

FIRST REGULAR SESSION

SENATE BILL NO. 367

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time January 31, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1682S.011

AN ACT

To repeal sections 407.1025, 407.1028, 407.1031, 407.1034, 407.1035, 407.1037, 407.1043, 407.1047, and 407.1049, RSMo, and to enact in lieu thereof nine new sections relating to powersport vehicle franchise practices.

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

Section A. Sections 407.1025, 407.1028, 407.1031, 407.1034, 407.1035, 2 407.1037, 407.1043, 407.1047, and 407.1049, RSMo, are repealed and nine new 3 sections enacted in lieu thereof, to be known as sections 407.1025, 407.1028, 4 407.1031, 407.1034, 407.1035, 407.1037, 407.1043, 407.1047, and 407.1049, to 5 read as follows:

407.1025. As used in sections 407.1025 to 407.1049, unless the context 2 otherwise requires, the following terms mean:

3 (1) "Administrative hearing commission", the body established in chapter 4 621 to conduct administrative hearings;

5 (2) "All-terrain vehicle", any motorized vehicle manufactured and used 6 exclusively for off-highway use which is fifty inches or less in width, with an 7 unladen dry weight of six hundred pounds or less, traveling on three, four or 8 more low pressure tires, with a seat designed to be straddled by the operator, and 9 handlebars for steering control;

10 (3) "Coerce", to force a person to act in a given manner or to compel by 11 pressure or threat but shall not be construed to include the following:

12 (a) Good faith recommendations, exposition, argument, persuasion or 13 attempts at persuasion;

14 (b) Notice given in good faith to any franchisee of such franchisee's 15 violation of terms or provisions of such franchise or contractual agreement;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (c) Any other conduct set forth in section 407.1043 as a defense to an
17 action brought pursuant to sections 407.1025 to 407.1049; or

18 (d) Any other conduct set forth in sections 407.1025 to 407.1049 that is
19 permitted of the franchisor or is expressly excluded from coercion or a violation
20 of sections 407.1025 to 407.1049;

21 (4) "Franchise", a written arrangement or contract for a definite or
22 indefinite period, in which a person grants to another person a license to use, or
23 the right to grant to others a license to use, a trade name, trademark, service
24 mark, or related characteristics, in which there is a community of interest in the
25 marketing of goods or services, or both, at wholesale or retail, by agreement, lease
26 or otherwise, and in which the operation of the franchisee's business with respect
27 to such franchise is substantially reliant on the franchisor for the continued
28 supply of franchised new [motorcycles or all-terrain] **powersport** vehicles, parts
29 and accessories for sale at wholesale or retail;

30 (5) "Franchisee", a person to whom a franchise is granted;

31 (6) "Franchisor", a person who grants a franchise to another person;

32 (7) "Motorcycle", a motor vehicle operated on two wheels;

33 (8) "New", when referring to [motorcycles or all-terrain] **powersport**
34 vehicles or parts, means those [motorcycles or all-terrain] **powersport** vehicles
35 or parts which have not been held except as inventory, as that term is defined in
36 subdivision (4) of section 400.9-109;

37 (9) "Person", a sole proprietor, partnership, corporation, or any other form
38 of business organization;

39 **(10) "Powersport vehicle", includes but is not limited to any**
40 **motorcycle, all-terrain vehicle, motorized bicycle, motortricycle,**
41 **recreational off-highway vehicle, or utility vehicle, as defined in section**
42 **301.010, or personal watercraft as defined in section 306.010.**

407.1028. Any person who is engaged or engages directly or indirectly in
2 purposeful contacts within the state of Missouri in connection with the offering,
3 advertising, purchasing, selling, or contracting to purchase or to sell new
4 [motorcycles or all-terrain] **powersport** vehicles, or who, being a [motorcycle or
5 all-terrain] **powersport** vehicle franchisor, is transacting or transacts any
6 business with a [motorcycle or all-terrain] **powersport** vehicle franchisee who
7 maintains a place of business within the state and with whom the person has a
8 franchise, shall be subject to the jurisdiction of the courts of the state of Missouri,
9 upon service of process in accordance with the provisions of section 506.510,

10 irrespective of whether such person is a manufacturer, importer, distributor or
11 dealer in new [motorcycles or all-terrain] **powersport** vehicles.

