

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1288

AN ACT

To repeal section 301.566, RSMo, and to enact in lieu thereof eight new sections relating to contractual agreements between manufacturers and other merchants.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 301.566, RSMo, is repealed and eight new  
2 sections enacted in lieu thereof, to be known as sections  
3 301.566, 407.1047, 407.1360, 407.1362, 407.1364, 407.1366,  
4 407.1368, and 407.1370, to read as follows:

5           301.566. 1. A motor vehicle dealer may participate in any  
6 motor vehicle show or sale and conduct sales of motor vehicles  
7 away from the dealer's usual, licensed place of business if  
8 either the requirements of subsection 2 or 3 of this section are  
9 met or the event is conducted for not more than ten days, and if  
10 a majority of the motor vehicle dealers within a class of dealers  
11 described pursuant to subsection 3 of section 301.550 in a city  
12 or town participate or are invited and have the opportunity to  
13 participate in the event, except that a recreational motor  
14 vehicle dealer classified in subdivision (5) of subsection 3 of  
15 section 301.550 may participate in such a show or sale even if a

1 majority of recreational motor vehicle dealers in a city or town  
2 do not participate in the event. The department shall consider  
3 such events to be proper in all respects and as if each dealer  
4 participant was conducting business at the dealer's usual  
5 business location. Nothing contained in this section shall be  
6 construed as applying to the sale of motor vehicles or trailers  
7 through either a wholesale motor vehicle auction or public motor  
8 vehicle auction.

9         2. Any person, partnership, corporation or association  
10 disposing of vehicles used and titled solely in its ordinary  
11 course of business as provided in section 301.570 may sell at  
12 retail such vehicles away from that person's bona fide  
13 established place of business, thus constituting an off-site  
14 sale, by adhering to each of the following conditions with regard  
15 to each and every off-site sale conducted:

16             (1) Have in effect a valid license, pursuant to sections  
17 301.550 to 301.575, from the department for the sale of used  
18 motor vehicles;

19             (2) No off-site sale may exceed ten days in duration, and  
20 only one sale may be held per year, per county, in counties of  
21 the third and fourth classification;

22             (3) Pay to the motor vehicle commission fund, pursuant to  
23 section 301.560, a permit fee of two hundred fifty dollars for  
24 each off-site sale event;

25             (4) Advise the department, at least ten days prior to the  
26 sale, of the date, location and duration of each off-site sale;

27             (5) The sale of vehicles at off-site sales shall be limited  
28 to sales by a seller of vehicles used and titled solely in its

1 ordinary course of business, and such sales shall be held in  
2 conjunction with a credit union and limited to members of the  
3 credit union, thus constituting a private sale to be advertised  
4 to members only;

5 (6) Off-site sales by a seller of vehicles used and titled  
6 solely in its ordinary course of business may also be held in  
7 conjunction with other financial institutions provided that any  
8 such sale event shall be held on the premises of the financial  
9 institution, and sales shall be limited to persons who were  
10 customers of the financial institution prior to the date of the  
11 sale event. Off-site sales held with such other financial  
12 institutions shall be limited to one sale per year per  
13 institution;

14 (7) The sale of motor vehicles which have the designation  
15 of the current model year, except discontinued models, is  
16 prohibited at off-site sales until subsequent model year  
17 designated vehicles of the same manufacture and model are offered  
18 for sale to the public.

19 3. A recreational vehicle dealer, as that term is defined  
20 in section 700.010, RSMo, who is licensed in another state may  
21 participate in recreational vehicle shows or exhibits with  
22 recreational vehicles within this state, in which less than fifty  
23 dealers participate as exhibitors with permission of the dealer's  
24 licensed manufacturer if all of the following conditions exist:

25 (1) The show or exhibition has a minimum of ten  
26 recreational vehicle dealers licensed as motor vehicle dealers in  
27 this state;

28 (2) More than fifty percent of the participating

1 recreational vehicle dealers are licensed motor vehicle dealers  
2 in this state; and

3 (3) The state in which the recreational vehicle is licensed  
4 is a state contiguous to Missouri and the state permits  
5 recreational vehicle dealers licensed in Missouri to participate  
6 in recreational vehicle shows in such state pursuant to  
7 conditions substantially equivalent to the conditions which are  
8 imposed on dealers from such state who participate in  
9 recreational vehicle shows in Missouri.

