

FIRST REGULAR SESSION

HOUSE BILL NO. 969

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

2065H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 407.1034, RSMo, and to enact in lieu thereof one new section relating to motorcycle or all-terrain vehicle franchisors.

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

Section A. Section 407.1034, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.1034, to read as follows:

407.1034. Notwithstanding the terms of any franchise agreement, the performance, whether by act or omission, by a motorcycle or all-terrain vehicle franchisor of any or all of the following acts enumerated in this section are hereby defined as unlawful practices, the remedies for which are set forth in section 407.1043:

(1) To engage in any conduct which is capricious, in bad faith, or unconscionable and which causes damage to a motorcycle or all-terrain vehicle franchisee or to the public; provided, that good faith conduct engaged in by motorcycle or all-terrain vehicle franchisors as sellers of new motorcycles, all-terrain vehicles or parts or as holders of security interests therein, in pursuit of rights or remedies accorded to sellers of goods or to holders of security interests pursuant to the provisions of chapter 400, uniform commercial code, shall not constitute unfair practices pursuant to sections 407.1025 to 407.1049;

(2) To coerce any motorcycle or all-terrain vehicle franchisee to accept delivery of any new motorcycle, motorcycles, all-terrain vehicles, equipment, parts or accessories therefor, or any other commodity or commodities which such motorcycle or all-terrain vehicle franchisee has not ordered after such motorcycle or all-terrain vehicle franchisee has rejected such commodity or commodities. It shall not be deemed a violation of sections 407.1025 to 407.1049 for a motorcycle or all-terrain vehicle franchisor to require a

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 motorcycle or all-terrain vehicle franchisee to have an inventory of parts, tools and equipment
19 reasonably necessary to service the motorcycles or all-terrain vehicles sold by a motorcycle or
20 all-terrain vehicle franchisor; or new motorcycles or all-terrain vehicles reasonably necessary
21 to meet the demands of dealers or the public;

22 (3) To unreasonably refuse to deliver in reasonable quantities and within a reasonable
23 time after receipt of orders for new motorcycles or all-terrain vehicles, such motorcycles or
24 all-terrain vehicles as are so ordered and as are covered by such franchise and as are
25 specifically publicly advertised by such motorcycle or all-terrain vehicle franchisor to be
26 available for immediate delivery; provided, however, the failure to deliver any motorcycle or
27 all-terrain vehicle shall not be considered a violation of sections 407.1025 to 407.1049 if such
28 failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty,
29 shortage of products or materials, freight delays, embargo or other cause of which such
30 motorcycle or all-terrain vehicle franchisor has no control;

31 (4) To coerce any motorcycle or all-terrain vehicle franchisee to enter into any
32 agreement with such motorcycle or all-terrain vehicle franchisor or to do any other act
33 prejudicial to such motorcycle or all-terrain vehicle franchisee, by threatening to cancel any
34 franchise or any contractual agreement existing between such motorcycle or all-terrain
35 vehicle franchisor and motorcycle or all-terrain vehicle franchisee; provided, however, that
36 notice in good faith to any motorcycle or all-terrain vehicle franchisee of such motorcycle or
37 all-terrain vehicle franchisee's violation of any provisions of such franchise or contractual
38 agreement shall not constitute a violation of sections 407.1025 to 407.1049;

39 (5) To terminate, cancel or refuse to continue any franchise, directly or indirectly
40 through the actions of the franchisor, unless such new motorcycle or all-terrain vehicle
41 franchisee substantially defaults in the performance of such franchisee's reasonable and
42 lawful obligations under such franchisee's franchise, or such new motorcycle or all-terrain
43 vehicle franchisor discontinues the sale in the state of Missouri of such franchisor's products
44 which are the subject of the franchise:

45 (a) Notwithstanding the terms of any franchise agreement to the contrary, good cause
46 to terminate, cancel or refuse to continue any franchise agreement shall not be established
47 based upon the fact that the motorcycle or all-terrain vehicle franchisee owns, has an
48 investment in, participates in the management of or holds a franchise agreement for the sale
49 or service of another make or line of new motorcycles or all-terrain vehicles or the motorcycle
50 or all-terrain vehicle dealer has established another make or line of new motorcycles or all-
51 terrain vehicles or service in the same dealership facilities as those of the motorcycle or all-
52 terrain vehicle franchisor prior to February 1, 1998, or such establishment is approved in
53 writing by the franchisee and the franchisor. However, a franchisor may require a franchisee
54 to maintain a reasonable line of credit for each franchise and to comply with each franchisor's

