

SENATE BILL NO. 1358

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR THOMPSON REHDER.

5299S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 407.1025 and 407.1034, RSMo, and to enact in lieu thereof three new sections relating to vehicle dealers.

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

Section A. Sections 407.1025 and 407.1034, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 407.1025, 407.1026, and 407.1034, to read as
4 follows:

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

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

7 (2) "All-terrain vehicle", any motorized vehicle
8 manufactured and used exclusively for off-highway use, with
9 an unladen dry weight of one thousand five hundred pounds or
10 less, traveling on three, four or more nonhighway tires,
11 with either:

12 (a) A seat designed to be straddled by the operator,
13 and handlebars for steering control, but excluding an
14 electric bicycle as defined in section 301.010; or

15 (b) A width of fifty inches or less, measured from
16 outside of tire rim to outside of tire rim, regardless of
17 seating or steering arrangement;

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

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

21 (a) Good faith recommendations, exposition, argument,
22 persuasion or attempts at persuasion;

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

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

29 (d) Any other conduct set forth in sections 407.1025
30 to 407.1049 that is permitted of the franchisor or is
31 expressly excluded from coercion or a violation of sections
32 407.1025 to 407.1049;

33 (4) **"Distributor", a person, resident or nonresident,**
34 **who, in whole or in part, sells or distributes new**
35 **motorcycles or all-terrain vehicles to dealers in this state;**

36 (5) "Franchise", a written arrangement or contract for
37 a definite or indefinite period, in which a person grants to
38 another person a license to use, or the right to grant to
39 others a license to use, a trade name, trademark, service
40 mark, or related characteristics, in which there is a
41 community of interest in the marketing of goods or services,
42 or both, at wholesale or retail, by agreement, lease or
43 otherwise, and in which the operation of the franchisee's
44 business with respect to such franchise is substantially
45 reliant on the franchisor for the continued supply of
46 franchised new motorcycles or all-terrain vehicles, parts
47 and accessories for sale at wholesale or retail;

48 [(5)] (6) "Franchisee", a person to whom a franchise
49 is granted;

50 [(6)] (7) "Franchisor", a person who grants a
51 franchise to another person;

52 [(7)] (8) "Importer", a person who has written
53 authorization from a foreign manufacturer of a line-make of
54 motorcycles or all-terrain vehicles to grant a franchise to
55 a motorcycle or all-terrain vehicle dealer in this state
56 with respect to that line-make;

57 (9) "Line-make", a collection of models, series, or
58 groups of motorcycles or all-terrain vehicles manufactured
59 by or for a particular manufacturer, distributor, or
60 importer offered for sale, lease, or distribution pursuant
61 to a common brand name or mark; provided, however:

62 (a) Multiple brand names or marks may constitute a
63 single line-make, but only when included in a common dealer
64 agreement and the manufacturer, distributor, or importer
65 offers such vehicles bearing the multiple names or marks
66 together only, and not separately, to its authorized
67 dealers; and

68 (b) Vehicles bearing a common brand name or mark may
69 constitute separate line-makes when pertaining to vehicles
70 subject to separate dealer agreements or when such vehicles
71 are intended for different types of use;

72 (10) "Manufacturer", any person, whether a resident or
73 nonresident of this state, who manufactures or assembles
74 motorcycles or all-terrain vehicles. The term
75 "manufacturer" shall include a central or principal sales
76 corporation or other entity, other than a franchisee,
77 through which, by contractual agreement or otherwise, it
78 distributes its products;

79 (11) "Motorcycle", a motor vehicle operated on two
80 wheels, but excluding an electric bicycle as defined in
81 section 301.010;

82 [(8)] (12) "New", when referring to motorcycles or all-
83 terrain vehicles or parts, means those motorcycles or all-
84 terrain vehicles or parts which have not been held except as
85 inventory, as that term is defined in subdivision (4) of
86 section [400.9-109] **400.9-102;**

87 [(9)] (13) "Person", a sole proprietor, partnership,
88 corporation, or any other form of business organization.

**407.1026. 1. No manufacturer, importer, or
2 distributor shall engage in the business of selling
3 motorcycles or all-terrain vehicles or parts to retail
4 consumers in this state, including by mail, except through a
5 franchise as permitted by sections 407.1025 to 407.1049.**

6 **2. No manufacturer, importer, or distributor shall
7 establish a new line-make unless the manufacturer,
8 distributor, or importer offers vehicles of such line-make
9 only to authorized dealers of its previous line-make.**

10 **3. Any dealer or manufacturer in this state shall have
11 standing to enforce the provisions of this section.**