407.1031. 1. Any party seeking relief pursuant to the provisions of
2 sections 407.1025 to 407.1049 may file an application for a hearing with the
3 administrative hearing commission within the time periods specified in this
4 section. The application for a hearing shall comply with the requirements for a
5 request for agency action set forth in chapter 536. Simultaneously, with the filing
6 of the application for a hearing with the administrative hearing commission, the
7 applicant shall send by certified mail, return receipt requested, a copy of the
8 application to the party or parties against whom relief is sought. Within ten days
9 of receiving a timely application for a hearing, the administrative hearing
10 commission shall enter an order fixing a date, time and place for a hearing on the
11 record. Such hearing shall be within forty-five days of the date of the order but
12 the administrative hearing commission may continue the hearing date up to
13 twenty-five additional days by agreement of the parties or upon a finding of good
14 cause. The administrative hearing commission shall send by certified mail,
15 return receipt requested, a copy of the order to the party seeking relief and to the
16 party or parties against whom relief is sought. The order shall also state that the
17 party against whom relief is sought shall not proceed with the initiation of its
18 activity or activities until the administrative hearing commission issues its final
19 decision or order.

20 2. Unless otherwise expressly provided in sections 407.1025 to 407.1049,
21 the provisions of chapter 536 shall govern hearings and prehearing procedures
22 conducted pursuant to the authority of this section. The administrative hearing
23 commission shall issue a final decision or order, in proceedings arising pursuant
24 to the provisions of sections 407.1025 to 407.1049, within forty-five days from the
25 conclusion of the hearing. Any final decisions shall be subject to review pursuant
26 to a petition for review to be filed in the court of appeals in the district in which
27 the hearing, or any part of the hearing, is held and by delivery of copies of the
28 petition to each party of record, within thirty days after the mailing or delivery
29 of the final decision and notice of the final decision in such a case. Review
30 pursuant to this section shall be exclusive and decisions of the administrative
31 hearing commission reviewable pursuant to this section shall not be reviewable
32 in any other proceeding, and no other official or court shall have power to review
33 any such decision by an action in the nature of mandamus or otherwise, except
34 pursuant to the provisions of this section. The party seeking review shall be

35 responsible for the filing of the transcript and record of all proceedings before the
36 administrative hearing commission with the appropriate court of appeals.

37 3. Any franchisee receiving a notice from a franchisor pursuant to the
38 provisions of sections 407.1025 to 407.1049, or any franchisee adversely affected
39 by a franchisor's acts or proposed acts described in the provisions of sections
40 407.1025 to 407.1049, shall be entitled to file an application for a hearing before
41 the administrative hearing commission for a determination as to whether the
42 franchisor has good cause for its acts or proposed acts.

43 4. Not less than sixty days before the effective date of the initiation of any
44 enumerated act pursuant to subdivisions (5), (6), (7) and (14) of section 407.1034,
45 a franchisor shall give written notice to the affected franchisee or franchisees, by
46 certified mail, return receipt requested, except as follows:

47 (1) Upon the initiation of an act pursuant to subdivision (5) of section
48 407.1034, such notice shall be given not less than fifteen days before the effective
49 date of such act only if the grounds for the notice include the following:

50 (a) Transfer of any ownership or interest in the franchised dealership
51 without the consent of the [motorcycle or all-terrain] **powersport** vehicle
52 franchisor;

53 (b) Material misrepresentation by the [motorcycle or all-terrain]
54 **powersport** vehicle franchisee in applying for the franchise;

55 (c) Insolvency of the [motorcycle or all-terrain] **powersport** vehicle
56 franchisee or the filing of any petition by or against the [motorcycle or all-terrain]
57 **powersport** vehicle franchisee under any bankruptcy or receivership law;

58 (d) Any unfair business practice by the [motorcycle or all-terrain]
59 **powersport** vehicle franchisee after the [motorcycle or all-terrain] **powersport**
60 vehicle franchisor has issued a written warning to the [motorcycle or all-terrain]
61 **powersport** vehicle franchisee to desist from such practice;

62 (e) Conviction of the [motorcycle or all-terrain] **powersport** vehicle
63 franchisee of a crime which is a felony;

64 (f) Failure of the [motorcycle or all-terrain] **powersport** vehicle
65 franchisee to conduct customary sales and service operations during customary
66 business hours for at least seven consecutive business days unless such closing
67 is due to an act of God, strike or labor difficulty or other cause over which [the
68 motorcycle or all-terrain vehicle] **such** franchisee has no control; or

