

FIRST REGULAR SESSION

HOUSE BILL NO. 1112

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RUTH.

2311H.02I

DANA RADEMAN MILLER, Chief Clerk

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A. Sections 407.1025, 407.1028, 407.1031, 407.1034, 407.1035, 407.1037, 407.1043, 407.1047, and 407.1049, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 407.1025, 407.1028, 407.1031, 407.1034, 407.1035, 407.1037, 407.1043, 407.1047, and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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

407.1031. 1. Any party seeking relief pursuant to the provisions of sections 407.1025
2 to 407.1049 may file an application for a hearing with the administrative hearing commission

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

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

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

36 4. Not less than sixty days before the effective date of the initiation of any enumerated
37 act pursuant to subdivisions (5), (6), (7) and (14) of section 407.1034, a franchisor shall give

38 written notice to the affected franchisee or franchisees, by certified mail, return receipt requested,
39 except as follows:

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

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

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

47 (c) Insolvency of the [~~motorcycle or all-terrain~~] **powersport** vehicle franchisee or the
48 filing of any petition by or against the [~~motorcycle or all-terrain~~] **powersport** vehicle franchisee
49 under any bankruptcy or receivership law;

50 (d) Any unfair business practice by the [~~motorcycle or all-terrain~~] **powersport** vehicle
51 franchisee after the [~~motorcycle or all-terrain~~] **powersport** vehicle franchisor has issued a written
52 warning to the [~~motorcycle or all-terrain~~] **powersport** vehicle franchisee to desist from such
53 practice;

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

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

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

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

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

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

83 "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED TO FILE A PROTEST
84 WITH THE MISSOURI ADMINISTRATIVE HEARING COMMISSION IN JEFFERSON
85 CITY, MISSOURI, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE
86 CONTENTS OF THIS NOTICE. ANY ACTION MUST BE FILED WITHIN FIFTEEN DAYS
87 FROM RECEIPT OF THIS NOTICE."

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

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

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

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

12 (2) To coerce any [~~motorcycle or all-terrain~~] **powersport** vehicle franchisee to accept
13 delivery of any new [~~motorcycle, motorcycles, all-terrain~~] **powersport** vehicles, equipment, parts

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

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

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

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

48 (a) Notwithstanding the terms of any franchise agreement to the contrary, good cause to
49 terminate, cancel, or refuse to continue any franchise agreement shall not be established based

50 upon the fact that the ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisee owns, has an
51 investment in, participates in the management of or holds a franchise agreement for the sale or
52 service of another make or line of new ~~[motorcycles or all-terrain]~~ **powersport** vehicles or the
53 ~~[motorcycle or all-terrain]~~ **powersport** vehicle dealer has established another make or line of
54 new ~~[motorcycles or all-terrain]~~ **powersport** vehicles or service in the same dealership facilities
55 as those of the ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisor prior to February 1,
56 1998, or such establishment is approved in writing by the franchisee and the franchisor.
57 However, a franchisor may require a franchisee to maintain a reasonable line of credit for each
58 franchise and to comply with each franchisor's reasonable requirements concerning capital,
59 management and facilities. If the franchise agreement requires the approval of the franchisor,
60 such approval shall be requested in writing by the franchisee and the franchisor shall approve or
61 disapprove such a request in writing within sixty days of receipt of such request. A request from
62 a franchisee shall be deemed to have been approved if the franchisor fails to notify the
63 franchisee, in writing, of its disapproval within sixty days after its receipt of the written request;

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

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

77 (6) To prevent by contract or otherwise, any ~~[motorcycle or all-terrain]~~ **powersport**
78 vehicle franchisee from changing the capital structure of the franchisee's franchise of such
79 ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisee or the means by or through which the
80 franchisee finances the operation of the franchisee's franchise, provided the ~~[motorcycle or~~
81 ~~all-terrain]~~ **powersport** vehicle franchisee at all times meets any reasonable capital standards
82 agreed to between the ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisee and the
83 ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisor and grants to the ~~[motorcycle or~~
84 ~~all-terrain]~~ **powersport** vehicle franchisor a purchase money security interest in the new

85 ~~[motorcycles or all-terrain]~~ **powersport** vehicles, new parts and accessories purchased from the
86 ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisor;

87 (7) (a) Prevent, by contract or otherwise, any sale or transfer of a franchisee's franchise
88 or franchises or interest or management thereof; provided, if the franchise specifically permits
89 the franchisor to approve or disapprove any such proposed sale or transfer, a franchisor shall only
90 be allowed to disapprove a proposed sale or transfer if the interest being sold or transferred when
91 added to any other interest owned by the transferee constitutes fifty percent or more of the
92 ownership interest in the franchise and if the proposed transferee fails to satisfy any standards
93 of the franchisor which are in fact normally relied upon by the franchisor prior to its entering into
94 a franchise, and which relate to the proposed management or ownership of the franchise
95 operations or to the qualification, capitalization, integrity or character of the proposed transferee
96 and which are reasonable. A franchisee may request, at any time, that the franchisor provide a
97 copy of the standards which are normally relied upon by the franchisor to evaluate a proposed
98 sale or transfer and a proposed transferee;

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

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

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

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

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

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

117 e. The franchisor agrees to pay the reasonable expenses, including attorney's fees which
118 do not exceed the usual, customary and reasonable fees charged for similar work done for other
119 clients, incurred by the proposed transferee prior to the franchisor's exercise of its right of first
120 refusal in negotiating and implementing the contract for the proposed sale or transfer of the