55 reasonable requirements concerning capital, management and facilities. If the franchise
56 agreement requires the approval of the franchisor, such approval shall be requested in writing
57 by the franchisee and the franchisor shall approve or disapprove such a request in writing
58 within sixty days of receipt of such request. A request from a franchisee shall be deemed to
59 have been approved if the franchisor fails to notify the franchisee, in writing, of its
60 disapproval within sixty days after its receipt of the written request;

61 (b) In determining whether good cause exists, the administrative hearing commission
62 shall take into consideration the existing circumstances, including, but not limited to, the
63 following factors:

- 64 a. The franchisee's sales in relation to sales in the market;
- 65 b. The franchisee's investment and obligations;
- 66 c. Injury to the public welfare;
- 67 d. The adequacy of the franchisee's service facilities, equipment, parts and personnel
68 in relation to those of other franchisees of the same line-make;
- 69 e. Whether warranties are being honored by the franchisee;
- 70 f. The parties' compliance with their franchise agreement;
- 71 g. The desire of a franchisor for market penetration or a market study, if any, prepared
72 by the franchisor or franchisee are two factors which may be considered;
- 73 h. The harm to the franchisor;

74 (6) To prevent by contract or otherwise, any motorcycle or all-terrain vehicle
75 franchisee from changing the capital structure of the franchisee's franchise of such motorcycle
76 or all-terrain vehicle franchisee or the means by or through which the franchisee finances the
77 operation of the franchisee's franchise, provided the motorcycle or all-terrain vehicle
78 franchisee at all times meets any reasonable capital standards agreed to between the
79 motorcycle or all-terrain vehicle franchisee and the motorcycle or all-terrain vehicle
80 franchisor and grants to the motorcycle or all-terrain vehicle franchisor a purchase money
81 security interest in the new motorcycles or all-terrain vehicles, new parts and accessories
82 purchased from the motorcycle or all-terrain vehicle franchisor;

83 (7) (a) Prevent, by contract or otherwise, any sale or transfer of a franchisee's
84 franchise or franchises or interest or management thereof; provided, if the franchise
85 specifically permits the franchisor to approve or disapprove any such proposed sale or
86 transfer, a franchisor shall only be allowed to disapprove a proposed sale or transfer if the
87 interest being sold or transferred when added to any other interest owned by the transferee
88 constitutes fifty percent or more of the ownership interest in the franchise and if the proposed
89 transferee fails to satisfy any standards of the franchisor which are in fact normally relied
90 upon by the franchisor prior to its entering into a franchise, and which relate to the proposed
91 management or ownership of the franchise operations or to the qualification, capitalization,

92 integrity or character of the proposed transferee and which are reasonable. A franchisee may
93 request, at any time, that the franchisor provide a copy of the standards which are normally
94 relied upon by the franchisor to evaluate a proposed sale or transfer and a proposed transferee;

95 (b) The franchisee and the prospective franchisee shall cooperate fully with the
96 franchisor in providing information relating to the prospective transferee's qualifications,
97 capitalization, integrity and character;

98 (c) In the event of a proposed sale or transfer of a franchise, the franchisor shall be
99 permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:

100 a. The franchise agreement permits the franchisor to exercise a right of first refusal to
101 acquire the franchisee's assets or ownership in the event of a proposed sale or transfer;

102 b. Such sale or transfer is conditioned upon the franchisor or franchisee entering a
103 franchise agreement with the proposed transferee;

104 c. The exercise of the right of first refusal shall result in the franchisee and the
105 franchisee's owners receiving the same or greater consideration and the same terms and
106 conditions as contracted to receive in connection with the proposed sale or transfer;

107 d. The sale or transfer does not involve the sale or transfer to an immediate member
108 or members of the family of one or more franchisee owners, defined as a spouse, child,
109 grandchild, spouse of a child or grandchild, brother, sister or parent of the franchisee owner,
110 or to the qualified manager, defined as an individual who has been employed by the
111 franchisee for at least two years and who otherwise qualifies as a franchisee operator, or a
112 partnership or corporation controlled by such persons; and