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

7 (1) To engage in any conduct which is capricious, in
8 bad faith, or unconscionable and which causes damage to a
9 motorcycle or all-terrain vehicle franchisee or to the
10 public; provided, that good faith conduct engaged in by
11 motorcycle or all-terrain vehicle franchisors as sellers of
12 new motorcycles, all-terrain vehicles or parts or as holders
13 of security interests therein, in pursuit of rights or
14 remedies accorded to sellers of goods or to holders of

15 security interests pursuant to the provisions of chapter
16 400, uniform commercial code, shall not constitute unfair
17 practices pursuant to sections 407.1025 to 407.1049;

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

33 (3) To unreasonably refuse to deliver in reasonable
34 quantities and within a reasonable time after receipt of
35 orders for new motorcycles or all-terrain vehicles, such
36 motorcycles or all-terrain vehicles as are so ordered and as
37 are covered by such franchise and as are specifically
38 publicly advertised by such motorcycle or all-terrain
39 vehicle franchisor to be available for immediate delivery;
40 provided, however, the failure to deliver any motorcycle or
41 all-terrain vehicle shall not be considered a violation of
42 sections 407.1025 to 407.1049 if such failure is due to an
43 act of God, work stoppage, or delay due to a strike or labor
44 difficulty, shortage of products or materials, freight
45 delays, embargo or other cause of which such motorcycle or
46 all-terrain vehicle franchisor has no control;

47 (4) To coerce any motorcycle or all-terrain vehicle
48 franchisee to enter into any agreement with such motorcycle
49 or all-terrain vehicle franchisor or to do any other act
50 prejudicial to such motorcycle or all-terrain vehicle
51 franchisee, by threatening to cancel any franchise or any
52 contractual agreement existing between such motorcycle or
53 all-terrain vehicle franchisor and motorcycle or all-terrain
54 vehicle franchisee; provided, however, that notice in good
55 faith to any motorcycle or all-terrain vehicle franchisee of
56 such motorcycle or all-terrain vehicle franchisee's
57 violation of any provisions of such franchise or contractual
58 agreement shall not constitute a violation of sections
59 407.1025 to 407.1049;

60 (5) To terminate, cancel or refuse to continue any
61 franchise, directly or indirectly through the actions of the
62 franchisor, unless such new motorcycle or all-terrain
63 vehicle franchisee substantially defaults in the performance
64 of such franchisee's reasonable and lawful obligations under
65 such franchisee's franchise, or such new motorcycle or all-
66 terrain vehicle franchisor discontinues the sale in the
67 state of Missouri of such franchisor's products which are
68 the subject of the franchise:

69 (a) Notwithstanding the terms of any franchise
70 agreement to the contrary, good cause to terminate, cancel
71 or refuse to continue any franchise agreement shall not be
72 established based upon the fact that the motorcycle or all-
73 terrain vehicle franchisee owns, has an investment in,
74 participates in the management of or holds a franchise
75 agreement for the sale or service of another make or line of
76 new motorcycles or all-terrain vehicles or the motorcycle or
77 all-terrain vehicle dealer has established another make or
78 line of new motorcycles or all-terrain vehicles or service

79 in the same dealership facilities as those of the motorcycle
80 or all-terrain vehicle franchisor prior to February 1, 1998,
81 or such establishment is approved in writing by the
82 franchisee and the franchisor. However, a franchisor may
83 require a franchisee to maintain a reasonable line of credit
84 for each franchise and to comply with each franchisor's
85 reasonable requirements concerning capital, management and
86 facilities. If the franchise agreement requires the
87 approval of the franchisor, such approval shall be requested
88 in writing by the franchisee and the franchisor shall
89 approve or disapprove such a request in writing within sixty
90 days of receipt of such request. A request from a
91 franchisee shall be deemed to have been approved if the
92 franchisor fails to notify the franchisee, in writing, of
93 its disapproval within sixty days after its receipt of the
94 written request;

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

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

101 b. The franchisee's investment and obligations;

102 c. Injury to the public welfare;

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

106 e. Whether warranties are being honored by the
107 franchisee;

108 f. The parties' compliance with their franchise
109 agreement;

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

113 h. The harm to the franchisor;

114 (6) To prevent by contract or otherwise, any
115 motorcycle or all-terrain vehicle franchisee from changing
116 the capital structure of the franchisee's franchise of such
117 motorcycle or all-terrain vehicle franchisee or the means by
118 or through which the franchisee finances the operation of
119 the franchisee's franchise, provided the motorcycle or all-
120 terrain vehicle franchisee at all times meets any reasonable
121 capital standards agreed to between the motorcycle or all-
122 terrain vehicle franchisee and the motorcycle or all-terrain
123 vehicle franchisor and grants to the motorcycle or all-
124 terrain vehicle franchisor a purchase money security
125 interest in the new motorcycles or all-terrain vehicles, new
126 parts and accessories purchased from the motorcycle or all-
127 terrain vehicle franchisor;

