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**HOUSE BILL NO. 2681**

Offered January 14, 2003

A *BILL to amend and reenact §§ 46.2-1993, 46.2-1993.6, 46.2-1993.25, 46.2-1993.64, and 46.2-1993.67 of the Code of Virginia, relating to motorcycle dealers; all-terrain vehicles.*

Patrons—Abbitt, Hargrove and Sherwood; Senator: Hanger

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-1993, 46.2-1993.6, 46.2-1993.25, 46.2-1993.64, and 46.2-1993.67 of the Code of Virginia are amended and reenacted as follows:**

§ 46.2-1993. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"All-terrain vehicle" means a 3-wheeled or 4-wheeled motor vehicle powered by a gasoline or diesel engine and generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, that is intended for off-road use by an individual rider on various types of unpaved terrain. The term does not include 4-wheeled vehicles that have low centers of gravity and are typically used in racing and on relatively level surfaces, commonly known as "go-carts," nor does the term include any "farm utility vehicle" as defined in this section. Except as otherwise provided in this chapter, for the purposes of this chapter, all-terrain vehicles shall be deemed to be motorcycles.

"Certificate of origin" means the document provided by the manufacturer of a new motorcycle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motorcycle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new motorcycles pursuant to a written agreement with the manufacturer, to franchised motorcycle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of motorcycles to motorcycle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motorcycles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motorcycles to distributors or for the sale of motorcycles to motorcycle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles motorcycles, or by a factory branch for the purpose of making or promoting the sale of its motorcycles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motorcycle" means a motorcycle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motorcycle will be resold or otherwise retransferred only to the manufacturer or distributor of the motorcycle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least ~~five~~ 5 years.

"Farm utility vehicle" means a vehicle that is designed for off-road use and is used as a farm, agricultural, or horticultural service vehicle, generally having a gasoline or diesel engine, 4 or more wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed. "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, riding lawn mowers, or all-terrain vehicles.

"Franchise" means a written contract or agreement between ~~two~~ 2 or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motorcycles of a particular line-make or late model or factory repurchase motorcycles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor,

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59 the motorcycle or its manufacturer or distributor. The term shall include any severable part or parts of a  
60 franchise agreement which separately provides for selling and servicing different line-makes of the  
61 franchisor.

62 "Franchised late model or factory repurchase motorcycle dealer" means a dealer in late model or  
63 factory repurchase motorcycles, including a franchised new motorcycle dealer, that has a franchise  
64 agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase  
65 motorcycles.

66 "Franchised motorcycle dealer" or "franchised dealer" means a dealer in new motorcycles that has a  
67 franchise agreement with a manufacturer or distributor of new motorcycles.

68 "Independent motorcycle dealer" means a dealer in used motorcycles.

69 "Late model motorcycle" means a motorcycle of the current model year and the immediately  
70 preceding model year.

71 "*Line-make*" means the name of the motorcycle manufacturer or distributor and a brand or name  
72 plate marketed by the manufacturer or distributor. For the purposes of this chapter, the "*line-make*" of a  
73 motorcycle manufacturer, factory branch, distributor, or distributor branch shall include every brand of  
74 all-terrain vehicle and off-road motorcycle manufactured or distributed bearing the name of the  
75 motorcycle manufacturer or distributor.

76 "Manufacturer" means a person engaged in the business of constructing or assembling new  
77 motorcycles.

78 "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact  
79 with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in  
80 § 46.2-100. *Except as otherwise provided in this chapter, for the purposes of this chapter "all-terrain*  
81 *vehicles" and "off-road motorcycles" shall be deemed to be "motorcycles."*

82 "Motorcycle dealer" or "dealer" means any person who:

83 1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on  
84 conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to  
85 solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motorcycles,  
86 new and used motorcycles, or used motorcycles alone, whether or not the motorcycles are owned by  
87 him;

88 2. Is wholly or partly engaged in the business of selling new motorcycles, new and used motorcycles,  
89 or used motorcycles only, whether or not the motorcycles are owned by him; or

90 3. Offers to sell, sells, displays, or permits the display for sale, of ~~five~~ 5 or more motorcycles within  
91 any ~~twelve~~ 12 consecutive months.