69 (g) Revocation of the [motorcycle or all-terrain] **powersport** vehicle
70 franchisee's license **to operate as a dealer of powersport vehicles**;

71 (2) Upon initiation of an act pursuant to subdivision (7) of section
72 407.1034, such notice shall be given within sixty days of the franchisor's receipt
73 of a written proposal to consummate such sale or transfer and the receipt of all
74 necessary information and documents generally used by the franchisor to conduct
75 its review. The franchisor's notice of disapproval shall also specify the reasonable
76 standard which the franchisor contends is not satisfied and the reason the
77 franchisor contends such standard is not satisfied. Failure on the part of the
78 franchisor to provide such notice shall be conclusively deemed an approval by the
79 franchisor of the proposed sale or transfer to the proposed transferee. A
80 franchisee's application for a hearing shall be filed with the administrative
81 hearing commission within fifteen days from receipt of such franchisor's notice;

82 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of section
83 407.1034, such notice shall be given within sixty days of the franchisor's receipt
84 of a deceased or incapacitated franchisee's designated family member's intention
85 to succeed to the franchise or franchises or of the franchisor's receipt of the
86 personal and financial data of the designated family member, whichever is later.

87 5. A franchisor's notice to a franchisee or franchisees pursuant to
88 subdivisions (5), (6), (7) and (14) of section 407.1034 shall contain a statement of
89 the particular grounds supporting the intended action or activity which shall
90 include any reasonable standards which were not satisfied. The notice shall also
91 contain at a minimum, on the first page thereof, a conspicuous statement which
92 reads as follows:

93 "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED TO FILE A
94 PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING COMMISSION
95 IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH YOU
96 MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE
97 FILED WITHIN FIFTEEN DAYS FROM RECEIPT OF THIS NOTICE."

98 6. When more than one application for a hearing is filed with the
99 administrative hearing commission, the administrative hearing commission may
100 consolidate the applications into one proceeding to expedite the disposition of all
101 relevant issues.

102 7. In all proceedings before the administrative hearing commission
103 pursuant to this section and section 407.1034, where the franchisor is required
104 to give notice pursuant to subsection 5 of this section, the franchisor shall have
105 the burden of proving by a preponderance of the evidence that good cause exists
106 for its actions. In all other actions, the franchisee shall have the burden of proof.

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

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

15 (2) To coerce any [motorcycle or all-terrain] **powersport** vehicle
16 franchisee to accept delivery of any new [motorcycle, motorcycles, all-terrain]
17 **powersport** vehicles, equipment, parts or accessories therefor, or any other
18 commodity or commodities which such [motorcycle or all-terrain] **powersport**
19 vehicle franchisee has not ordered after such [motorcycle or all-terrain]
20 **powersport** vehicle franchisee has rejected such commodity or commodities. It
21 shall not be deemed a violation of sections 407.1025 to 407.1049 for a [motorcycle
22 or all-terrain] **powersport** vehicle franchisor to require a [motorcycle or
23 all-terrain] **powersport** vehicle franchisee to have an inventory of parts, tools
24 and equipment reasonably necessary to service the [motorcycles or all-terrain]
25 **powersport** vehicles sold by a [motorcycle or all-terrain] **powersport** vehicle
26 franchisor; or new [motorcycles or all-terrain] **powersport** vehicles reasonably
27 necessary to meet the demands of dealers or the public;

28 (3) To unreasonably refuse to deliver in reasonable quantities and within
29 a reasonable time after receipt of orders for new [motorcycles or all-terrain]
30 **powersport** vehicles, such [motorcycles or all-terrain] **powersport** vehicles as
31 are so ordered and as are covered by such franchise and as are specifically
32 publicly advertised by such [motorcycle or all-terrain] **powersport** vehicle
33 franchisor to be available for immediate delivery; provided, however, the failure
34 to deliver any [motorcycle or all-terrain] **powersport** vehicle shall not be
35 considered a violation of sections 407.1025 to 407.1049 if such failure is due to an
36 act of God, work stoppage, or delay due to a strike or labor difficulty, shortage of

37 products or materials, freight delays, embargo or other cause of which such
38 [motorcycle or all-terrain] **powersport** vehicle franchisor has no control;