128 (7) (a) Prevent, by contract or otherwise, any sale
129 or transfer of a franchisee's franchise or franchises or
130 interest or management thereof; provided, if the franchise
131 specifically permits the franchisor to approve or disapprove
132 any such proposed sale or transfer, a franchisor shall only
133 be allowed to disapprove a proposed sale or transfer if the
134 interest being sold or transferred when added to any other
135 interest owned by the transferee constitutes fifty percent
136 or more of the ownership interest in the franchise and if
137 the proposed transferee fails to satisfy any standards of
138 the franchisor which are in fact normally relied upon by the
139 franchisor prior to its entering into a franchise, and which
140 relate to the proposed management or ownership of the
141 franchise operations or to the qualification,

142 capitalization, integrity or character of the proposed
143 transferee and which are reasonable. A franchisee may
144 request, at any time, that the franchisor provide a copy of
145 the standards which are normally relied upon by the
146 franchisor to evaluate a proposed sale or transfer and a
147 proposed transferee;

148 (b) The franchisee and the prospective franchisee
149 shall cooperate fully with the franchisor in providing
150 information relating to the prospective transferee's
151 qualifications, capitalization, integrity and character;

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

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

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

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

168 d. The sale or transfer does not involve the sale or
169 transfer to an immediate member or members of the family of
170 one or more franchisee owners, defined as a spouse, child,
171 grandchild, spouse of a child or grandchild, brother, sister
172 or parent of the franchisee owner, or to the qualified
173 manager, defined as an individual who has been employed by

174 the franchisee for at least two years and who otherwise
175 qualifies as a franchisee operator, or a partnership or
176 corporation controlled by such persons; and

177 e. The franchisor agrees to pay the reasonable
178 expenses, including attorney's fees which do not exceed the
179 usual, customary and reasonable fees charged for similar
180 work done for other clients, incurred by the proposed
181 transferee prior to the franchisor's exercise of its right
182 of first refusal in negotiating and implementing the
183 contract for the proposed sale or transfer of the franchise
184 or the franchisee's assets. Notwithstanding the foregoing,
185 no payment of such expenses and attorney's fees shall be
186 required if the franchisee has not submitted or caused to be
187 submitted an accounting of those expenses within fourteen
188 days of the franchisee's receipt of the franchisor's written
189 request for such an accounting. Such accounting may be
190 requested by a franchisor before exercising its right of
191 first refusal;

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

197 a. Whether the franchise agreement specifically
198 permits the franchisor to approve or disapprove any proposed
199 sale or transfer;

200 b. Whether the interest to be sold or transferred when
201 added to any other interest owned by the proposed transferee
202 constitutes fifty percent or more of the ownership interest
203 in the franchise;

204 c. Whether the proposed transferee fails to satisfy
205 any standards of the franchisor which are in fact normally

206 relied upon by the franchisor prior to its entering into a
207 franchise, and which are related to the proposed management
208 or ownership of the franchise operations or to the
209 qualification, capitalization, integrity or character of the
210 proposed transferee which are reasonable;

211 d. Injury to the public welfare;

212 e. The harm to the franchisor;

213 (8) To prevent by contract or otherwise any motorcycle
214 or all-terrain vehicle franchisee from changing the
215 executive management of motorcycle or all-terrain vehicle
216 franchisee's business, except that any attempt by a
217 motorcycle or all-terrain vehicle franchisor to demonstrate
218 by giving reasons that such change in executive management
219 will be detrimental to the distribution of the motorcycle or
220 all-terrain vehicle franchisor's motorcycles shall not
221 constitute a violation of this subdivision;

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

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

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

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

236 (13) Upon any termination, cancellation or refusal to
237 continue any franchise or any discontinuation of any line-

238 make or parts or products related to such line-make by a
239 franchisor, fail to pay reasonable compensation to a
240 franchisee as follows:

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

251 (b) The current parts catalog cost to the dealer of
252 each new, unused, undamaged and unsold part or accessory if
253 the part or accessory is in the current parts catalog, less
254 applicable allowances. If the part or accessory was
255 purchased by the franchisee from an outgoing authorized
256 franchisee, the franchisor shall purchase the part for
257 either the price in the current parts catalog or the
258 franchisee's actual purchase price of the part, whichever is
259 less;

260 (c) The depreciated value determined pursuant to
261 generally accepted accounting principles of each undamaged
262 sign owned by the franchisee which bears a trademark or
263 trade name used or claimed by the franchisor if the sign was
264 purchased from, or purchased at the request of, the
265 franchisor;

266 (d) The fair market value of all special tools, data
267 processing equipment and motorcycle or all-terrain vehicle
268 service equipment owned by the franchisee which were
269 recommended in writing and designated as special tools and

270 equipment and purchased from, or purchased at the request
271 of, the franchisor within three years of the termination of
272 the franchise, if the tools and equipment are in usable and
273 good condition, except for reasonable wear and tear; and