92 The term "motorcycle dealer" does not include:

93 1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed  
94 by or acting under judgment or order of any court or their employees when engaged in the specific  
95 performance of their duties as employees.

96 2. Public officers, their deputies, assistants, or employees, while performing their official duties.

97 3. Persons other than business entities primarily engaged in the leasing or renting of motorcycles to  
98 others when selling or offering such motorcycles for sale at retail, disposing of motorcycles acquired for  
99 their own use and actually so used, when the motorcycles have been so acquired and used in good faith  
100 and not for the purpose of avoiding the provisions of this chapter.

101 4. Any financial institution chartered or authorized to do business under the laws of the  
102 Commonwealth or the United States which may have received title to a motorcycle in the normal course  
103 of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that  
104 institution occurring as a result of any loan secured by a lien on the motorcycle.

105 5. An employee of an organization arranging for the purchase or lease by the organization of  
106 motorcycles for use in the organization's business.

107 6. Any person who permits the operation of a motorcycle show or permits the display of motorcycles  
108 for sale by any motorcycle dealer licensed under this chapter.

109 7. An insurance company authorized to do business in the Commonwealth that sells or disposes of  
110 motorcycles under a contract with its insured in the regular course of business.

111 8. Any publication, broadcast, or other communications media when engaged in the business of  
112 advertising, but not otherwise arranging for the sale of motorcycles owned by others.

113 9. Any person dealing solely in the sale or lease of *either (i) motorcycles designed exclusively for*  
114 *off-road use or (ii) all-terrain vehicles.*

115 10. Any credit union authorized to do business in Virginia, provided the credit union does not  
116 receive a commission, money, or other thing of value directly from a motorcycle dealer.

117 "Motorcycle salesperson" or "salesperson" means any person who is licensed as and employed as a  
118 salesperson by a motorcycle dealer to sell or exchange motorcycles.

119 "Motorcycle show" means a display of motorcycles to the general public at a location other than a  
120 dealer's location licensed under this chapter where the motorcycles are not being offered for sale or

121 exchange during or as part of the display.

122 "New motorcycle" means any motorcycle which (i) has not been previously sold except in good faith  
 123 for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration  
 124 motorcycle, or for the personal and business transportation of the manufacturer, distributor, dealer, or  
 125 any of his employees, (iii) has not been used except for limited use necessary in moving or road testing  
 126 the motorcycle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has  
 127 the manufacturer's certification that it conforms to all applicable federal motorcycle safety and emission  
 128 standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not  
 129 titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

130 "*Off-road motorcycle*" means every motorcycle designed exclusively for off-road use by an individual  
 131 rider with not more than 2 wheels in contact with the ground. Except as otherwise provided in this  
 132 chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be "motorcycles."

133 "Original license" means a motorcycle dealer license issued to an applicant who has never been  
 134 licensed as a motorcycle dealer in Virginia or whose Virginia motorcycle dealer license has been expired  
 135 for more than ~~thirty~~ 30 days.

136 "Relevant market area" means as follows:

137 1. In metropolitan localities with a ~~population~~ populations of 250,000 or more, the relevant market  
 138 area shall be a circular area around an existing franchised dealer not to exceed a radius of ~~ten~~ 10 miles;  
 139 but in no case less than seven miles.

140 2. If the population in an area within a radius of ~~ten~~ 10 miles around an existing franchised dealer is  
 141 less than 250,000, but the population in an area within a radius of ~~fifteen~~ 15 miles around an existing  
 142 franchised dealer is 150,000 or more, the relevant market area shall be that area within the  
 143 ~~fifteen~~ 15-mile radius.