39 (4) To coerce any [motorcycle or all-terrain] **powersport** vehicle
40 franchisee to enter into any agreement with such [motorcycle or all-terrain]
41 **powersport** vehicle franchisor or to do any other act prejudicial to such
42 [motorcycle or all-terrain] **powersport** vehicle franchisee, by threatening to
43 cancel any franchise or any contractual agreement existing between such
44 [motorcycle or all-terrain] **powersport** vehicle franchisor and [motorcycle or
45 all-terrain] **powersport** vehicle franchisee; provided, however, that notice in
46 good faith to any [motorcycle or all-terrain] **powersport** vehicle franchisee of
47 such [motorcycle or all-terrain] **powersport** vehicle franchisee's violation of any
48 provisions of such franchise or contractual agreement shall not constitute a
49 violation of sections 407.1025 to 407.1049;

50 (5) To terminate, cancel or refuse to continue any franchise, directly or
51 indirectly through the actions of the franchisor, unless such new [motorcycle or
52 all-terrain] **powersport** vehicle franchisee substantially defaults in the
53 performance of such franchisee's reasonable and lawful obligations under such
54 franchisee's franchise, or such new [motorcycle or all-terrain] **powersport**
55 vehicle franchisor discontinues the sale in the state of Missouri of such
56 franchisor's products which are the subject of the franchise:

57 (a) Notwithstanding the terms of any franchise agreement to the contrary,
58 good cause to terminate, cancel or refuse to continue any franchise agreement
59 shall not be established based upon the fact that the [motorcycle or all-terrain]
60 **powersport** vehicle franchisee owns, has an investment in, participates in the
61 management of or holds a franchise agreement for the sale or service of another
62 make or line of new [motorcycles or all-terrain] **powersport** vehicles or the
63 [motorcycle or all-terrain] **powersport** vehicle dealer has established another
64 make or line of new [motorcycles or all-terrain] **powersport** vehicles or service
65 in the same dealership facilities as those of the [motorcycle or all-terrain]
66 **powersport** vehicle franchisor prior to February 1, 1998, or such establishment
67 is approved in writing by the franchisee and the franchisor. However, a
68 franchisor may require a franchisee to maintain a reasonable line of credit for
69 each franchise and to comply with each franchisor's reasonable requirements
70 concerning capital, management and facilities. If the franchise agreement
71 requires the approval of the franchisor, such approval shall be requested in
72 writing by the franchisee and the franchisor shall approve or disapprove such a

73 request in writing within sixty days of receipt of such request. A request from a
74 franchisee shall be deemed to have been approved if the franchisor fails to notify
75 the franchisee, in writing, of its disapproval within sixty days after its receipt of
76 the written request;

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

80 a. The franchisee's sales in relation to sales in the market;

81 b. The franchisee's investment and obligations;

82 c. Injury to the public welfare;

83 d. The adequacy of the franchisee's service facilities, equipment, parts and
84 personnel in relation to those of other franchisees of the same line-make;

85 e. Whether warranties are being honored by the franchisee;

86 f. The parties' compliance with their franchise agreement;

87 g. The desire of a franchisor for market penetration or a market study, if
88 any, prepared by the franchisor or franchisee are two factors which may be
89 considered;

90 h. The harm to the franchisor;

91 (6) To prevent by contract or otherwise, any [motorcycle or all-terrain]
92 **powersport** vehicle franchisee from changing the capital structure of the
93 franchisee's franchise of such [motorcycle or all-terrain] **powersport** vehicle
94 franchisee or the means by or through which the franchisee finances the
95 operation of the franchisee's franchise, provided the [motorcycle or all-terrain]
96 **powersport** vehicle franchisee at all times meets any reasonable capital
97 standards agreed to between the [motorcycle or all-terrain] **powersport** vehicle
98 franchisee and the [motorcycle or all-terrain] **powersport** vehicle franchisor and
99 grants to the [motorcycle or all-terrain] **powersport** vehicle franchisor a
100 purchase money security interest in the new [motorcycles or all-terrain]
101 **powersport** vehicles, new parts and accessories purchased from the [motorcycle
102 or all-terrain] **powersport** vehicle franchisor;

103 (7) (a) Prevent, by contract or otherwise, any sale or transfer of a
104 franchisee's franchise or franchises or interest or management thereof; provided,
105 if the franchise specifically permits the franchisor to approve or disapprove any
106 such proposed sale or transfer, a franchisor shall only be allowed to disapprove
107 a proposed sale or transfer if the interest being sold or transferred when added
108 to any other interest owned by the transferee constitutes fifty percent or more of

