

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 693**  
**91ST GENERAL ASSEMBLY**

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Reported from the Committee on Judiciary, April 11, 2001, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

TERRY L. SPIELER, Secretary.

1675S.04C

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Sections 407.820, 407.822, 621.053, 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 407.820, 407.822, 621.053, 621.055, 621.150, 621.189 and 621.198, to read as follows:

407.820. Any person who is engaged or engages directly or indirectly in purposeful contacts within the state of Missouri in connection with the offering, advertising, purchasing, selling, or contracting to purchase or to sell new motor vehicles, or who, being a motor vehicle franchisor, is transacting or transacts any business with a motor vehicle franchisee who maintains a place of business within the state and with whom he has a franchise, shall be subject to the jurisdiction of the courts **and administrative agencies** of the state of Missouri, upon service of process in accordance with the provisions of section 506.510, RSMo, irrespective of whether 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 407.835 may file an application for a hearing with the administrative hearing commission within the time periods specified in this section. The application for a hearing shall comply with the requirements for a request for agency action set forth in chapter 536,

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

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

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

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

39 4. Not less than sixty days before the effective date of the initiation of any  
40 enumerated act pursuant to subdivisions (5), (6), (7) and (14) of subsection 1 of section

41 407.825, a franchisor shall give written notice to the affected franchisee or franchisees, by  
42 certified mail, return receipt requested, except as follows:

43 (1) Upon the initiation of an act pursuant to subdivision (5) of subsection 1 of section  
44 407.825, such notice shall be given not less than fifteen days before the effective date of such  
45 act only if the grounds for the notice include the following:

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

48 (b) Material misrepresentation by the motor vehicle franchisee in applying for the  
49 franchise;

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

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

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

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

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

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

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

76 5. A franchisor's notice to a franchisee or franchisees pursuant to subdivisions (5), (6),

77 (7) and (14) of subsection 1 of section 407.825 shall contain a statement of the particular  
78 grounds supporting the intended action or activity which shall include any reasonable  
79 standards which were not satisfied. The notice shall also contain at a minimum, on the first  
80 page thereof, a conspicuous statement which reads as follows: "NOTICE TO FRANCHISEE:  
81 YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE MISSOURI  
82 ADMINISTRATIVE HEARING COMMISSION IN JEFFERSON CITY, MISSOURI, AND  
83 HAVE A HEARING IN WHICH YOU MAY PROTEST THE CONTENTS OF THIS  
84 NOTICE. ANY ACTION MUST BE FILED WITHIN TWENTY DAYS FROM RECEIPT OF  
85 THIS NOTICE."

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

89 7. In all proceedings before the administrative hearing commission pursuant to this  
90 section, section 407.825 and section 621.053, RSMo, where the franchisor is required to give  
91 notice pursuant to subsection 4 of this section, the franchisor shall have the burden of proving  
92 by a preponderance of the evidence that good cause exists for its actions. In all other actions,  
93 the 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  
3 to a [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**  
6 **may, by rule, establish a filing fee equal to the filing fee of the circuit court of Cole**  
7 **County.**

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  
3 208.152, RSMo, may seek review by the administrative hearing commission of any of the  
4 actions of the department of social services specified in subsection 2, 3, [or] 4 **or 5** of section  
5 208.156, RSMo. The review may be instituted by the filing of a petition with the  
6 administrative hearing commission. The procedures applicable to the processing of such  
7 review shall be those established by chapter 536, RSMo. The administrative hearing  
8 commission shall maintain a transcript of all testimony and proceedings in any review  
9 governed by this section, and copies thereof shall be made available to any interested person  
10 upon the payment of a fee which shall not exceed the reasonable cost of preparation and  
11 supply. Decisions of the administrative hearing commission under this section shall be  
12 binding subject to appeal by either party. If the provider of services prevails in any dispute

13 [under] **pursuant to** this section, interest shall be allowed at the rate of eight percent per  
14 annum upon any amount found to have been wrongfully denied or withheld. In any  
15 proceeding before the administrative hearing commission [under] **pursuant to** this section  
16 the burden of proof shall be on the provider of services seeking review.