144 3. In all other cases the relevant market area shall be an area within a radius of ~~twenty~~ 20 miles  
 145 around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is  
 146 greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market  
 147 area shall be the greater of an area within a radius of ~~twenty~~ 20 miles around an existing franchised  
 148 dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail  
 149 sales or sales efforts.

150 In determining population for this definition, the most recent census by the U.S. Bureau of the  
 151 Census or the most recent population update, either from the National Planning Data Corporation or  
 152 other similar recognized source, shall be accumulated for all census tracts either wholly or partially  
 153 within the relevant market area.

154 "Retail installment sale" means every sale of one or more motorcycles to a buyer for his use and not  
 155 for resale, in which the price of the motorcycle is payable in one or more installments and in which the  
 156 seller has either retained title to the goods or has taken or retained a security interest in the goods under  
 157 form of contract designated either as a security agreement, conditional sale, bailment lease, chattel  
 158 mortgage, or otherwise.

159 "Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or  
 160 otherwise disposing of a motorcycle to a buyer for his personal use and not for resale.

161 "Sale at wholesale" or "wholesale" means a sale to motorcycle dealers or wholesalers other than to  
 162 consumers, or a sale to one who intends to resell.

163 "Used motorcycle" means any motorcycle other than a new motorcycle as defined in this section.

164 "Wholesale auction" means an auction of motorcycles restricted to sales at wholesale.

165 § 46.2-1993.6. Licenses required.

166 ~~It~~ Except as otherwise provided in this section, it shall be unlawful for any person to engage in  
 167 business in the Commonwealth as a motorcycle dealer, salesperson, manufacturer, factory branch,  
 168 distributor, distributor branch, or factory or distributor representative, without first obtaining a license as  
 169 provided in this chapter. Any person licensed in another state as a motorcycle dealer may sell  
 170 motorcycles at wholesale auctions in the Commonwealth after having obtained a certificate of dealer  
 171 registration as provided in Chapter 19 (§ 46.2-1900 et seq.) of this title. Any nonprofit organization  
 172 exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, after having obtained a  
 173 nonprofit organization certificate as provided in this chapter, may consign donated motorcycles to  
 174 licensed Virginia motorcycle dealers. The offering or granting of a motorcycle dealer franchise in the  
 175 Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section,  
 176 and no new motorcycle may be sold or offered for sale in the Commonwealth unless the franchisor of  
 177 motorcycle dealer franchises for that line-make in the Commonwealth, whether such franchisor is a  
 178 manufacturer, factory branch, distributor, distributor branch, or otherwise, is licensed under this chapter.  
 179 In the event a license issued under this chapter to a franchisor of motorcycle dealer franchises is  
 180 suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new motorcycle  
 181 of such franchisor's line-make manufactured in or brought into the Commonwealth for sale prior to the

182 suspension, revocation or expiration of the license.

183 *Notwithstanding the foregoing provisions of this section, a manufacturer, factory branch, distributor,*  
184 *distributor branch, or factory or distributor representative engaged in the manufacture or distribution of*  
185 *all-terrain vehicles or off-road motorcycles that does not also manufacture or does not also distribute in*  
186 *Virginia any motorcycle designed for lawful use on the public highways shall not be required to obtain*  
187 *a license from the Department as provided in this chapter.*

188 Violation of any provision of this section shall constitute a Class 1 misdemeanor.

189 § 46.2-1993.25. Odometer disclosure.

190 Every motorcycle dealer shall comply with all requirements of the Federal Odometer Act and  
191 § 46.2-629 by completing the appropriate odometer mileage statement form for each vehicle purchased,  
192 sold or transferred, or in any other way acquired or disposed of. Odometer disclosure statements shall be  
193 maintained by the dealer in a manner that permits systematic retrieval. Any person found violating any  
194 of the provisions of this section shall be guilty of a Class 1 misdemeanor.

195 *The provisions of this section shall not apply to all-terrain vehicles or off-road motorcycles.*

196 § 46.2-1993.64. Filing of franchises.