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

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

288 (a) Any designated family member of a deceased or
289 incapacitated franchisee shall become the succeeding
290 franchisee of such deceased or incapacitated franchisee if
291 such designated family member gives the franchisor written
292 notice of such family member's intention to succeed to the
293 franchise or franchises within forty-five days after the
294 death or incapacity of the franchisee, and agrees to be
295 bound by all of the terms and conditions of the current
296 franchise agreement, and the designated family member meets
297 the current reasonable criteria generally applied by the
298 franchisor in qualifying franchisees. A franchisee may
299 request, at any time, that the franchisor provide a copy of
300 such criteria generally applied by the franchisor in
301 qualifying franchisees;

302 (b) The franchisor may request from a designated
303 family member such personal and financial data as is
304 reasonably necessary to determine whether the existing
305 franchise agreement should be honored. The designated
306 family member shall supply the personal and financial data
307 promptly upon the request;

308 (c) If the designated family member does not meet the
309 reasonable criteria generally applied by the franchisor in
310 qualifying franchisees, the discontinuance of the current
311 franchise agreement shall take effect not less than ninety
312 days after the date the franchisor serves the required
313 notice on the designated family member pursuant to
314 subsection 5 of section 407.1031;

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

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

325 a. Whether the franchise agreement specifically
326 permits the franchisor to approve or disapprove any
327 successor;

328 b. Whether the proposed successor fails to satisfy any
329 standards of the franchisor which are in fact normally
330 relied upon by the franchisor prior to the successor
331 entering into a franchise, and which relate to the proposed
332 management or ownership of the franchise operation or to the

333 qualification, capitalization, integrity or character of the
334 proposed successor and which are reasonable;

335 c. Injury to the public welfare;

336 d. The harm to the franchisor;

337 (15) To establish or implement a plan or system for
338 the allocation, scheduling, or delivery of new vehicles,
339 parts, or accessories to its franchisees that is not fair,
340 reasonable, and equitable or modifying an existing plan or
341 system so as to cause the plan or system to be unreasonable,
342 unfair, or inequitable. Within ten days of any request of a
343 franchisee, the franchisor shall disclose in writing to the
344 franchisee the method and mode of distribution of that line-
345 make among the franchisor's franchisees of the same line-
346 make within the same metro area for franchisees located in a
347 metropolitan area and within the county and contiguous
348 counties of any franchisee not located in a metropolitan
349 area;

350 (16) To implement a program or policy that encourages
351 or requires a franchisee to install direct current fast
352 charging stations, unless the franchisor reimburses the
353 franchisee for the cost to install and maintain the stations;

354 (17) To condition the sale, transfer, relocation, or
355 renewal of a franchise agreement, or to condition sales,
356 services, parts, or finance incentives, upon site control or
357 an agreement to renovate or make improvements to a facility;
358 except that voluntary acceptance of such conditions by the
359 franchisee shall not constitute a violation;

360 (18) To fail to offer to all of its franchisees of the
361 same line-make any consumer rebates, dealer incentives,
362 price or interest rate reduction, or finance terms that the
363 franchisor offers or advertises, or allows its franchisees
364 of the same line-make to offer or advertise;

365 (19) To offer rebates, bonuses, incentives, or other
366 similar benefits to a franchisee for the sale of a vehicle
367 by its franchisees unless: the same rebate, cash incentive,
368 or promotion is offered and made practically available to
369 all of its franchisees of the same line-make; and any
370 rebate, cash incentive, or promotion that is based on the
371 sale of an individual vehicle is not increased for meeting a
372 performance standard;

373 (20) To coerce any motorcycle or all-terrain vehicle
374 franchisee not to offer any product or service to consumers,
375 including but not limited to financial services, debt
376 waivers, or service contracts, or to coerce the franchisee
377 to offer such products or services through the franchisor;

378 (21) To make contingent or modify any motorcycle or
379 all-terrain vehicle franchisee's compensation for the sale
380 of a motorcycle or all-terrain vehicle based on the sale of
381 any other product or service, or on any other performance
382 standard;

383 (22) To coerce, threaten, intimidate or require a
384 franchisee under any condition affecting or related to a
385 franchise agreement, or to waive, limit or disclaim a right
386 that the franchisee may have pursuant to the provisions of
387 sections 407.1025 to 407.1049. Any contracts or agreements
388 which contain such provisions shall be deemed against the
389 public policy of the state of Missouri and are void and
390 unenforceable. Nothing in this section shall be construed
391 to prohibit voluntary settlement agreements;

392 [(16)] (23) To initiate any act enumerated in this
393 subsection on grounds that it has advised a franchisee of
394 its intention to discontinue representation at the time of a
395 franchisee change.

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