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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1157**

February 26, 2009

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to commerce; regulating franchise agreements between outdoor sport
1.3 equipment dealers, manufacturers, and distributors; proposing coding for new
law as Minnesota Statutes, chapter 80G.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[80G.01] DEFINITIONS.**

1.7 Subdivision 1. **Scope.** For the purposes of sections 80G.01 to 80G.11, the terms
1.8 defined in this section have the meanings given them.

1.9 Subd. 2. **Dealership agreement.** "Dealership agreement" means a written
1.10 agreement of definite or indefinite duration between an outdoor sport equipment
1.11 manufacturer and an outdoor sport equipment dealer or distributor that enables the dealer
1.12 to purchase equipment from the manufacturer or dealer and provides for the rights and
1.13 obligations of the parties with respect to the purchase or sale of outdoor sport equipment.

1.14 Subd. 3. **Designated successor.** "Designated successor" means one or more persons
1.15 nominated by the dealer, in a written document filed by the dealer with the manufacturer
1.16 or distributor at the time the dealership agreement is executed, to succeed the dealer in the
1.17 event of the dealer's death or incapacity.

1.18 Subd. 4. **Outdoor sport equipment.** "Outdoor sport equipment" means
1.19 snowmobiles as defined in section 84.81, subdivision 3; all-terrain vehicles as defined
1.20 in section 84.92, subdivision 8; personal watercraft as defined in section 86B.005,
1.21 subdivision 14a; watercraft as defined in section 86B.001, subdivision 18; and off-highway
1.22 motorcycles, as defined in section 84.787, subdivision 7, and all attachments and repair
1.23 parts for all of this equipment.

2.1 Subd. 5. **Outdoor sport equipment dealer or dealer.** "Outdoor sport equipment
 2.2 dealer" or "dealer" means a person engaged in acquiring outdoor sport equipment from a
 2.3 manufacturer and reselling the outdoor sport equipment at wholesale or retail.

2.4 Subd. 6. **Outdoor sport equipment distributor or distributor.** "Outdoor sport
 2.5 equipment distributor" means a person, other than a manufacturer, who offers for sale,
 2.6 sells, or distributes outdoor sport equipment to an outdoor sport equipment dealer or who
 2.7 maintains a factory representative, or who controls a person who offers for sale, sells,
 2.8 or distributes outdoor equipment to an outdoor sport equipment dealer. "Distributor"
 2.9 includes a wholesaler.

2.10 Subd. 7. **Outdoor sport equipment manufacturer or manufacturer.** "Outdoor
 2.11 sport equipment manufacturer" or "manufacturer" means a person engaged in the
 2.12 manufacture or assembly of outdoor sport equipment. The term also includes any
 2.13 successor in interest of the outdoor sport equipment manufacturer, including any purchaser
 2.14 of assets or stock, any surviving corporation resulting from a merger or liquidation, any
 2.15 receiver or assignee, or any trustee of the original outdoor sport equipment manufacturer.

2.16 Subd. 8. **Person.** "Person" means an individual, partnership, limited partnership,
 2.17 corporation, limited liability company, trustee of a trust, personal representative of an
 2.18 estate, or any other type of business entity.

2.19 Subd. 9. **Proposed outdoor sport equipment dealer.** "Proposed outdoor sport
 2.20 equipment dealer" or "proposed dealer" means a person who has an application for a new
 2.21 dealership agreement pending with a manufacturer or distributor. Proposed dealer does
 2.22 not include a person whose dealership agreement is being renewed or continued.

2.23 **Sec. 2. [80G.02] DEALERSHIP AGREEMENT AND COMPLIANCE**
 2.24 **REQUIRED FOR SALE OR PURCHASE OF OUTDOOR SPORT EQUIPMENT.**

2.25 A manufacturer or distributor shall not offer for sale to a new outdoor sport
 2.26 equipment dealer, and a new or proposed new outdoor sport equipment dealer shall not
 2.27 offer to purchase from a manufacturer, new outdoor sport equipment without first entering
 2.28 into a written dealership agreement and complying with all other applicable provisions of
 2.29 this chapter. The written agreement may provide for certain types of routine transactions
 2.30 to be done orally.

