

FIRST REGULAR SESSION

SENATE BILL NO. 587

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

2256S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 407.1034, RSMo, and to enact in lieu thereof one new section relating to vehicle franchise practices.

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

Section A. Section 407.1034, RSMo, is repealed and one
2 new section enacted in lieu thereof, to be known as section
3 407.1034, to read as follows:

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;

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

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:] **If a motorcycle or all-terrain**

241 franchise agreement is terminated, cancelled, or not renewed
242 by the franchisor for cause; or if the dealer voluntarily
243 terminates a motorcycle or all-terrain dealer agreement in a
244 manner permitted by such agreement; or if the franchisor
245 terminates or discontinues a franchise by discontinuing a
246 line-make or by ceasing to do business in this state; or if
247 the franchisor changes the distributor or method of
248 distribution of its products in this state or alters its
249 sales regions or marketing areas within this state in a
250 manner that eliminates or diminishes the dealer's market
251 area; to fail to pay reasonable compensation to the
252 franchisee, at the election of the franchisee, as follows:

253 (a) **Repurchase** any new, undamaged and unsold
254 motorcycles or all-terrain vehicles in the franchisee's
255 inventory of either the current model year or purchased from
256 the franchisor within one hundred twenty days prior to
257 receipt of a notice of termination or nonrenewal, provided
258 the motorcycle or all-terrain vehicle has less than twenty
259 miles registered on the odometer, including mileage incurred
260 in delivery from the franchisor or in transporting the
261 motorcycle or all-terrain vehicle between dealers for sale,
262 at the dealer's net acquisition cost;

263 (b) **Repurchase** the current parts catalog cost to the
264 dealer of each new, unused, undamaged and unsold part or
265 accessory if the part or accessory is in the current parts
266 catalog, less applicable allowances. If the part or
267 accessory was purchased by the franchisee from an outgoing
268 authorized franchisee, the franchisor shall purchase the
269 part for either the price in the current parts catalog or
270 the franchisee's actual purchase price of the part,
271 whichever is less;

272 (c) **Pay to the franchisee** the depreciated value
273 determined pursuant to generally accepted accounting
274 principles of each undamaged sign owned by the franchisee
275 which bears a trademark or trade name used or claimed by the
276 franchisor if the sign was purchased from, or purchased at
277 the request of, the franchisor;

278 (d) **Pay to the franchisee** the fair market value of all
279 special tools, data processing equipment and motorcycle or
280 all-terrain vehicle service equipment owned by the
281 franchisee which were recommended in writing and designated
282 as special tools and equipment and purchased from, or
283 purchased at the request of, the franchisor within three
284 years of the termination of the franchise, if the tools and
285 equipment are in usable and good condition, except for
286 reasonable wear and tear; and

287 (e) The franchisor shall pay the franchisee the
288 amounts specified in this subdivision within [ninety] **thirty**
289 days after [the tender of the property] **termination of the**
290 **franchise**, subject to the franchisee providing evidence of
291 good and clear title upon return of the property to the
292 franchisor. Unless previous arrangements have been made and
293 agreed upon, the franchisee is under no obligation to
294 provide insurance for the property left after one hundred
295 eighty days;

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

302 (a) Any designated family member of a deceased or
303 incapacitated franchisee shall become the succeeding

304 franchisee of such deceased or incapacitated franchisee if
305 such designated family member gives the franchisor written
306 notice of such family member's intention to succeed to the
307 franchise or franchises within forty-five days after the
308 death or incapacity of the franchisee, and agrees to be
309 bound by all of the terms and conditions of the current
310 franchise agreement, and the designated family member meets
311 the current reasonable criteria generally applied by the
312 franchisor in qualifying franchisees. A franchisee may
313 request, at any time, that the franchisor provide a copy of
314 such criteria generally applied by the franchisor in
315 qualifying franchisees;

316 (b) The franchisor may request from a designated
317 family member such personal and financial data as is
318 reasonably necessary to determine whether the existing
319 franchise agreement should be honored. The designated
320 family member shall supply the personal and financial data
321 promptly upon the request;

322 (c) If the designated family member does not meet the
323 reasonable criteria generally applied by the franchisor in
324 qualifying franchisees, the discontinuance of the current
325 franchise agreement shall take effect not less than ninety
326 days after the date the franchisor serves the required
327 notice on the designated family member pursuant to
328 subsection 5 of section 407.1031;

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

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

339 a. Whether the franchise agreement specifically
340 permits the franchisor to approve or disapprove any
341 successor;

342 b. Whether the proposed successor fails to satisfy any
343 standards of the franchisor which are in fact normally
344 relied upon by the franchisor prior to the successor
345 entering into a franchise, and which relate to the proposed
346 management or ownership of the franchise operation or to the
347 qualification, capitalization, integrity or character of the
348 proposed successor and which are reasonable;

349 c. Injury to the public welfare;

350 d. The harm to the franchisor;

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

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

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