10 4. A recreational vehicle dealer licensed in another state  
11 may participate in a vehicle show or exhibition in Missouri which  
12 has, when it opens to the public, at least fifty dealers  
13 displaying recreational vehicles if the show or exhibition is  
14 trade-oriented and is predominantly funded by recreational  
15 vehicle manufacturers. All of the participating dealers who are  
16 not licensed in Missouri shall be licensed as recreational  
17 vehicle dealers by the state of their residence.

18 5. A recreational vehicle dealer licensed in another state  
19 who intends to participate in a vehicle show or exhibition in  
20 this state, shall send written notification of such intended  
21 participation to the motor vehicle commission at least thirty  
22 days prior to the vehicle show or exhibition. Upon receipt of  
23 such written notification, the motor vehicle commission shall  
24 make a determination regarding compliance with the provisions of  
25 this section. If such recreational vehicle dealer would be  
26 unable to participate in the vehicle show or exhibition in this  
27 state pursuant to this section, the motor vehicle commission  
28 shall notify the recreational vehicle dealer at least fifteen

1 days prior to the vehicle show or exhibition of the inability to  
2 participate in the vehicle show or exhibition in this state, a  
3 violation of this section shall result in a fine of one thousand  
4 dollars to be assessed by the motor vehicle commission.

5 407.1047. 1. The provisions of this section shall apply to  
6 franchisors and franchisees engaged in the sale of motorcycles  
7 and all-terrain vehicles.

8 2. Each franchisor shall specify in writing to each of its  
9 franchisees in this state the franchisee's obligations for  
10 preparation, delivery, and warranty service on its products. The  
11 franchisor shall compensate the franchisee for warranty service  
12 required of the franchisee by the franchisor.

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

1 4. A franchisor shall not:

2 (1) Fail to perform any warranty obligation;

3 (2) Fail to include in written notices of franchisor  
4 recalls to owners of new motorcycles and all-terrain vehicles the  
5 expected date by which necessary parts and equipment will be  
6 available to franchisees for the correction of the defects; or

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

9 5. All claims made by a franchisee pursuant to this  
10 section for labor and parts shall be paid within thirty days  
11 after their approval. All claims shall be either approved or  
12 disapproved by the franchisor within thirty days after their  
13 receipt on a proper form generally used by the franchisor and  
14 containing the usually required information therein. Any claims  
15 not specifically disapproved in writing within thirty days after  
16 the receipt of the form shall be considered to be approved and  
17 payment shall be made within thirty days. A claim that has been  
18 approved and paid may not be charged back to the franchisee  
19 unless the franchisor can show that the claim was fraudulent,  
20 false, or unsubstantiated, except that a charge back for false or  
21 fraudulent claims shall not be made more than two years after  
22 payment, and a charge back for unsubstantiated claims shall not  
23 be made more than fifteen months after payment. A franchisee  
24 shall maintain all records of warranty repairs, including the  
25 related time records of its employees, for at least two years  
26 following payment of any warranty claim.

27 6. A franchisor shall compensate the franchisee for  
28 franchisor-sponsored sales or service promotion events, programs,

1 or activities in accordance with established guidelines for such  
2 events, programs, or activities.

3 7. All claims made by a franchisee pursuant to subsection  
4 5 of this section for promotion events, programs, or activities  
5 shall be paid within twenty-five days after their approval or  
6 program close, whichever comes later. All claims except those of  
7 the type set forth in subparagraphs (1) and (2) of this  
8 subsection shall be either approved or disapproved by the  
9 franchisor within thirty days after their receipt on a proper  
10 form generally used by the franchisor and containing the usually  
11 required information therein. Any claim not specifically  
12 disapproved in writing within thirty days after the receipt of  
13 this form shall be considered to be approved, and payment shall  
14 be made within thirty days. The franchisor has the right to  
15 charge back any claim for twelve months after the later of either  
16 the close of the promotion event, program, or activity, or the  
17 date of the payment. The provisions of this subsection shall not  
18 apply to:

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

26 (2) Claims related to franchisor's use of a "balance  
27 forward account" to make reimbursement, in which event the  
28 franchisor shall compensate a franchisee no later than seventy-

1 five days following the date that the franchisee properly  
2 registered the manufacturer's limited warranty for the vehicle.

