

Representative Francis D. Gibson proposes the following substitute bill:

MOTORBOAT AGREEMENTS ACT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill enacts the Motorboat Agreements Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain provisions in an agreement;
- ▶ enacts provisions related to a motorboat dealer's default and curing a default; and
- ▶ enacts provisions related to the termination or nonrenewal of an agreement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-58-101, Utah Code Annotated 1953

13-58-102, Utah Code Annotated 1953

13-58-201, Utah Code Annotated 1953

13-58-301, Utah Code Annotated 1953



26 [13-58-302](#), Utah Code Annotated 1953
27 [13-58-401](#), Utah Code Annotated 1953
28 [13-58-402](#), Utah Code Annotated 1953

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section [13-58-101](#) is enacted to read:

32 **CHAPTER 58. MOTORBOAT AGREEMENTS ACT**

33 **Part 1. General Provisions**

34 **13-58-101. Title.**

35 This chapter is known as the "Motorboat Agreements Act."

36 Section 2. Section [13-58-102](#) is enacted to read:

37 **13-58-102. Definitions.**

38 As used in this chapter:

39 (1) "Agreement" means an agreement between:

40 (a) a motorboat dealer; and

41 (b) (i) a manufacturer; or

42 (ii) a distributor.

43 (2) "Distributor" means a person who:

44 (a) has an agreement with a manufacturer of motorboats to distribute motorboats

45 within this state; and

46 (b) in whole or in part sells or distributes motorboats to motorboat dealers.

47 (3) "Manufacturer" means a person engaged in the business of constructing,

48 manufacturing, assembling, producing, or importing new motorboats for the purpose of sale or

49 trade.

50 (4) "Motorboat" means the same as that term is defined in Section [73-18-2](#).

51 (5) "Motorboat dealer" means a person who:

52 (a) is engaged in the business of buying, selling, offering for sale, or exchanging new

53 motorboats either outright or on conditional sale, bailment, lease, chattel mortgage, or

54 otherwise; and

55 (b) has established in this state a place of business for the sale, lease, trade, or display

56 of new motorboats.

57 Section 3. Section 13-58-201 is enacted to read:

58 **Part 2. Agreements**

59 **13-58-201. Terms of agreements.**

60 (1) A person may not act as a motorboat dealer in this state without entering into an
61 agreement.

62 (2) An agreement shall include:

63 (a) each working capital standard, inventory standard, facility standard, equipment
64 standard, and tool standard, if any, including each agreed upon minimum product stocking
65 requirement;

66 (b) provisions for termination or nonrenewal of the agreement;

67 (c) the designation of a successor motorboat dealer in the event of the motorboat
68 dealer's death or disability;

69 (d) the obligations of the manufacturer, distributor, and motorboat dealer in the
70 preparation and delivery of, and warranty service on, new motorboats and new motorboat
71 motors;

72 (e) the obligations of the manufacturer, distributor, and new motorboat dealer upon
73 termination of the agreement, including obligations in relation to:

74 (i) inventory of new motorboats;

75 (ii) inventory of new motorboat motors;

76 (iii) inventory of parts;

77 (iv) equipment;

78 (v) furnishings;

79 (vi) special tools; and

80 (vii) required signs;

81 (f) each standard for maintenance of:

82 (i) a dedicated or self-funded line of credit, if any; and

83 (ii) a trade-in line of credit or self-funded trade-in line of credit, if any; and

84 (g) dispute resolution procedures.

85 Section 4. Section 13-58-301 is enacted to read:

86 **Part 3. Default**

87 **13-58-301. Motorboat dealer default.**

88 A motorboat dealer defaults on an agreement if the motorboat dealer:
 89 (1) materially fails to:
 90 (a) meet minimum product stocking requirements as specified under the agreement;
 91 (b) make timely payment of a material obligation as specified under the agreement; or
 92 (c) meet an applicable standard, as specified by the agreement, for:
 93 (i) a dedicated or self-funded line of credit; or
 94 (ii) a trade-in or self-funded trade-in line of credit; or
 95 (2) markets the manufacturer's motorboats outside of the motorboat dealer's territory in
 96 violation of the agreement.

97 Section 5. Section 13-58-302 is enacted to read:

98 **13-58-302. Cure of default.**

99 (1) If a motorboat dealer defaults as described in Section 13-58-301, the manufacturer
 100 or distributor who is part of the agreement shall:

- 101 (a) give the dealer written notice of the dealer's default; and
- 102 (b) allow the dealer to cure the default within the period described in Subsection (2).

103 (2) A motorboat dealer may cure a default no later than:

- 104 (a) 30 days after the day on which the dealer receives the notice described in
 105 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(b) or (2);
- 106 (b) 60 days after the day on which the dealer receives the notice described in
 107 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(a), (d), or (e);

108 and

- 109 (c) 160 days after the day on which the dealer receives the notice described in
 110 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(c).