109 the ownership interest in the franchise and if the proposed transferee fails to
110 satisfy any standards of the franchisor which are in fact normally relied upon by
111 the franchisor prior to its entering into a franchise, and which relate to the
112 proposed management or ownership of the franchise operations or to the
113 qualification, capitalization, integrity or character of the proposed transferee and
114 which are reasonable. A franchisee may request, at any time, that the franchisor
115 provide a copy of the standards which are normally relied upon by the franchisor
116 to evaluate a proposed sale or transfer and a proposed transferee;

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

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

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

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

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

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

139 e. The franchisor agrees to pay the reasonable expenses, including
140 attorney's fees which do not exceed the usual, customary and reasonable fees
141 charged for similar work done for other clients, incurred by the proposed
142 transferee prior to the franchisor's exercise of its right of first refusal in
143 negotiating and implementing the contract for the proposed sale or transfer of the
144 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment

145 of such expenses and attorney's fees shall be required if the franchisee has not
146 submitted or caused to be submitted an accounting of those expenses within
147 fourteen days of the franchisee's receipt of the franchisor's written request for
148 such an accounting. Such accounting may be requested by a franchisor before
149 exercising its right of first refusal;

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

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

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

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

163 d. Injury to the public welfare;

164 e. The harm to the franchisor;

165 (8) To prevent by contract or otherwise any [motorcycle or all-terrain]
166 **powersport** vehicle franchisee from changing the executive management of
167 [motorcycle or all-terrain] **powersport** vehicle franchisee's business, except that
168 any attempt by a [motorcycle or all-terrain] **powersport** vehicle franchisor to
169 demonstrate by giving reasons that such change in executive management will
170 be detrimental to the distribution of the [motorcycle or all-terrain] **powersport**
171 vehicle franchisor's [motorcycles] **vehicles** shall not constitute a violation of this
172 subdivision;

173 (9) To impose unreasonable standards of performance upon a [motorcycle
174 or all-terrain] **powersport** vehicle franchisee;

175 (10) To require a [motorcycle or all-terrain] **powersport** vehicle
176 franchisee at the time of entering into a franchise arrangement to assent to a
177 release, assignment, novation, waiver or estoppel which would relieve any person
178 from liability imposed by sections 407.1025 to 407.1049;

179 (11) To prohibit directly or indirectly the right of free association among
180 [motorcycle or all-terrain] **powersport** vehicle franchisees for any lawful

181 purpose;

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

185 (13) Upon any termination, cancellation or refusal to continue any
186 franchise or any discontinuation of any line-make or parts or products related to
187 such line-make by a franchisor, fail to pay reasonable compensation to a
188 franchisee as follows:

189 (a) Any new, undamaged [and], unsold [motorcycles or all-terrain], **and**
190 **untitled powersport** vehicles in the franchisee's inventory of either the current
191 model year, or [purchased from the franchisor within one hundred twenty days]
192 **of the two model years** prior to receipt of a notice of termination or
193 nonrenewal, provided the [motorcycle or all-terrain] **powersport** vehicle has less
194 than [twenty] **seventy-five** miles registered on the odometer, including mileage
195 incurred in delivery from the franchisor or in transporting the [motorcycle or
196 all-terrain] **powersport** vehicle between dealers for sale, at the dealer's net
197 acquisition cost;

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

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

208 (d) The fair market value of all special tools, data processing equipment
209 and [motorcycle or all-terrain] **powersport** vehicle service equipment owned by
210 the franchisee which were recommended in writing and designated as special
211 tools and equipment and purchased from, or purchased at the request of, the
212 franchisor within three years of the termination of the franchise, if the tools and
213 equipment are in usable and good condition, except for reasonable wear and tear;
214 and

215 (e) The franchisor shall pay the franchisee the amounts specified in this
216 subdivision within ninety days after the tender of the property subject to the

217 franchisee providing evidence of good and clear title upon return of the property
218 to the franchisor. Unless previous arrangements have been made and agreed
219 upon, the franchisee is under no obligation to provide insurance for the property
220 left after one hundred eighty days;