2.31 **Sec. 3. [80G.03] CONTENTS OF DEALERSHIP AGREEMENT.**

2.32 Each dealership agreement must include, but is not limited to, all of the following:

2.33 (1) the territory or market area;

2.34 (2) the period of time covered by the dealership agreement;

- 3.1 (3) performance and marketing standards;
- 3.2 (4) notice provisions for termination, cancellation, or nonrenewal;
- 3.3 (5) obligations in the preparation and delivery of product and warranty service;
- 3.4 (6) disposition obligations upon termination, cancellation, or nonrenewal relating to
- 3.5 inventory, equipment, furnishings, special tools, and required signs acquired within the 18
- 3.6 months immediately prior to the date of termination, cancellation, or nonrenewal; and
- 3.7 (7) dispute resolution procedures.

3.8 **Sec. 4. [80G.04] SALE, TRANSFER, EXCHANGE OF DEALERSHIP;**
 3.9 **CONSENT; CRITERIA; PROHIBITED CONDUCT.**

3.10 (a) A manufacturer or distributor shall not unreasonably withhold consent to the
 3.11 sale, transfer, or exchange of a dealership to a person who meets the criteria, if any, set
 3.12 forth in the dealership agreement.

3.13 (b) Failure by a manufacturer or distributor to respond within 60 days after receipt of
 3.14 a written request by the dealer to the manufacturer or distributor for consent to the sale,
 3.15 transfer, or exchange of a dealership is considered consent to the request.

3.16 **Sec. 5. [80G.05] INABILITY OF DESIGNATED SUCCESSOR TO SUCCEED**
 3.17 **OUTDOOR SPORT EQUIPMENT DEALER.**

3.18 If a designated successor is not able to succeed the outdoor sport equipment dealer
 3.19 because of the designated successor's death or legal incapacity, the dealer may, at any time
 3.20 after that death or incapacity, execute and deliver to the manufacturer or distributor a new
 3.21 document nominating a designated successor.

3.22 **Sec. 6. [80G.06] DESIGNATED SUCCESSOR OF DECEASED OR**
 3.23 **INCAPACITATED SPORT EQUIPMENT DEALER; NOTICE OF INTENT;**
 3.24 **EXISTING DEALERSHIP AGREEMENT; PERSONAL AND FINANCIAL DATA;**
 3.25 **NOTICE OF REFUSAL TO APPROVE SUCCESSION.**

3.26 (a) A designated successor of a deceased or incapacitated new sport equipment
 3.27 dealer may succeed the dealer in the ownership or operation of the dealership under
 3.28 the existing dealership agreement if the designated successor gives the manufacturer
 3.29 or distributor written notice of the designated successor's intention to succeed to the
 3.30 dealership within 60 days after the dealer's death or incapacity and agrees to be bound by
 3.31 all of the terms and conditions of the dealership agreement. A manufacturer or distributor
 3.32 may refuse to honor the existing dealer agreement with the designated successor for good
 3.33 cause or on the basis of criteria agreed to in the existing dealership agreement.

4.1 (b) The manufacturer or distributor may request from a designated successor the
 4.2 personal and financial data necessary to determine whether the existing dealership
 4.3 agreement should be honored with the designated successor. Upon request, the designated
 4.4 successor shall supply the personal and financial data.

4.5 (c) Within 60 days after receiving the notice of the designated successor's intent
 4.6 to succeed the dealer in the ownership and operation of the dealership or within 60
 4.7 days after receiving the requested personal and financial data, whichever occurs last, if
 4.8 a manufacturer or distributor believes that good cause or other criteria agreed to in the
 4.9 existing dealership agreement exist for refusing to honor the succession, the manufacturer
 4.10 or distributor may provide written notice to the designated successor of its refusal to
 4.11 approve the succession.

4.12 **Sec. 7. [80G.07] CANCELLATION AND ALTERATION OF DEALERSHIPS.**

4.13 Subdivision 1. **Termination by manufacturer or distributor.** (a) No manufacturer
 4.14 or distributor, directly or through any officer, agent, or employee, may terminate, cancel,
 4.15 or fail to renew a dealership agreement without good cause.

4.16 (b) The burden of proving good cause is on the manufacturer or distributor.

4.17 (c) For purposes of this section, "good cause" means:

4.18 (1) failure by the dealer to comply substantially with essential and reasonable
 4.19 requirements imposed or sought to be imposed by the manufacturer or distributor,
 4.20 which requirements are not discriminatory as compared to requirements imposed by the
 4.21 manufacturer or distributor on other similarly situated dealers, either by the terms or in
 4.22 the manner of their enforcement;

4.23 (2) a substantial breach of the dealership agreement that the dealer has not cured
 4.24 within a reasonable time after notice of the breach by the manufacturer;

4.25 (3) without the consent of the outdoor sport equipment manufacturer, who shall not
 4.26 withhold consent unreasonably:

4.27 (i) the outdoor sport equipment dealer has transferred an interest in the outdoor
 4.28 sport equipment dealership;

4.29 (ii) there has been a withdrawal from the dealership of an individual proprietor,
 4.30 partner, major shareholder, or the manager of the dealership; or

4.31 (iii) there has been a substantial reduction in interest of a partner or major
 4.32 stockholder;

4.33 (4) the outdoor sport equipment dealer has filed a voluntary petition in bankruptcy or
 4.34 has had an involuntary petition in bankruptcy filed against it that has not been discharged
 4.35 within 30 days after the filing, there has been a closeout or other sale of a substantial part

5.1 of the dealer's assets related to the outdoor sport equipment business, or there has been a
 5.2 commencement of dissolution or liquidation of the dealer;

5.3 (5) there has been a change without the prior written approval of the manufacturer,
 5.4 in the location of the dealer's principal place of business under the dealership agreement;

5.5 (6) the outdoor sport equipment dealer has defaulted under a chattel mortgage
 5.6 or other security agreement between the dealer and the outdoor sport equipment
 5.7 manufacturer, or there has been a revocation or discontinuance of a guarantee of the
 5.8 dealer's present or future obligations to the outdoor sport equipment manufacturer;

5.9 (7) the outdoor sport equipment dealer has failed to operate in the normal course of
 5.10 business for seven consecutive days or has otherwise abandoned the business;

5.11 (8) the outdoor sport equipment dealer has pleaded guilty to or has been convicted of
 5.12 a felony affecting the relationship between the dealer and manufacturer;

5.13 (9) the outdoor sport equipment dealer has engaged in conduct that is injurious or
 5.14 detrimental to the dealer's customers or to the public welfare; or

5.15 (10) the outdoor sport equipment dealer, after receiving notice from the manufacturer
 5.16 of its requirements for reasonable market penetration based on the manufacturer's
 5.17 experience in other comparable marketing areas, fails to meet the manufacturer's market
 5.18 penetration requirements.

5.19 Subd. 2. **Termination by dealer.** A dealer shall not terminate, cancel, or fail to
 5.20 renew a dealership agreement except on 90 days written notice to the manufacturer or
 5.21 distributor, unless a shorter period is agreed upon by the parties. This prohibition does not
 5.22 apply to a termination, cancellation, or failure to renew due to the death of the dealer or
 5.23 the death of an individual who is at least a 50 percent owner of the dealership.

5.24 **Sec. 8. [80G.08] REPURCHASE OF INVENTORY REQUIRED.**

5.25 (a) If a manufacturer or distributor terminates a dealer agreement as a result of any
 5.26 action, except for good cause under section 80G.07, the manufacturer or distributor shall
 5.27 repurchase the inventory as provided in this section. The dealer may keep part or all of the
 5.28 inventory if it desires to do so, and the manufacturer agrees in writing. If the dealer has an
 5.29 outstanding debt to the manufacturer or distributor, then the repurchase amount may be
 5.30 adjusted by the manufacturer to take into account those unpaid debts.

5.31 (b) After written notice by the dealer to the manufacturer or distributor in person
 5.32 or by registered or certified mail or by a commercial delivery service, return receipt
 5.33 requested, provided by the dealer within 30 days after termination of the dealer agreement,
 5.34 the manufacturer or distributor shall, within 30 days after receiving the notice, repurchase

6.1 that inventory previously purchased from the manufacturer or distributor as provided in
6.2 this section except as otherwise provided in paragraph (a).

6.3 (c) Upon payment within a reasonable time of the repurchase amount to the dealer,
6.4 the title, if any, and the right of possession to the repurchased inventory transfers to the
6.5 manufacturer or distributor.

6.6 (d) The repurchase amount for the inventory must be at least the amount the dealer
6.7 paid for the inventory.

6.8 Sec. 9. **[80G.09] WARRANTIES.**

6.9 Subdivision 1. **Application.** This section applies to all warranty claims submitted
6.10 by a dealer to an outdoor sport equipment manufacturer in which the outdoor sport
6.11 equipment dealer has complied with the policies and procedures contained in the outdoor
6.12 sport equipment manufacturer's warranty.

6.13 Subd. 2. **Prompt payment.** Claims filed for payment under warranty agreements
6.14 must be approved or disapproved within 30 days after receipt by the outdoor sport
6.15 equipment manufacturer. Unless the outdoor sport equipment dealer agrees to a later date,
6.16 approved claims for payment must be paid within 30 days after approval. When a claim is
6.17 disapproved, the outdoor sport equipment manufacturer shall notify the dealer within the
6.18 30-day period stating the specific grounds on which the disapproval is based. Any claim
6.19 not specifically disapproved within 30 days of receipt is deemed approved and must be
6.20 paid within 30 days after the deemed approval.