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

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

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

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

[621.155. The administrative hearing commission shall conduct  
2 hearings, make findings of fact and conclusions of law, and issue decisions in  
3 those cases involving complaints filed pursuant to the provisions of section  
4 536.050, 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  
3 practicable thereafter give notice of such complaint and the date upon which  
4 the hearing will be held by delivery of a copy, or by certified mail, of such

5 complaint and notice both to the office of the agency whose authority is  
6 challenged and to the complainant.]

2 [621.175. Hearings in cases filed pursuant to section 536.050, RSMo,  
3 shall not be deemed to be contested cases and the procedures established by  
4 chapter 536, RSMo, or any other procedural requirements applicable to  
5 contested cases shall not apply to such hearings unless required by the  
6 provisions of the law relating to the administrative hearing commission, other  
7 independent statute or by constitutional provision. Unless the administrative  
8 hearing commission rules that special circumstances so require, and sets forth  
9 in writing such special circumstances and the reasons why they so require,  
10 evidentiary submissions shall be limited to written exhibits, physical evidence,  
11 testimony of persons present at the hearing, and  
12 affidavits. Cross-examination of persons testifying may be permitted, but shall  
13 be limited to situations where there are genuinely disputed questions of  
14 material facts. The administrative hearing commission shall maintain a  
15 transcript of all testimony and proceedings in hearings, and copies thereof  
16 shall be made available to any interested person upon the payment of a fee  
17 which shall in no case exceed the reasonable cost of preparation and  
18 supply. Rules of discovery shall not apply to hearings held under this section,  
19 but the administrative hearing commission, at the request of a party, or on its  
20 own motion, may issue subpoenas duces tecum, but not subpoenas ad  
21 testificandum, subject to and consistent with the procedures set forth in  
22 section 536.077, RSMo. In cases heard under this section the administrative  
23 hearing commission may take judicial notice of judicially cognizable facts as  
24 well as generally recognized technical or internal administrative facts of which  
25 the administrative hearing commission has specialized knowledge. Parties  
26 shall be notified either before the hearing, or during the hearing, or by  
27 reference in preliminary reports, or otherwise, of the material so to be noticed  
28 and shall be 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,  
3 RSMo, shall be in writing and shall include or be accompanied by findings of  
4 fact and conclusions of law together with a statement of findings upon which  
5 the administrative hearing commission bases its decision. The administrative  
6 hearing commission shall as soon as practicable upon its decision either  
deliver or send by certified mail both notice of its decision as well as a copy of

7 the full decision itself to each party to the proceeding or to his attorney of  
8 record.]

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

621.198. The administrative hearing commission shall publish and file with the  
2 secretary of state [independent sets of] rules of procedure for the conduct of proceedings  
3 before it. [One set of rules shall apply exclusively to proceedings in licensing cases under  
4 section 621.045. Another set of rules shall apply exclusively to challenges to agency authority  
5 brought under section 621.155. A third set of rules shall apply to sales and use and income  
6 tax disputes under section 621.050.] Rules of procedure adopted [under the authority of]  
7 **pursuant to** this section shall be designed to simplify the maintenance of actions and to  
8 enable review to be sought, where appropriate, without the need to be represented by  
9 independent counsel. [Each set of rules shall be promulgated under the procedures set forth  
10 in sections 536.020 to 536.035, RSMo] **Any rule or portion of a rule, as that term is**  
11 **defined in section 536.010, RSMo, that is created under the authority delegated in**  
12 **this section shall become effective only if it complies with and is subject to all of**  
13 **the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**  
14 **section and chapter 536, RSMo, are nonseverable and if any of the powers vested**  
15 **with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**  
16 **effective date or to disapprove and annul a rule are subsequently held**  
17 **unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
18 **adopted after August 28, 2001, shall be invalid and void.**