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

226 (a) Any designated family member of a deceased or incapacitated
227 franchisee shall become the succeeding franchisee of such deceased or
228 incapacitated franchisee if such designated family member gives the franchisor
229 written notice of such family member's intention to succeed to the franchise or
230 franchises within forty-five days after the death or incapacity of the franchisee,
231 and agrees to be bound by all of the terms and conditions of the current franchise
232 agreement, and the designated family member meets the current reasonable
233 criteria generally applied by the franchisor in qualifying franchisees. A
234 franchisee may request, at any time, that the franchisor provide a copy of such
235 criteria generally applied by the franchisor in qualifying franchisees;

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

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

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

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

252 a. Whether the franchise agreement specifically permits the franchisor to

253 approve or disapprove any successor;

254 b. Whether the proposed successor fails to satisfy any standards of the
255 franchisor which are in fact normally relied upon by the franchisor prior to the
256 successor entering into a franchise, and which relate to the proposed management
257 or ownership of the franchise operation or to the qualification, capitalization,
258 integrity or character of the proposed successor and which are reasonable;

259 c. Injury to the public welfare;

260 d. The harm to the franchisor;

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

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

407.1035. 1. For purposes of this section, "relevant market area" means:

2 (1) For a proposed franchisee or franchisee who plans to relocate his or
3 her place of business in a county having a population which is greater than one
4 hundred thousand, the area within a radius of ten miles of the intended site of
5 the proposed or relocated franchisee. The ten-mile distance shall be determined
6 by measuring the distance between the nearest surveyed boundary of the existing
7 franchisee's principal place of business and the nearest surveyed boundary line
8 of the proposed or relocated franchisee's principal place of business; or

9 (2) For a proposed franchisee or a franchisee who plans to relocate his or
10 her place of business in a county having a population which is not greater than
11 one hundred thousand, the area within a radius of twenty miles of the intended
12 site of the proposed or relocated franchisee, or the county line, whichever is closer
13 to the intended site. The twenty-mile distance shall be determined by measuring
14 the distance between the nearest surveyed boundary line of the existing
15 franchisee's principal place of business and the nearest surveyed boundary line
16 of the proposed or relocated franchisee's principal place of business.

17 2. As used in this section, "relocate" and "relocation" shall not include the
18 relocation of a franchisee within two miles of its established place of business.

19 3. As used in this section, "motor vehicle" shall include [motorcycles and
20 all-terrain] **powersport** vehicles as defined in section 407.1025.

21 4. Before a franchisor enters into a franchise establishing or relocating a
22 franchisee within a relevant market area where the same line-make is
23 represented, the franchisor shall give written notice to each franchisee of the
24 same line-make in the relevant market area of its intention to establish an
25 additional franchisee or to relocate an existing franchisee within that relevant
26 market area.

27 5. Within thirty days after receiving the notice provided for in subsection
28 4 of this section, or within thirty days after the end of any appeal procedure
29 provided by the franchisor, a franchisee may bring an action pursuant to section
30 407.1031 to determine whether good cause exists for the establishing or relocating
31 of a proposed franchisee.

32 6. This section shall not apply to the reopening or replacement in a
33 relevant market area of a closed dealership that has been closed within the
34 preceding year, if the established place of business of the reopened or replacement
35 franchisee is within two miles of the established place of business of the closed
36 dealership.

37 7. In determining whether good cause exists for establishing or relocating
38 an additional franchisee for the same line-make, the court shall take into
39 consideration the existing circumstances, including but not limited to the
40 following:

41 (1) Permanency of the investment;

42 (2) Effect on the retail motor vehicle business and the consuming public
43 in the relevant market area;

44 (3) Whether it is injurious or beneficial to the public welfare;

45 (4) Whether the franchisees of the same line-make in that relevant market
46 area are providing adequate competition and convenient consumer care for the
47 motor vehicles of that line-make in the market area, including the adequacy of
48 the motor vehicle sales and qualified service personnel;

49 (5) Whether the establishment or relocation of the franchisee would
50 promote competition;

51 (6) Growth or decline of the population and the number of new motor
52 vehicle registrations in the relevant market area; and

53 (7) Effect on the relocating franchisee of a denial of its relocations into the
54 relevant market area.

55 8. The remedies and relief available pursuant to section 407.1049 shall
56 apply to this section.

 407.1037. When a franchised dealer or manufacturer proposes to establish
2 or relocate a [motorcycle or all-terrain] **powersport** vehicle dealership within
3 any city not within a county, the dealer or manufacturer shall make reasonable
4 efforts to establish or relocate such dealership in an area within such city that
5 improves the equitable distribution of dealerships within such city and is
6 conveniently located to serve minorities who reside in such city.