6.21 Subd. 3. **Post-termination claims.** If, after termination of a dealership agreement, a
6.22 dealer submits a warranty claim for warranty work performed before the effective date
6.23 of the termination, the outdoor sport equipment manufacturer shall handle the claim as
6.24 provided in subdivision 2.

6.25 Subd. 4. **Compensation for warranty work.** Warranty work performed by the
6.26 dealer must be compensated in accordance with the reasonable and customary amount
6.27 of time required to complete the work, expressed in hours and fractions of hours
6.28 multiplied by the dealer's established customer hourly retail labor rate, which the dealer
6.29 shall communicate to the outdoor sport equipment manufacturer before performing the
6.30 warranty work.

6.31 Subd. 5. **Expenses.** Expenses expressly excluded under the outdoor sport equipment
6.32 manufacturer's warranty to the customer must not be included in claims and are not
6.33 required to be paid on requests for compensation from the dealer for warranty work
6.34 performed.

7.1 Subd. 6. **Compensation for parts.** Payment for all parts used by the dealer in
 7.2 performing warranty work must be paid to the dealer in the amount equal to the dealer's
 7.3 net price for the parts, plus a minimum of 15 percent to reimburse the dealer for reasonable
 7.4 costs of doing business in performing warranty service on the outdoor sport equipment
 7.5 manufacturer's behalf, including, but not limited to, freight and handling costs.

7.6 Subd. 7. **Adjustment for errors.** The outdoor sport equipment manufacturer may
 7.7 adjust for errors discovered during audit, and if necessary, adjust claims paid in error.

7.8 Subd. 8. **Alternate terms and conditions.** A dealer may choose to accept alternate
 7.9 reimbursement terms and conditions in lieu of the requirements of subdivisions 2 to 7,
 7.10 provided there is a written dealership agreement between the outdoor sport equipment
 7.11 manufacturer and the dealer providing for compensation to the dealer for warranty labor
 7.12 costs either as:

7.13 (1) a discount in the pricing of the equipment to the dealer; or

7.14 (2) a lump-sum payment to the dealer.

7.15 The discount or lump sum must be no less than five percent of the suggested retail price
 7.16 of the equipment. If the requirements of this subdivision are met and alternate terms
 7.17 and conditions are in place, subdivisions 2 to 7 do not apply and the alternate terms and
 7.18 conditions are enforceable.

7.19 Subd. 9. **Warranty work on units not sold by the dealer.** Upon request of the
 7.20 manufacturer or distributor, the dealer shall perform warranty repair work on units that
 7.21 were not sold by the dealer. Compensation for that work must be on the same terms and
 7.22 conditions otherwise required in this section.

7.23 **Sec. 10. [80G.10] STATUS OF INCONSISTENT AGREEMENTS.**

7.24 A term of a dealership agreement either expressed or implied, including a choice
 7.25 of law provision that is inconsistent with sections 80G.01 to 80G.11 or that purports to
 7.26 waive an outdoor sport equipment manufacturer's or distributor's compliance with sections
 7.27 80G.01 to 80G.11 is void and unenforceable and does not waive any rights provided to
 7.28 a person by sections 80G.01 to 80G.11.

7.29 **Sec. 11. [80G.11] REMEDIES.**

7.30 If either party to a dealership agreement violates any provision of sections 80G.01
 7.31 to 80G.11, the other party may bring an action against the alleged violator in a court
 7.32 of competent jurisdiction for damages sustained by the allegedly wronged party as a
 7.33 consequence of the violation, and the allegedly wronged party may also be granted

8.1 injunctive relief against any action or inaction prohibited under sections 80G.01 to 80G.11.
8.2 The remedies in this section are in addition to any other remedies permitted by law.

8.3 Sec. 12. **[80G.12] APPLICABILITY.**

8.4 Sections 80G.01 to 80G.11 are effective August 1, 2009, and apply to all dealership
8.5 agreements entered into, amended, or renewed on or after that date. Any dealership
8.6 agreement in force and effect on August 1, 2009, that has a stated expiration date after
8.7 that date and is not renewed or amended on or after August 1, 2009, is not subject to
8.8 sections 80G.01 to 80G.11. Sections 80G.01 to 80G.11 apply as of August 1, 2009, to any
8.9 dealership agreement then in effect that has no stated expiration date.