121 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment of such expenses
122 and attorney's fees shall be required if the franchisee has not submitted or caused to be submitted
123 an accounting of those expenses within fourteen days of the franchisee's receipt of the
124 franchisor's written request for such an accounting. Such accounting may be requested by a
125 franchisor before exercising its right of first refusal;

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

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

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

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

139 d. Injury to the public welfare;

140 e. The harm to the franchisor;

141 (8) To prevent by contract or otherwise any ~~[motorcycle or all-terrain]~~ **powersport**
142 vehicle franchisee from changing the executive management of ~~[motorcycle or all-terrain]~~
143 **powersport** vehicle franchisee's business, except that any attempt by a ~~[motorcycle or all-terrain]~~
144 **powersport** vehicle franchisor to demonstrate by giving reasons that such change in executive
145 management will be detrimental to the distribution of the ~~[motorcycle or all-terrain]~~ **powersport**
146 vehicle franchisor's ~~[motorcycles]~~ **vehicles** shall not constitute a violation of this subdivision;

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

149 (10) To require a ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisee at the time
150 of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or
151 estoppel which would relieve any person from liability imposed by sections 407.1025 to
152 407.1049;

153 (11) To prohibit directly or indirectly the right of free association among ~~[motorcycle or~~
154 ~~all-terrain]~~ **powersport** vehicle franchisees for any lawful purpose;

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

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

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

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

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

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

188 (e) The franchisor shall pay the franchisee the amounts specified in this subdivision
189 within ninety days after the tender of the property subject to the franchisee providing evidence
190 of good and clear title upon return of the property to the franchisor. Unless previous

191 arrangements have been made and agreed upon, the franchisee is under no obligation to provide
192 insurance for the property left after one hundred eighty days;

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

197 (a) Any designated family member of a deceased or incapacitated franchisee shall
198 become the succeeding franchisee of such deceased or incapacitated franchisee if such designated
199 family member gives the franchisor written notice of such family member's intention to succeed
200 to the franchise or franchises within forty-five days after the death or incapacity of the franchisee,
201 and agrees to be bound by all of the terms and conditions of the current franchise agreement, and
202 the designated family member meets the current reasonable criteria generally applied by the
203 franchisor in qualifying franchisees. A franchisee may request, at any time, that the franchisor
204 provide a copy of such criteria generally applied by the franchisor in qualifying franchisees;

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

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

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

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

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

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

227 c. Injury to the public welfare;

228 d. The harm to the franchisor;

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

235 (16) To initiate any act enumerated in this subsection on grounds that it has advised a
236 franchisee of its intention to discontinue representation at the time 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 her place of
3 business in a county having a population which is greater than one hundred thousand, the area
4 within a radius of ten miles of the intended site of the proposed or relocated franchisee. The
5 ten-mile distance shall be determined by measuring the distance between the nearest surveyed
6 boundary of the existing franchisee's principal place of business and the nearest surveyed
7 boundary line of the proposed or relocated franchisee's principal place of business; or

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

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

17 3. As used in this section, "motor vehicle" shall include ~~motorcycles and all-terrain~~
18 **powersport** vehicles as defined in section 407.1025.

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

24 5. Within thirty days after receiving the notice provided for in subsection 4 of this
25 section, or within thirty days after the end of any appeal procedure provided by the franchisor,

26 a franchisee may bring an action pursuant to section 407.1031 to determine whether good cause
27 exists for the establishing or relocating of a proposed franchisee.

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

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

35 (1) Permanency of the investment;

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

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

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

43 (5) Whether the establishment or relocation of the franchisee would promote
44 competition;

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

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

49 8. The remedies and relief available pursuant to section 407.1049 shall apply to this
50 section.

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

407.1043. It shall be a defense for a ~~[motorcycle or all-terrain]~~ **powersport** vehicle
2 franchisor, to any action brought pursuant to sections 407.1025 to 407.1049 by a ~~[motorcycle or~~
3 ~~all-terrain]~~ **powersport** vehicle franchisee, if it is shown that such ~~[motorcycle or all-terrain]~~
4 **powersport** vehicle franchisee has failed to substantially comply with reasonable and lawful
5 requirements imposed by the franchise and other agreements ancillary or collateral thereto, or
6 if the ~~[motorcycle or all-terrain]~~ **powersport** vehicle franchisee, or any of its officers, have been

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

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

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

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

18 4. A franchisor shall not:

19 (1) Fail to perform any warranty obligation;

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

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

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

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

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

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

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

407.1049. In addition to the administrative relief provided in sections 407.1025 to
2 407.1049, any ~~motorcycle or all-terrain~~ **powersport** vehicle franchisee may bring an action in
3 any court of competent jurisdiction against a ~~motorcycle or all-terrain~~ **powersport** vehicle
4 franchisor with whom the franchisee has a franchise, for an act or omission which constitutes an
5 unlawful practice as defined in section 407.1034 to recover damages sustained by reason thereof,
6 and, where appropriate, such ~~motorcycle or all-terrain~~ **powersport** vehicle franchisee shall be
7 entitled to injunctive relief, but the remedies set forth in this section shall not be deemed
8 exclusive and shall be in addition to any other remedies permitted by law.

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