

FIRST REGULAR SESSION

HOUSE BILL NO. 788

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE O'CONNOR.

Read 1st time February 14, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1880L.011

AN ACT

To repeal sections 407.1000, 407.1005, 407.1010, 407.1015 and 407.1020, RSMo 2000, relating to motorcycle franchise practices.

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

Section A. Sections 407.1000, 407.1005, 407.1010, 407.1015 and 407.1020, RSMo
2 2000, are repealed.

[407.1000. As used in sections 407.1000 to 407.1020, unless the context
2 otherwise requires, the following terms mean:

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

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

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

9 (c) Any other conduct set forth in section 407.1020 as a defense to an action
10 brought pursuant to sections 407.1000 to 407.1020; or

11 (d) Any other conduct set forth in sections 407.1000 to 407.1020 that is
12 permitted of the franchisor or is expressly excluded from coercion or a violation of
13 sections 407.1000 to 407.1020;

14 (2) "Franchise", a written arrangement or contract for a definite or indefinite
15 period, in which a person grants to another person a license to use, or the right to
16 grant to others a license to use, a trade name, trademark, service mark, or related
17 characteristics, in which there is a community of interest in the marketing of goods
18 or services, or both, at wholesale or retail, by agreement, lease or otherwise, and in
19 which the operation of the franchisee's business with respect to such franchise is

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

20 substantially reliant on the franchisor for the continued supply of franchised new
21 motorcycles, parts and accessories for sale at wholesale or retail;

22 (3) "Franchisee", a person to whom a franchise is granted;

23 (4) "Franchisor", a person who grants a franchise to another person;

24 (5) "Motorcycle", a motor vehicle operated on two wheels;

25 (6) "New", when referring to motorcycles or parts, means those motorcycles
26 or parts which have not been held except as inventory, as that term is defined in
27 subdivision (4) of section 400.9-109, RSMo;

28 (7) "Person", a sole proprietor, partnership, corporation, or any other form
29 of business organization.]

2 [407.1005. The performance, whether by act or omission, by a motorcycle
3 franchisor of any or all of the following activities enumerated in this section are
4 hereby defined as unlawful practices, the remedies for which are set forth in section
407.1010:

5 (1) To engage in any conduct which is capricious, in bad faith, or
6 unconscionable and which causes damage to a motorcycle franchisee or to the public;
7 provided, that good faith conduct engaged in by motorcycle franchisors as sellers of
8 new motorcycles or parts or as holders of security interest therein, in pursuit of rights
9 or remedies accorded to sellers of goods or to holders of security interests pursuant
10 to the provisions of chapter 400, RSMo, uniform commercial code, shall not
11 constitute unfair practices pursuant to sections 407.1000 to 407.1020;

12 (2) To coerce any motorcycle franchisee to accept delivery of any new
13 motorcycle or motorcycles, equipment, parts or accessories therefor, or any other
14 commodity or commodities which such motorcycle franchisee has not ordered after
15 such motorcycle franchisee has rejected such commodity or commodities. It shall not
16 be deemed a violation of this section for a motorcycle franchisor to require a
17 motorcycle franchisee to have an inventory of parts, tools, and equipment reasonably
18 necessary to service the motorcycles sold by a motorcycle franchisor; or new
19 motorcycles reasonably necessary to meet the demands of dealers or the public or to
20 display to the public the full line of a motorcycle franchisor's product line;

21 (3) To unreasonably refuse to deliver in reasonable quantities and within a
22 reasonable time after receipt of orders for new motorcycles, such motorcycles as are
23 so ordered and as are covered by such franchise and as are specifically publicly
24 advertised by such motorcycle franchisor to be available for immediate delivery;
25 provided, however, the failure to deliver any motorcycle shall not be considered a
26 violation of sections 407.1000 to 407.1020 if such failure be due to an act of God,
27 work stoppage, or delay due to a strike or labor difficulty, shortage of products or
28 materials, freight delays, embargo or other cause of which such motorcycle franchisor
29 shall have no control;

30 (4) To coerce any motorcycle franchisee to enter into any agreement with
31 such motorcycle franchisor or to do any other act prejudicial to such motorcycle
32 franchisee, by threatening to cancel any franchise or any contractual agreement
33 existing between such motorcycle franchisor and motorcycle franchisee; provided,

34 however, that notice in good faith to any motorcycle franchisee of such motorcycle
35 franchisee's violation of any provisions of such franchise or contractual agreement
36 shall not constitute a violation of sections 407.1000 to 407.1020;

37 (5) To terminate or cancel the franchise or selling agreement of any
38 motorcycle franchisee except a termination or cancellation made by reason of a
39 substantial default by such franchisee in the performance of such motorcycle
40 franchisee's reasonable and lawful obligations to such motorcycle franchisor under
41 the franchise. The nonrenewal of a motorcycle franchise or selling agreement shall
42 constitute an unfair termination or cancellation, regardless of the terms or provisions
43 of such franchise or selling agreement unless it is not renewed by reason of:

44 (a) A substantial default by such motorcycle franchisee in the performance
45 of such motorcycle franchisee's reasonable and lawful obligations to such motorcycle
46 franchisor under the nonrenewed franchise or selling agreement; or

47 (b) The discontinuance of the sale in the state of Missouri of such motorcycle
48 franchisor's products which are the subject of the franchise;