 407.1043. It shall be a defense for a [motorcycle or all-terrain]
2 **powersport** vehicle franchisor, to any action brought pursuant to sections
3 407.1025 to 407.1049 by a [motorcycle or all-terrain] **powersport** vehicle
4 franchisee, if it is shown that such [motorcycle or all-terrain] **powersport**
5 vehicle franchisee has failed to substantially comply with reasonable and lawful
6 requirements imposed by the franchise and other agreements ancillary or
7 collateral thereto, or if the [motorcycle or all-terrain] **powersport** vehicle
8 franchisee, or any of its officers, have been convicted of a felony relevant to
9 business honesty or business practices, or if [the motorcycle or all-terrain vehicle]
10 **such** franchisee has ceased conducting its business or has abandoned the
11 franchise, or is insolvent as that term is defined in subdivision (23) of section
12 400.1-201, or has filed a voluntary petition in bankruptcy, or has made an
13 assignment for benefit of creditors, or has been the subject of an involuntary
14 proceeding under the Federal Bankruptcy Act or under any state insolvency law
15 which is not vacated within twenty days from the institution thereof, or there has
16 been an appointment of a receiver or other officer having similar powers for the
17 [motorcycle or all-terrain] **powersport** vehicle franchisee or [the motorcycle or
18 all-terrain vehicle] **such** franchisee's business who is not removed within twenty
19 days from the person's appointment, or there has been a levy under attachment,
20 execution or similar process which is not within ten days vacated or removed by
21 payment or bonding, and it shall be a defense to any action brought pursuant to
22 sections 407.1025 to 407.1049 that the complained of conduct by a [motorcycle or
23 all-terrain] **powersport** vehicle franchisor was undertaken in good faith in
24 pursuit of rights or remedies accorded to [a motorcycle or all-terrain vehicle]
25 **such** franchisor as a seller of goods or a holder of a security interest pursuant to
26 the provisions of chapter 400.

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

3 vehicles.

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

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

21 4. A franchisor shall not:

22 (1) Fail to perform any warranty obligation;

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

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

29 5. All claims made by a franchisee pursuant to this section for labor and
30 parts shall be paid within thirty days after their approval. All claims shall be
31 either approved or disapproved by the franchisor within thirty days after their
32 receipt on a proper form generally used by the franchisor and containing the
33 usually required information therein. Any claims not specifically disapproved in
34 writing within thirty days after the receipt of the form shall be considered to be
35 approved and payment shall be made within thirty days. A claim that has been
36 approved and paid may not be charged back to the franchisee unless the
37 franchisor can show that the claim was fraudulent, false, or unsubstantiated,
38 except that a charge back for false or fraudulent claims shall not be made more

39 than two years after payment, and a charge back for unsubstantiated claims shall
40 not be made more than fifteen months after payment. A franchisee shall
41 maintain all records of warranty repairs, including the related time records of its
42 employees, for at least two years following payment of any warranty claim.

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

46 7. All claims made by a franchisee pursuant to subsection 5 of this section
47 for promotion events, programs, or activities shall be paid within twenty-five days
48 after their approval or program close, whichever comes later. All claims except
49 those of the type set forth in subdivisions (1) and (2) of this subsection shall be
50 either approved or disapproved by the franchisor within thirty days after their
51 receipt on a proper form generally used by the franchisor and containing the
52 usually required information therein. Any claim not specifically disapproved in
53 writing within thirty days after the receipt of this form shall be considered to be
54 approved, and payment shall be made within thirty days. The franchisor has the
55 right to charge back any claim for twelve months after the later of either the close
56 of the promotion event, program, or activity, or the date of the payment. The
57 provisions of this subsection shall not apply to:

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

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

407.1049. In addition to the administrative relief provided in sections
2 407.1025 to 407.1049, any [motorcycle or all-terrain] **powersport** vehicle
3 franchisee may bring an action in any court of competent jurisdiction against a
4 [motorcycle or all-terrain] **powersport** vehicle franchisor with whom the
5 franchisee has a franchise, for an act or omission which constitutes an unlawful
6 practice as defined in section 407.1034 to recover damages sustained by reason
7 thereof, and, where appropriate, such [motorcycle or all-terrain] **powersport**

8 vehicle franchisee shall be entitled to injunctive relief, but the remedies set forth
9 in this section shall not be deemed exclusive and shall be in addition to any other
10 remedies permitted by law.

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