

FIRST REGULAR SESSION

# HOUSE BILL NO. 693

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SMITH AND CARNAHAN (Co-sponsors).

Read 1<sup>st</sup> time February 7, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1675L.011

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### AN ACT

To repeal sections 407.820, 407.822, 621.053, 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, relating to the administrative hearing commission, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Sections 407.820, 407.822, 621.053, 621.055, 621.155, 621.165, 621.175, 2 621.185, 621.189 and 621.198, RSMo 2000, are repealed and seven new sections enacted in lieu 3 thereof, to be known as sections 407.820, 407.822, 621.053, 621.055, 621.150, 621.189 and 4 621.198, to read as follows:

407.820. 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 motor vehicles, or who, being a motor vehicle 4 franchisor, is transacting or transacts any business with a motor vehicle franchisee who maintains 5 a place of business within the state and with whom he has a franchise, shall be subject to the 6 jurisdiction of the courts **and administrative agencies** of the state of Missouri, upon service of 7 process in accordance with the provisions of section 506.510, RSMo, irrespective of whether 8 such person is a manufacturer, importer, distributor or dealer in new motor vehicles.

407.822. 1. Any party seeking relief pursuant to the provisions of sections 407.810 to 2 407.835 may file an application for a hearing with the administrative hearing commission within 3 the time periods specified in this section. The application for a hearing shall comply with the 4 requirements for a request for agency action set forth in chapter 536, RSMo. Simultaneously,

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

5 with 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] **Upon receipt of**  
8 a timely application for a hearing, the administrative hearing commission shall enter an order  
9 fixing a date, time and place for a hearing on the record. Such hearing shall be within forty-five  
10 days of the date of the order but the administrative hearing commission may continue the hearing  
11 date up to forty-five additional days by agreement of the parties or upon a finding of good cause.  
12 The administrative hearing commission shall send by certified mail, return receipt requested, a  
13 copy of the order to the party seeking relief and to the party or parties against whom relief is  
14 sought. The order shall also state that the party against whom relief is sought shall not proceed  
15 with the initiation of its activity or activities until the administrative hearing commission issues  
16 its final decision or order.

17 2. Unless otherwise expressly provided in sections 407.810 to 407.835, the provisions  
18 of chapter 536, RSMo, shall govern hearings and prehearing procedures conducted pursuant to  
19 the authority of this section. The administrative hearing commission shall issue a final decision  
20 or order, in proceedings arising pursuant to the provisions of sections 407.810 to 407.835[,  
21 within sixty days from the conclusion of the hearing]. Any final decisions **of the administrative**  
22 **hearing commission** shall be subject to review pursuant to a petition for review to be filed in  
23 the court of appeals in the district in which the hearing, or any part of the hearing, is held and by  
24 delivery of copies of the petition to each party of record, within thirty days after the mailing or  
25 delivery of the final decision and notice of the final decision in such a case. Review pursuant  
26 to this section shall be exclusive and decisions of the administrative hearing commission  
27 reviewable pursuant to this section shall not be reviewable in any other proceeding, and no other  
28 official or court shall have power to review any such decision by an action in the nature of  
29 mandamus or otherwise, except pursuant to the provisions of this section. The party seeking  
30 review shall be responsible for the filing of the transcript and record of all proceedings before  
31 the administrative hearing commission with the appropriate court of appeals.

32 3. Any franchisee receiving a notice from a franchisor pursuant to the provisions of  
33 sections 407.810 to 407.835, or any franchisee adversely affected by a franchisor's acts or  
34 proposed acts described in the provisions of sections 407.810 to 407.835, shall be entitled to file  
35 an application for a hearing before the administrative hearing commission for a determination  
36 as to whether the franchisor has good cause for its acts or proposed acts.

37 4. Not less than sixty days before the effective date of the initiation of any enumerated  
38 act pursuant to subdivisions (5), (6), (7) and (14) of subsection 1 of section 407.825, a franchisor  
39 shall give written notice to the affected franchisee or franchisees, by certified mail, return receipt  
40 requested, except as follows:

41 (1) Upon the initiation of an act pursuant to subdivision (5) of subsection 1 of section  
42 407.825, such notice shall be given not less than fifteen days before the effective date of such  
43 act only if the grounds for the notice include the following:

44 (a) Transfer of any ownership or interest in the franchised dealership without the consent  
45 of the motor vehicle franchisor;

46 (b) Material misrepresentation by the motor vehicle franchisee in applying for the  
47 franchise;

48 (c) Insolvency of the motor vehicle franchisee or the filing of any petition by or against  
49 the motor vehicle franchisee under any bankruptcy or receivership law;

50 (d) Any unfair business practice by the motor vehicle franchisee after the motor vehicle  
51 franchisor has issued a written warning to the motor vehicle franchisee to desist from such  
52 practice;

53 (e) Conviction of the motor vehicle franchisee of a crime which is a felony;

54 (f) Failure of the motor vehicle franchisee to conduct customary sales and service  
55 operations during customary business hours for at least seven consecutive business days unless  
56 such closing is due to an act of God, strike or labor difficulty or other cause over which the motor  
57 vehicle franchisee has no control; or