113 e. The franchisor agrees to pay the reasonable expenses, including attorney's fees
114 which do not exceed the usual, customary and reasonable fees charged for similar work done
115 for other clients, incurred by the proposed transferee prior to the franchisor's exercise of its
116 right of first refusal in negotiating and implementing the contract for the proposed sale or
117 transfer of the franchise or the franchisee's assets. Notwithstanding the foregoing, no
118 payment of such expenses and attorney's fees shall be required if the franchisee has not
119 submitted or caused to be submitted an accounting of those expenses within fourteen days of
120 the franchisee's receipt of the franchisor's written request for such an accounting. Such
121 accounting may be requested by a franchisor before exercising its right of first refusal;

122 (d) For determining whether good cause exists for the purposes of this subdivision,
123 the administrative hearing commission shall take into consideration the existing
124 circumstances, including, but not limited to, the following factors:

125 a. Whether the franchise agreement specifically permits the franchisor to approve or
126 disapprove any proposed sale or transfer;

127 b. Whether the interest to be sold or transferred when added to any other interest
128 owned by the proposed transferee constitutes fifty percent or more of the ownership interest
129 in the franchise;

130 c. Whether the proposed transferee fails to satisfy any standards of the franchisor
131 which are in fact normally relied upon by the franchisor prior to its entering into a franchise,
132 and which are related to the proposed management or ownership of the franchise operations
133 or to the qualification, capitalization, integrity or character of the proposed transferee which
134 are reasonable;

135 d. Injury to the public welfare;

136 e. The harm to the franchisor;

137 (8) To prevent by contract or otherwise any motorcycle or all-terrain vehicle
138 franchisee from changing the executive management of motorcycle or all-terrain vehicle
139 franchisee's business, except that any attempt by a motorcycle or all-terrain vehicle franchisor
140 to demonstrate by giving reasons that such change in executive management will be
141 detrimental to the distribution of the motorcycle or all-terrain vehicle franchisor's motorcycles
142 shall not constitute a violation of this subdivision;

143 (9) To impose unreasonable standards of performance upon a motorcycle or all-
144 terrain vehicle franchisee;

145 (10) To require a motorcycle or all-terrain vehicle franchisee at the time of entering
146 into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel
147 which would relieve any person from liability imposed by sections 407.1025 to 407.1049;

148 (11) To prohibit directly or indirectly the right of free association among motorcycle
149 or all-terrain vehicle franchisees for any lawful purpose;

150 (12) To provide any term or condition in any lease or other agreement ancillary or
151 collateral to a franchise, which term or condition directly or indirectly violates the provisions
152 of sections 407.1025 to 407.1049;

153 (13) ~~Upon any termination, cancellation or refusal to continue any franchise or any~~
154 ~~discontinuation of any line-make or parts or products related to such line-make by a~~
155 ~~franchisor, fail to pay reasonable compensation to a franchisee as follows] **To fail to**~~
156 **repurchase a franchisee's inventory and other items as set forth in this subdivision if a**
157 **motorcycle or all-terrain franchise agreement is terminated, cancelled, or not renewed**
158 **by the manufacturer for cause; if the dealer voluntarily terminates a motorcycle or all-**
159 **terrain dealer agreement in a manner permitted by such agreement; if the**
160 **manufacturer terminates or discontinues a franchise by discontinuing a line-make or**
161 **by ceasing to do business in this state; or if the manufacturer changes the distributor or**
162 **method of distribution of its products in this state or alters its sales regions or marketing**
163 **areas within this state in a manner that eliminates or diminishes the dealer's market**

164 **area. In such circumstances the manufacturer shall, at the election of the motorcycle or**
165 **all-terrain vehicle dealer, within thirty days of termination, repurchase:**

166 (a) Any new, undamaged and unsold motorcycles or all-terrain vehicles in the
167 franchisee's inventory of either the current model year or purchased from the franchisor
168 within one hundred twenty days prior to receipt of a notice of termination or nonrenewal,
169 provided the motorcycle or all-terrain vehicle has less than twenty miles registered on the
170 odometer, including mileage incurred in delivery from the franchisor or in transporting the
171 motorcycle or all-terrain vehicle between dealers for sale, at the dealer's net acquisition cost;