3 407.1360. As used in sections 407.1360 to 407.1370, the  
4 following terms shall mean:

5 (1) "Boat dealer", any natural person, partnership, or  
6 corporation who, for a commission or with an intent to make a  
7 profit or gain of money or other thing of value, sells, barter,  
8 exchanges, leases or rents with the option to purchase, offers,  
9 attempts to sell, or negotiates the sale of any vessel or vessel  
10 trailer, whether the vessel or vessel trailer is owned by such  
11 person;

12 (2) "Boat manufacturer", any person engaged in the  
13 manufacture, assembling, or modification of any vessels or vessel  
14 trailers as a regular business, including a person, partnership,  
15 or corporation which acts for and is under the control of a  
16 manufacturer or assembly in connection with the distribution of  
17 vessels or vessel trailers, except for any person so engaged in  
18 the manufacture, assembly, or modification of any vessel or  
19 vessel trailer which is headquartered in this state and not a  
20 wholly owned subsidiary of a person not headquartered in this  
21 state;

22 (3) "Dealer", a person who is a grantee of a dealership  
23 situated in this state;

24 (4) "Dealer agreement", a contract or agreement, either  
25 expressed or implied, whether oral or written, between two or  
26 more persons, by which a person is granted the right to sell or  
27 distribute goods or services or use a trade name, trademark,  
28 service mark, logotype, advertising, or other commercial symbol

1 in which there is a community of interest in the business of  
2 offering, selling, or distributing goods or services at  
3 wholesale, retail, by lease agreement or otherwise;

4 (5) "Designated family member", the designated successor  
5 nominated by a boat dealer in a written document filed by the  
6 dealer with a manufacturer;

7 (6) "Good cause", for purposes of determining whether there  
8 is good cause for a proposed action, factors may include but not  
9 be limited to:

10 (a) The extent of the affected dealer's penetration in the  
11 relevant market area;

12 (b) The nature and extent of the dealer's investment in its  
13 business;

14 (c) The adequacy of the dealer's service facilities,  
15 equipment, parts, supplies, and personnel;

16 (d) The extent and quality of the dealer's service;

17 (e) The dealer's performance under the terms of its dealer  
18 agreement with the manufacturer;

19 (f) The dealer's compliance with the contractual  
20 requirements under the terms of the dealer agreement; or

21 (g) The factors as provided in section 407.1362;

22 (7) "Grantor", a person who grants a dealership;

23 (8) "Marine dealer", any natural person, partnership, or  
24 corporation who, for a commission or with an intent to make a  
25 profit or gain of money or other thing of value, sells, barter,  
26 exchanges, leases or rents with the option to purchase, offers,  
27 attempts to sell, or negotiates the sale of any vessel or vessel  
28 trailer, whether the vessel or vessel trailer is owned by such

1 person;

2 (9) "Marine manufacturer", a person who is a grantee of a  
3 dealership situated in this state, except for any person so  
4 engaged in the manufacture, assembly, or modification of any  
5 vessel or vessel trailer which is headquartered in this state and  
6 not a wholly owned subsidiary of a person not headquartered in  
7 this state;

8 (10) "Person", a natural person, partnership, joint  
9 venture, corporation, or other entity;

10 (11) "Personal watercraft", a class of vessel, which is  
11 less than sixteen feet in length, propelled by machinery which is  
12 designed to be operated by a person sitting, standing or kneeling  
13 on the vessel, rather than being operated by a person sitting or  
14 standing inside the vessel;

15 (12) "Vessel", every motorboat and every description of  
16 motorized watercraft, and any watercraft more than twelve feet in  
17 length which is powered by sail alone or by a combination of sail  
18 and machinery, used or capable of being used as a means of  
19 transportation on water, but not any watercraft having as the  
20 only means of propulsion a paddle or oars.