49 (6) To prevent by contract or otherwise, any motorcycle franchisee from
50 changing the capital structure of the franchisee's franchise of such motorcycle
51 franchisee or the means by or through which the franchisee finances the operation of
52 the franchisee's franchise, provided the motorcycle franchisee at all times meets any
53 reasonable capital standards agreed to between the motorcycle franchisee and the
54 motorcycle franchisor and grants to the motorcycle franchisor a purchase money
55 security interest in the new motorcycles, new parts and accessories purchased from
56 the motorcycle franchisor;

57 (7) To prevent by contract or otherwise any motorcycle franchisee or any
58 officer, partner or stockholder of any motorcycle franchisee from selling or
59 transferring any part of the interest of any of them to any other person or persons or
60 party or parties; provided, if the franchise specifically permits the franchisor to
61 approve or disapprove of any such proposed sale or transfer, a franchisor shall only
62 be allowed to disapprove of a proposed sale or transfer if the interest being sold or
63 transferred when added to any other interest owned by the transferee constitutes fifty
64 percent or more of the ownership interest in the franchise and if the proposed
65 transferee fails to satisfy any standards of the franchisor which are in fact normally
66 relied upon by the franchisor prior to its entering into a franchise, and which relate
67 to the proposed management or ownership of the franchise operations or to the
68 qualification, capitalization, integrity, or character of the proposed transferee and
69 which are reasonable. In order to exercise a franchisor's right of disapproval as set
70 forth herein the franchisor shall:

71 (a) Notify, in writing, the franchisee of the franchisor's disapproval within
72 thirty working days of the franchisor's receipt of a written proposal to consummate
73 such sale or transfer; provided, however, that the franchisee and the prospective
74 franchisee shall cooperate fully with the franchisor in providing information relating
75 to the prospective transferee's capitalization, integrity and character;

76 (b) Specify in such written notice the reasonable standards which the

77 franchisor contends are not satisfied and the reasons the franchisor contends such
78 standards are not satisfied. Failure on the part of the franchisor to fully comply with
79 either paragraph (a) of this subdivision or this paragraph shall be conclusively
80 deemed an approval by the franchisor of the proposed sale or transfer to the proposed
81 transferee;

82 (8) To prevent by contract or otherwise any motorcycle franchisee from
83 changing the executive management of the motorcycle franchisee's business, except
84 that any attempt by a motorcycle franchisor to demonstrate by giving reasons that
85 such change in executive management will be detrimental to the distribution of the
86 motorcycle franchisor's motorcycles shall not constitute a violation of this
87 subdivision;

88 (9) To impose unreasonable standards of performance upon a motorcycle
89 franchisee;

90 (10) To require a motorcycle franchisee at the time of entering into a
91 franchise arrangement to assent to a release, assignment, novation, waiver or estoppel
92 which would relieve any person from liability imposed by sections 407.1000 to
93 407.1020;

94 (11) To prohibit directly or indirectly the right of free association among
95 motorcycle franchisees for any lawful purpose;

96 (12) To provide any term or condition in any lease or other agreement
97 ancillary or collateral to a franchise, which term or condition directly or indirectly
98 violates the provisions of sections 407.1000 to 407.1020.]

2 [407.1010. Any motorcycle franchisee may bring an action against a
3 motorcycle franchisor with whom the franchisee has a franchise, for an act or
4 omission which constitutes an unlawful practice as defined in section 407.1005 to
5 recover damages sustained by reason thereof, and, where appropriate, such
6 motorcycle franchisee shall be entitled to injunctive relief, but the remedies set forth
7 in this section shall not be deemed exclusive and shall be in addition to any other
remedies permitted by law.]

2 [407.1015. Any person who is engaged or engages directly or indirectly in
3 purposeful contacts within the state of Missouri in connection with the offering,
4 advertising, purchasing, selling, or contracting to purchase or to sell new
5 motorcycles, or who, being a motorcycle franchisor, is transacting or transacts any
6 business with a motorcycle franchisee who maintains a place of business within the
7 state and with whom the franchisee has a franchise, shall be subject to the jurisdiction
8 of the courts of the state of Missouri, upon service of process in accordance with the
9 provisions of section 506.510, RSMo, irrespective of whether such person is a
manufacturer, importer, distributor or dealer in new motorcycles.]

2 [407.1020. It shall be a defense for a motorcycle franchisor, to any action
3 brought pursuant to sections 407.1000 to 407.1020 by a motorcycle franchisee, if it
4 is shown that such motorcycle franchisee has failed to substantially comply with
5 reasonable and lawful requirements imposed by the franchise and other agreements
ancillary or collateral thereto, or if the motorcycle franchisee, or any of its officers,

6 have been convicted of a felony relevant to business honesty or business practices,
7 or if the motorcycle franchisee has ceased conducting its business or has abandoned
8 the franchise, or is insolvent as that term is defined in subdivision (23) of section
9 400.1-201, RSMo, or has filed a voluntary petition in bankruptcy, or has made an
10 assignment for benefit of creditors, or has been the subject of an involuntary
11 proceeding under the federal bankruptcy act or under any state insolvency law which
12 is not vacated within twenty days from the institution thereof, or there has been an
13 appointment of a receiver or other officer having similar powers for the motorcycle
14 franchisee or the motorcycle franchisee's business who is not removed within twenty
15 days from the person's appointment, or there has been a levy under attachment,
16 execution or similar process which is not within ten days vacated or removed by
17 payment or bonding, and it shall be a defense to any action brought pursuant to
18 sections 407.1000 to 407.1020 that the complained of conduct by a motorcycle
19 franchisor was undertaken in good faith in pursuit of rights or remedies accorded to
20 a motorcycle franchisor as a seller of goods or a holder of a security interest pursuant
21 to the provisions of chapter 400, RSMo.]