172 (b) The current parts catalog cost to the dealer of each new, unused, undamaged and
173 unsold part or accessory if the part or accessory is in the current parts catalog, less applicable
174 allowances. If the part or accessory was purchased by the franchisee from an outgoing
175 authorized franchisee, the franchisor shall purchase the part for either the price in the current
176 parts catalog or the franchisee's actual purchase price of the part, whichever is less;

177 (c) The depreciated value determined pursuant to generally accepted accounting
178 principles of each undamaged sign owned by the franchisee which bears a trademark or trade
179 name used or claimed by the franchisor if the sign was purchased from, or purchased at the
180 request of, the franchisor;

181 (d) The fair market value of all special tools, data processing equipment and
182 motorcycle or all-terrain vehicle service equipment owned by the franchisee which were
183 recommended in writing and designated as special tools and equipment and purchased from,
184 or purchased at the request of, the franchisor within three years of the termination of the
185 franchise, if the tools and equipment are in usable and good condition, except for reasonable
186 wear and tear; and

187 (e) The franchisor shall pay the franchisee the amounts specified in this subdivision
188 within ninety days after the tender of the property subject to the franchisee providing
189 evidence of good and clear title upon return of the property to the franchisor. Unless previous
190 arrangements have been made and agreed upon, the franchisee is under no obligation to
191 provide insurance for the property left after one hundred eighty days;

192 (14) To prevent or refuse to honor the succession to a franchise or franchises by any
193 legal heir or devisee under the will of a franchisee, under any written instrument filed with the
194 franchisor designating any person as the person's successor franchisee, or pursuant to the laws
195 of descent and distribution of this state; provided:

196 (a) Any designated family member of a deceased or incapacitated franchisee shall
197 become the succeeding franchisee of such deceased or incapacitated franchisee if such
198 designated family member gives the franchisor written notice of such family member's
199 intention to succeed to the franchise or franchises within forty-five days after the death or
200 incapacity of the franchisee, and agrees to be bound by all of the terms and conditions of the

201 current franchise agreement, and the designated family member meets the current reasonable
202 criteria generally applied by the franchisor in qualifying franchisees. A franchisee may
203 request, at any time, that the franchisor provide a copy of such criteria generally applied by
204 the franchisor in qualifying franchisees;

205 (b) The franchisor may request from a designated family member such personal and
206 financial data as is reasonably necessary to determine whether the existing franchise
207 agreement should be honored. The designated family member shall supply the personal and
208 financial data promptly upon the request;

209 (c) If the designated family member does not meet the reasonable criteria generally
210 applied by the franchisor in qualifying franchisees, the discontinuance of the current franchise
211 agreement shall take effect not less than ninety days after the date the franchisor serves the
212 required notice on the designated family member pursuant to subsection 5 of section
213 407.1031;

214 (d) The provisions of this subdivision shall not preclude a franchisee from
215 designating any person as the person's successor by written instrument filed with the
216 franchisor, and if such an instrument is filed, it alone shall determine the succession rights to
217 the management and operation of the franchise; and

218 (e) For determining whether good cause exists, the administrative hearing
219 commission shall take into consideration the existing circumstances, including, but not
220 limited to, the following factors:

221 a. Whether the franchise agreement specifically permits the franchisor to approve or
222 disapprove any successor;

223 b. Whether the proposed successor fails to satisfy any standards of the franchisor
224 which are in fact normally relied upon by the franchisor prior to the successor entering into a
225 franchise, and which relate to the proposed management or ownership of the franchise
226 operation or to the qualification, capitalization, integrity or character of the proposed
227 successor and which are reasonable;

228 c. Injury to the public welfare;

229 d. The harm to the franchisor;

230 (15) To coerce, threaten, intimidate or require a franchisee under any condition
231 affecting or related to a franchise agreement, or to waive, limit or disclaim a right that the
232 franchisee may have pursuant to the provisions of sections 407.1025 to 407.1049. Any
233 contracts or agreements which contain such provisions shall be deemed against the public
234 policy of the state of Missouri and are void and unenforceable. Nothing in this section shall
235 be construed to prohibit voluntary settlement agreements;

236 (16) To initiate any act enumerated in this subsection on grounds that it has advised a
237 franchisee of its intention to discontinue representation at the time of a franchisee change.

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