111 Section 6. Section 13-58-401 is enacted to read:

112 **Part 4. Termination or Nonrenewal of Agreements**

113 **13-58-401. Termination or nonrenewal of agreement -- Notice -- Repurchase**
 114 **obligations.**

115 (1) Except as provided in Section 13-58-402, a manufacturer or distributor may not
 116 terminate or fail to renew an agreement with a motorboat dealer unless:

- 117 (a) the motorboat dealer defaults as described in Section 13-58-301;
- 118 (b) the manufacturer or distributor gives the motorboat dealer written notice as

119 described in Subsection 13-58-302 that clearly and concisely states:

120 (i) the default; and

121 (ii) that if the dealer fails to cure the default, the manufacturer or distributor may
122 terminate the agreement;

123 (c) the manufacturer or distributor provides the motorboat dealer the applicable period
124 to cure the default as described in Subsection 13-58-302(2); and

125 (d) the motorboat dealer fails to cure the default during the applicable period described
126 in Subsection 13-58-302(2).

127 (2) If an agreement is terminated or not renewed in violation of this section, the
128 manufacturer shall pay to the motorboat dealer:

129 (a) an amount that equals:

130 (i) the dealer's cost of each new, undamaged, unsold, and unregistered motorboat,
131 motorboat motor, and trailer in the dealer's inventory that the dealer:

132 (A) acquired from the manufacturer or from another dealer; and

133 (B) invoiced during the 24-month period immediately before the day on which the
134 agreement terminates or is not renewed; minus

135 (ii) each applicable dealer rebate and discount;

136 (b) for each charge the manufacturer made for distribution, delivery, or taxes;

137 (c) an amount that equals the dealer's cost for accessories added on a motorboat or
138 trailer;

139 (d) an amount that equals:

140 (i) the cost of all new, undamaged, and unsold supplies, parts, and accessories, as
141 advertised in the manufacturer's catalog or website on the day on which the agreement

142 terminates or is not renewed; minus

143 (ii) all allowance the manufacturer paid or credited to the dealer;

144 (e) an amount that equals the greater of the fair market value for or the dealer's
145 depreciated acquisition cost of a sign, if:

146 (i) the manufacturer required or recommended the dealer to acquire the sign;

147 (ii) the sign bears the manufacturer's name, trade name, or trademark;

148 (iii) the sign is undamaged; and

149 (iv) the dealer owns the sign;

150 (f) an amount that equals the greater of the fair market value for or the dealer's
151 depreciated acquisition cost of all special tools, equipment, and furnishings:
152 (i) acquired from the manufacturer or a source the manufacturer approved;
153 (ii) that the manufacturer required the dealer to acquire; and
154 (iii) that are in good and usable condition; and
155 (g) the cost of transporting, handling, packing, and loading all motorboats, motorboat
156 motors, trailers, supplies, parts, accessories, signs, special tools, equipment, and furnishings.
157 (3) A manufacturer shall pay a motorboat dealer the amounts described in Subsection
158 (2) within 90 days after the day on which the tender of the property to the manufacturer occurs,
159 if the dealer has:
160 (a) clear title to the property; or
161 (b) the manufacturer's statement of origin.
162 (4) If an item described in Subsection (2) is subject to a security interest, the
163 manufacturer may make payment jointly to:
164 (a) the motorboat dealer; and
165 (b) the holder of the security interest.
166 Section 7. Section **13-58-402** is enacted to read:
167 **13-58-402. Termination without time to cure.**
168 A manufacturer or distributor may terminate an agreement with a motorboat dealer
169 upon written notice and without a cure period described in Section [13-58-302](#), if:
170 (1) the motorboat dealer:
171 (a) financially defaults to the manufacturer, the distributor, or a financing source;
172 (b) becomes subject to an order for relief, as defined in 11 U.S.C. Sec. 102;
173 (c) files a voluntary petition in bankruptcy;
174 (d) has had an involuntary petition in bankruptcy filed against the motorboat dealer;
175 (e) engages in an act of material fraud in relation to the performance of a right or
176 obligation under the agreement;
177 (f) is a corporation that ceases to exist;
178 (g) becomes insolvent;
179 (h) takes or fails to take an action that constitutes an admission of inability to pay debts
180 as the debts mature;

- 181 (i) makes a general assignment for the benefit of creditors to an agent authorized to
182 liquidate any substantial amount of assets;
- 183 (j) applies to a court for the appointment of a receiver for any assets or properties;
184 (k) fails to substantially comply with a federal, state, or local law, rule, regulation,
185 ordinance, or order applicable to the agreement;
- 186 (l) receives three valid notices of a default under Section [13-58-302](#) for the same
187 default within a 12-month period, regardless of whether the dealer cures the default;
- 188 (m) transfers an interest in the dealership without the manufacturer's written consent;
189 (n) has pleaded guilty to or has been convicted of a felony, or of any misdemeanor
190 relating to the relationship between the motorboat dealer and manufacturer;
- 191 (o) or one of the owners of the motorboat dealer is convicted or enters a plea of nolo
192 contendere to a felony; or
- 193 (p) makes a material misrepresentation;
- 194 (2) there is a closeout or sale of a substantial part of the dealer's assets related to the
195 motorboat dealership;
- 196 (3) there is a commencement or dissolution or liquidation of the motorboat dealership;
197 (4) there is a change without the prior written approval of the manufacturer in the
198 location of the motorboat dealer's principal place of business under the dealership agreement;
- 199 or
- 200 (5) the motorboat dealer's license is suspended, revoked, or is not renewed.