58 (g) Revocation of the motor vehicle franchisee's license;

59 (2) Upon initiation of an act pursuant to subdivision (7) of subsection 1 of section  
60 407.825, such notice shall be given within sixty days of the franchisor's receipt of a written  
61 proposal to consummate such sale or transfer and the receipt of all necessary information and  
62 documents generally used by the franchisor to conduct its review. The franchisor's notice of  
63 disapproval shall also specify the reasonable standard which the franchisor contends is not  
64 satisfied and the reason the franchisor contends such standard is not satisfied. Failure on the part  
65 of the franchisor to provide such notice shall be conclusively deemed an approval by the  
66 franchisor of the proposed sale or transfer to the proposed transferee. A franchisee's application  
67 for a hearing shall be filed with the administrative hearing commission within twenty days from  
68 receipt of such franchisor's notice;

69 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of subsection 1 of section  
70 407.825, such notice shall be given within sixty days of the franchisor's receipt of a deceased or  
71 incapacitated franchisee's designated family member's intention to succeed to the franchise or  
72 franchises or of the franchisor's receipt of the personal and financial data of the designated family  
73 member, whichever is later.

74 5. A franchisor's notice to a franchisee or franchisees pursuant to subdivisions (5), (6),  
75 (7) and (14) of subsection 1 of section 407.825 shall contain a statement of the particular grounds  
76 supporting the intended action or activity which shall include any reasonable standards which

77 were not satisfied. The notice shall also contain at a minimum, on the first page thereof, a  
78 conspicuous statement which reads as follows: "NOTICE TO FRANCHISEE: YOU MAY BE  
79 ENTITLED TO FILE A PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING  
80 COMMISSION IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH  
81 YOU MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE  
82 FILED WITHIN TWENTY DAYS FROM RECEIPT OF THIS NOTICE."

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

86 7. In all proceedings before the administrative hearing commission pursuant to this  
87 section, section 407.825 and section 621.053, RSMo, where the franchisor is required to give  
88 notice pursuant to subsection 4 of this section, the franchisor shall have the burden of proving  
89 by a preponderance of the evidence that good cause exists for its actions. In all other actions, the  
90 franchisee shall have the burden of proof.

621.053. Any person authorized to protest any action taken by a motor vehicle,  
2 **motorcycle or all-terrain vehicle** manufacturer, distributor or representative pursuant to a  
3 [motor vehicle] franchise agreement may file a protest with the administrative hearing  
4 commission as provided in [sections 407.810 to 407.835] **chapter 407**, RSMo. **For cases**  
5 **arising pursuant to chapter 407, RSMo, the administrative hearing commission may, by**  
6 **rule, establish a filing fee equal to the circuit court's filing fee.**

621.055. 1. Any person authorized [under] **pursuant to** section 208.153, RSMo, to  
2 provide services for which benefit payments are authorized [under] **pursuant to** section 208.152,  
3 RSMo, may seek review by the administrative hearing commission of any of the actions of the  
4 department of social services specified in subsection 2, 3, or 4 of section 208.156, RSMo. The  
5 review may be instituted by the filing of a petition with the administrative hearing commission.  
6 The procedures applicable to the processing of such review shall be those established by chapter  
7 536, RSMo. The administrative hearing commission shall maintain a transcript of all testimony  
8 and proceedings in any review governed by this section, and copies thereof shall be made  
9 available to any interested person upon the payment of a fee which shall not exceed the  
10 reasonable cost of preparation and supply. Decisions of the administrative hearing commission  
11 under this section shall be binding subject to appeal by either party. If the provider of services  
12 prevails in any dispute under this section, interest shall be allowed at the rate of eight percent per  
13 annum upon any amount found to have been wrongfully denied or withheld. In any proceeding  
14 before the administrative hearing commission [under] **pursuant to** this section the burden of  
15 proof shall be on the provider of services seeking review.

16 2. As compensation for the additional duties imposed upon the administrative hearing

17 commission [under the provisions of] **pursuant to** this section and section 208.156, RSMo, each  
18 commissioner shall annually receive the sum of five thousand dollars plus any salary adjustment  
19 provided pursuant to section 105.005, RSMo. Such additional compensation shall be paid in the  
20 same manner and at the same time as other compensation for the commissioners.

21 **3. Any decision of the department of social services that is subject to appeal to the**  
22 **administrative hearing commission pursuant to subsection 1 of this section shall contain**  
23 **a notice of the right to appeal in substantially the following language:**

24 **If you were adversely affected by this decision, you may appeal this decision to the**  
25 **administrative hearing commission. To appeal, you must file a petition with the**  
26 **administrative hearing commission within thirty days from the date of mailing or delivery**  
27 **of this decision, whichever is earlier; except that, claims of less than five hundred dollars**  
28 **may be accumulated until such claims total that sum and, at which time, you have ninety**  
29 **days to file the petition. If any such petition is sent by registered mail or certified mail, the**  
30 **petition will be deemed filed on the date the petition is mailed. If any such petition is sent**  
31 **by any method other than registered mail or certified mail, the petition is deemed filed on**  
32 **the date of receipt by the commission.**

**621.150. Any party to a case before the administrative hearing commission may**  
2 **request that the hearing be held via videoconferencing. If that request is granted, the office**  
3 **of administration may charge the requesting party the costs for the videoconferencing.**

[621.155. The administrative hearing commission shall conduct hearings,  
2 make findings of fact and conclusions of law, and issue decisions in those cases  
3 involving complaints filed pursuant to the provisions of section 536.050, RSMo.]