21 407.1362. 1. No boat, marine, vessel, or personal  
22 watercraft manufacturer, directly or through any officer, agent  
23 or employee may terminate, cancel or fail to renew a dealership  
24 agreement or substantially change the competitive circumstances  
25 of a boat, marine, or vessel dealership without good cause. In  
26 addition, good cause shall exist whenever:

27 (1) The boat, marine, vessel, or personal watercraft dealer  
28 has transferred an interest in the dealership without the

1 manufacturer's written consent;

2 (2) The boat, marine, vessel, or personal watercraft dealer  
3 has filed a voluntary petition in bankruptcy or has had an  
4 involuntary petition in bankruptcy filed against it which has not  
5 been discharged within thirty days after the filing;

6 (3) There has been a closeout or sale of a substantial part  
7 of the dealer's assets related to the boat, marine, vessel, or  
8 personal watercraft dealership or there has been a commencement  
9 or dissolution or liquidation of the dealership;

10 (4) There has been a change without the prior written  
11 approval of the manufacturer in the location of the dealer's  
12 principal place of business under the dealership agreement;

13 (5) The boat, marine, vessel, or personal watercraft dealer  
14 has defaulted under any chattel mortgage or other security  
15 agreement between the dealer and the boat, marine, vessel, or  
16 personal watercraft manufacturer or there has been a revocation  
17 or discontinuance of any guarantee of the dealer's present or  
18 future obligations to the boat, marine, or vessel;

19 (6) The boat, marine, vessel, or personal watercraft dealer  
20 has failed to operate in the normal course of business for thirty  
21 consecutive days or has otherwise abandoned his or her business,  
22 unless otherwise provided for in the dealer agreement;

23 (7) The boat, marine, vessel, or personal watercraft dealer  
24 has pleaded guilty to or has been convicted of a felony, or of  
25 any misdemeanor relating to the relationship between the dealer  
26 and manufacturer;

27 (8) The dealer has engaged in conduct which is injurious or  
28 detrimental to the dealer's customers or to the public welfare.

1     407.1364. 1. Except as provided in this section, a boat,  
2 marine, vessel, or personal watercraft manufacturer shall provide  
3 a boat, marine, vessel, or personal watercraft dealer at least  
4 ninety days prior written notice of termination, cancellation, or  
5 nonrenewal of the dealership agreement. The notice shall state  
6 all the reasons for termination, cancellation, or nonrenewal of  
7 the dealership agreement and shall provide the said dealer ninety  
8 days in which to cure any claimed deficiency. If the deficiency  
9 is rectified within ninety days, the manufacturer's notice shall  
10 be void. However, if the dealer fails to provide the notice of  
11 intent to cure deficiencies in the prescribed time period, the  
12 termination shall take effect sixty days after the dealer's  
13 receipt of the manufacturer's notice unless the dealer has new  
14 and untitled inventory on hand, in which case, if requested by  
15 the dealer, it will take effect upon the sale of the remaining  
16 inventory but in no event later than ninety days from the  
17 manufacturer's notice of termination.

18     2. The notice and right to cure provisions in this section  
19 shall not apply if the reason for termination, cancellation, or  
20 nonrenewal is for good cause as defined in section 407.1360.

21     3. A dealer may terminate its dealer agreement at any time  
22 by giving written notice of said intentions to the manufacturer  
23 at least ninety days prior to the effective date specified for  
24 termination.

25     4. The ninety day notice may be reduced to sixty days'  
26 notice if the grounds for termination are due to:

27     (1) Conviction of or pleas of nolo contendere to a felony  
28 of a dealer, or one of its owners;

1 (2) The business operations of the dealer have been  
2 abandoned or closed for thirty consecutive days unless the  
3 closing is due to an act of God or other cause over which the  
4 dealer has no control;

5 (3) A material misrepresentation by the dealer; or

6 (4) The suspension, revocation, or refusal to renew the  
7 dealer's license.

8 5. The provisions of this section regarding notice shall  
9 not apply if the reason for termination is insolvency, the  
10 occurrence of an assignment for the benefit of creditors, or  
11 bankruptcy.

