

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

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

51 (3) The state in which the recreational vehicle is licensed is a state contiguous
52 to Missouri and the state permits recreational vehicle dealers licensed in Missouri to
53 participate in recreational vehicle shows in such state pursuant to conditions
54 substantially equivalent to the conditions which are imposed on dealers from such state

55 who participate in recreational vehicle shows in Missouri.

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

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

 407.1047. 1. The provisions of this section shall apply to franchisors
2 and 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
4 this state the franchisee's obligations for preparation, delivery, and warranty
5 service on its products. The franchisor shall compensate the franchisee for
6 warranty service required of the franchisee by the franchisor.

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

18 than the rates charged by the franchisee for like service to retail customers
19 for nonwarranty service and repairs, 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
23 new motorcycles and all-terrain vehicles the expected date by which
24 necessary parts and equipment will be available to franchisees for the
25 correction of the defects; or

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

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

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

47 7. All claims made by a franchisee pursuant to subsection 5 of this
48 section for promotion events, programs, or activities shall be paid within
49 twenty-five days after their approval or program close, whichever comes
50 later. All claims except those of the type set forth in subparagraphs (1) and
51 (2) of this subsection shall be either approved or disapproved by the
52 franchisor within thirty days after their receipt on a proper form generally
53 used by the franchisor and containing the usually required information
54 therein. Any claim not specifically disapproved in writing within thirty days

55 after the receipt of this form shall be considered to be approved, and payment
56 shall be made within thirty days. The franchisor has the right to charge back
57 any claim for twelve months after the later of either the close of the
58 promotion event, program, or activity, or the date of the payment. The
59 provisions of this subsection shall not apply to:

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

66 (2) Claims related to franchisor's use of a "balance forward account" to
67 make reimbursement, in which event the franchisor shall compensate a
68 franchisee no later than seventy-five days following the date that the
69 franchisee properly registered the manufacturer's limited warranty for the
70 vehicle.

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

3 (1) "Boat dealer", any natural person, partnership, or corporation who,
4 for a commission or with an intent to make a profit or gain of money or other
5 thing of value, sells, barter, exchanges, leases or rents with the option to
6 purchase, offers, attempts to sell, or negotiates the sale of any vessel or vessel
7 trailer, whether the vessel or vessel trailer is owned by such person;

8 (2) "Boat manufacturer", any person engaged in the manufacture,
9 assembling, or modification of any vessels or vessel trailers as a regular
10 business, including a person, partnership, or corporation which acts for and
11 is under the control of a manufacturer or assembly in connection with the
12 distribution of vessels or vessel trailers, except for any person so engaged in
13 the manufacture, assembly, or modification of any vessel or vessel trailer
14 which is headquartered in this state and not a wholly owned subsidiary of a
15 person not headquartered in this state;

16 (3) "Dealer", a person who is a grantee of a dealership situated in this
17 state;

18 (4) "Dealer agreement", a contract or agreement, either expressed or
19 implied, whether oral or written, between two or more persons, by which a
20 person is granted the right to sell or distribute goods or services or use a
21 trade name, trademark, service mark, logotype, advertising, or other

22 commercial symbol in which there is a community of interest in the business
23 of offering, selling, or distributing goods or services at wholesale, retail, by
24 lease agreement or otherwise;

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

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

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

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

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

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

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

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

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

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

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

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

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

57 (12) "Vessel", every motorboat and every description of motorized
58 watercraft, and any watercraft more than twelve feet in length which is

59 **powered by sail alone or by a combination of sail and machinery, used or**
60 **capable of being used as a means of transportation on water, but not any**
61 **watercraft having as the only means of propulsion a paddle or oars.**

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

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

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

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

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

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

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

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

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

407.1364. 1. Except as provided in this section, a boat, marine, vessel,

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

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

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

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

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

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

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

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

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

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

407.1366. 1. If a boat, marine, vessel, or personal watercraft dealer
2 desires to make a change in its ownership by the sale of the business assets,
3 stock transfer, or otherwise, the dealer must give the manufacturer ninety

4 days' written notice prior to the closing including all supporting
5 documentation as may be required by the manufacturer. The manufacturer
6 shall not refuse to agree to such proposed change or sale and may not
7 disapprove or withhold approval of such change or sale unless the
8 manufacturer can show that its decision is based on the manufacturer's
9 reasonable criteria, which may include but is not limited to the prospective
10 transferee's business experience, moral character, financial qualifications,
11 and any criminal record.

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

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

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

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

14 3. If a manufacturer unlawfully terminated or fails to renew as stated
15 in this section a retailer may bring an action against such manufacturer in

16 **any court of competent jurisdiction for damages sustained by the retailer as**
17 **a consequence of the violation together with the actual costs of the action**
18 **including reasonable attorney fees. The remedies set forth in this subsection**
19 **shall not be deemed exclusive and shall be in addition to any other remedies**
20 **provided by law.**

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

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