[621.165. Upon receipt of a written complaint filed pursuant to section  
2 536.050, RSMo, the administrative hearing commission shall as soon as practicable  
3 thereafter give notice of such complaint and the date upon which the hearing will be  
4 held by delivery of a copy, or by certified mail, of such complaint and notice both to  
5 the office of the agency whose authority is challenged and to the complainant.]

[621.175. Hearings in cases filed pursuant to section 536.050, RSMo, shall  
2 not be deemed to be contested cases and the procedures established by chapter 536,  
3 RSMo, or any other procedural requirements applicable to contested cases shall not  
4 apply to such hearings unless required by the provisions of the law relating to the  
5 administrative hearing commission, other independent statute or by constitutional  
6 provision. Unless the administrative hearing commission rules that special  
7 circumstances so require, and sets forth in writing such special circumstances and the  
8 reasons why they so require, evidentiary submissions shall be limited to written  
9 exhibits, physical evidence, testimony of persons present at the hearing, and  
10 affidavits. Cross-examination of persons testifying may be permitted, but shall be  
11 limited to situations where there are genuinely disputed questions of material facts.  
12 The administrative hearing commission shall maintain a transcript of all testimony  
13 and proceedings in hearings, and copies thereof shall be made available to any  
14 interested person upon the payment of a fee which shall in no case exceed the

15 reasonable cost of preparation and supply. Rules of discovery shall not apply to  
16 hearings held under this section, but the administrative hearing commission, at the  
17 request of a party, or on its own motion, may issue subpoenas duces tecum, but not  
18 subpoenas ad testificandum, subject to and consistent with the procedures set forth  
19 in section 536.077, RSMo. In cases heard under this section the administrative  
20 hearing commission may take judicial notice of judicially cognizable facts as well as  
21 generally recognized technical or internal administrative facts of which the  
22 administrative hearing commission has specialized knowledge. Parties shall be  
23 notified either before the hearing, or during the hearing, or by reference in  
24 preliminary reports, or otherwise, of the material so to be noticed and shall be  
25 afforded an opportunity to contest or to object to the noticing of such material.]

2 [621.185. Decisions after hearings in cases filed pursuant to 536.050, RSMo,  
3 shall be in writing and shall include or be accompanied by findings of fact and  
4 conclusions of law together with a statement of findings upon which the  
5 administrative hearing commission bases its decision. The administrative hearing  
6 commission shall as soon as practicable upon its decision either deliver or send by  
7 certified mail both notice of its decision as well as a copy of the full decision itself  
to each party to the proceeding or to his attorney of record.]

2 621.189. Final decisions of the administrative hearing commission in cases arising  
3 [under the provisions of sections 621.155 and 536.050, RSMo, and under the provisions of]  
4 **pursuant to** section 621.050 shall be subject to review pursuant to a petition for review to be  
5 filed in the court of appeals in the district in which the hearing, or any part thereof, is held or,  
6 where constitutionally required or ordered by transfer, to the supreme court, and by delivery of  
7 copies of the petition to each party of record, within thirty days after the mailing or delivery of  
8 the final decision and notice thereof in such a case. Review under this section shall be exclusive,  
9 and decisions of the administrative hearing commission reviewable [under] **pursuant to** this  
10 section shall not be reviewable in any other proceeding, and no other official or court shall have  
11 power to review any such decision by an action in the nature of mandamus or otherwise except  
12 pursuant to the provisions of this section. The party seeking review shall be responsible for the  
13 filing of the transcript and record of all proceedings before the administrative hearing  
commission in the case with the appropriate court of appeals.

2 621.198. The administrative hearing commission shall publish and file with the secretary  
3 of state [independent sets of] rules of procedure for the conduct of proceedings before it. [One  
4 set of rules shall apply exclusively to proceedings in licensing cases under section 621.045.  
5 Another set of rules shall apply exclusively to challenges to agency authority brought under  
6 section 621.155. A third set of rules shall apply to sales and use and income tax disputes under  
7 section 621.050.] Rules of procedure adopted [under the authority of] **pursuant to** this section  
8 shall be designed to simplify the maintenance of actions and to enable review to be sought,  
where appropriate, without the need to be represented by independent counsel. [Each set of

9 Rules shall be promulgated under the procedures set forth in sections 536.020 to 536.035,  
10 RSMo.] **No rule or portion of a rule promulgated pursuant to the authority of this section**  
11 **shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.**