12 407.1366. 1. If a boat, marine, vessel, or personal  
13 watercraft dealer desires to make a change in its ownership by  
14 the sale of the business assets, stock transfer, or otherwise,  
15 the dealer must give the manufacturer ninety days' written notice  
16 prior to the closing including all supporting documentation as  
17 may be required by the manufacturer. The manufacturer shall not  
18 refuse to agree to such proposed change or sale and may not  
19 disapprove or withhold approval of such change or sale unless the  
20 manufacturer can show that its decision is based on the  
21 manufacturer's reasonable criteria, which may include but is not  
22 limited to the prospective transferee's business experience,  
23 moral character, financial qualifications, and any criminal  
24 record.

25 2. It is unlawful for any manufacturer to fail to provide a  
26 boat, marine, vessel, or personal watercraft dealer an  
27 opportunity to designate, in writing, a member of the dealer's  
28 family as a successor to the dealership in the event of the

1 death, incapacity, or retirement of the boat, marine, vessel, or  
2 personal watercraft dealer. It shall be unlawful to prevent or  
3 refuse to honor the succession to a dealership by a member of the  
4 family of the deceased, retired or incapacitated dealer unless  
5 the manufacturer has provided to the dealer written notice of its  
6 objections. Grounds for objection shall be lack of  
7 creditworthiness, conviction of a felony, lack of required  
8 licenses or business experience or other conditions which make  
9 such succession unreasonable under the circumstances, but the  
10 manufacturer shall bear the burden of showing the  
11 unreasonableness of such succession. However, no member of the  
12 family may succeed to a boat, marine, vessel, or personal  
13 watercraft dealer if the succession to the boat, marine, vessel,  
14 or personal watercraft dealer involves, without the  
15 manufacturer's consent, a relocation of the business or an  
16 alteration of the terms and conditions of the written agreement.

17 3. If the manufacturer rejects a proposed change or sale,  
18 the manufacturer shall give written notice of its reasons to the  
19 boat, marine, vessel, or personal watercraft dealer within sixty  
20 days after receipt of the dealer notification and complete  
21 documentation. If no such notice is given to the boat, marine,  
22 vessel, or personal watercraft dealer, the change or sale shall  
23 be deemed approved.

24 407.1368. If the boat, marine, vessel, or personal  
25 watercraft dealer agreement is terminated, canceled or not  
26 renewed by the manufacturer for cause, the manufacturer shall, at  
27 the election of the boat, marine, vessel, or personal watercraft  
28 dealer, within thirty days of termination, repurchase:

1 (1) (a) All new, untitled current model year inventory,  
2 acquired from the manufacturer, which has not been used (except  
3 for demonstration purposes), altered or damaged to the extent  
4 that such damage must be disclosed to the consumer pursuant to  
5 section 407.1343, at one hundred percent of the net invoice cost,  
6 less transportation, applicable rebates, and discounts to the  
7 dealer;

8 (b) All new, untitled inventory of the prior model year,  
9 acquired from the manufacturer, provided the prior model year  
10 vessels have not been altered, used (except for demonstration  
11 purposes) or damaged to the extent that such damage must be  
12 disclosed to the consumer pursuant to section 407.1343, and were  
13 drafted on the dealer's financing source or paid within one  
14 hundred twenty days prior to the effective date of the  
15 termination, cancellation, or nonrenewal;

16 (c) Any other existing inventory provided the boat, marine,  
17 vessel, or personal watercraft dealer and the manufacturer have  
18 agreed on a wholesale value for such inventory.

19  
20 In the event any of the vessels repurchased pursuant to this  
21 subdivision are damaged, but do not trigger the consumer  
22 disclosure requirement, the amount due the dealer shall be  
23 reduced by the cost to repair the vessels. Damage prior to  
24 delivery to dealer that is disclosed at the time of delivery will  
25 not disqualify repurchase under this provision;

26 (2) All current and undamaged manufacturer's accessories  
27 and proprietary parts sold to the dealer for resale, if  
28 accompanied by the original invoice, at one hundred percent of

1 the original net price paid to the manufacturer minus a five  
2 percent freight and restocking expenses; and  
3 407.1370. The provisions of sections 407.1360 to 407.1370  
4 shall apply to all dealership agreements entered into on or after  
5 January 1, 2005.