197 ~~Each~~ *Except as otherwise provided in this section, each* motorcycle manufacturer, factory branch,  
198 distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each  
199 new, amended, modified, or different form or addendum offered to more than one dealer which affects  
200 the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and  
201 service agreement to be offered to a motorcycle dealer or prospective motorcycle dealer in the  
202 Commonwealth no later than sixty days prior to the date the franchise or sales agreement is offered. In  
203 no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and  
204 service agreement be offered a motorcycle dealer in the Commonwealth until the form has been  
205 determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter.  
206 At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory  
207 branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of  
208 the papers so filed to the affected dealer or dealers.

209 *The provisions of this article shall not apply to a manufacturer, factory branch, distributor,*  
210 *distributor branch, or factory or distributor representative engaged in the manufacture or distribution of*  
211 *all-terrain vehicles or off-road motorcycles that does not also manufacture or does not also distribute in*  
212 *Virginia any motorcycle designed for lawful use on the public highways.*

213 § 46.2-1993.67. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer  
214 franchises; delivery of motorcycles, parts, and accessories.

215 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any  
216 field representative, officer, agent, or their representatives:

217 1. To coerce or attempt to coerce any dealer to accept delivery of any motorcycle or motorcycles,  
218 parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

219 2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer,  
220 factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to  
221 the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch,  
222 distributor, distributor branch, or representative thereof and the dealer.

223 3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising  
224 association.

225 4. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of  
226 the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a  
227 change in the executive management or principal operator of the dealership, unless the franchisor  
228 provides written notice to the dealer of its objection and the reasons therefor at least ~~thirty~~ 30 days prior  
229 to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be  
230 effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if  
231 requested in writing by the dealer within ~~thirty~~ 30 days after receipt of an objection to the proposed  
232 sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale,  
233 transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold,  
234 assigned, or transferred unless (i) the franchisor has been given at least ninety days' prior written notice  
235 by the dealer as to the identity, financial ability, and qualifications of the proposed transferee and (ii) the  
236 sale or transfer of the franchise and business will not involve, without the franchisor's consent, a  
237 relocation of the business.

238 5. a. To grant an additional franchise for a particular line-make of motorcycle in a relevant market  
239 area in which a dealer or dealers in that line-make are already located unless the franchisor has first  
240 advised in writing all other dealers in the line-make in the relevant market area. No such additional  
241 franchise may be established at the proposed site unless the Commissioner has determined, if requested  
242 by a dealer of the same line-make in the relevant market area within ~~thirty~~ 30 days after receipt of the  
243 franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter,

244 that there is reasonable evidence that after the grant of the new franchise, the market will support all of  
 245 the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant  
 246 market area to replace a franchised dealer that has not been in operation for more than two years shall  
 247 constitute the establishment of a new franchise subject to the terms of this subdivision. The ~~two~~2-year  
 248 period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a  
 249 termination hearing was held, on the day the franchisor was legally permitted finally to terminate the  
 250 franchise. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's  
 251 relevant market area if the relocation site is to be more than ten miles distant from any other dealer for  
 252 the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if  
 253 the relocation site is to be more distant than the existing site from all other dealers of the same  
 254 line-make in that relevant market area; or (iii) the relocation of an existing new motorcycle dealer within  
 255 two miles of the existing site of the relocating dealer.

256 *b. No new or additional motorcycle dealer franchise shall be established in any county, city or town*  
 257 *the Commonwealth unless the manufacturer, factory branch, distributor, distributor branch, or factory or*  
 258 *distributor representative gives advance notice to ~~any~~all existing franchised dealers of the same*  
 259 *line-make in the Commonwealth. The notice shall be in writing, shall include the exact street address of*  
 260 *the proposed new dealer, and sent by certified mail, return receipt requested, at least ~~forty-five~~45 days*  
 261 *prior to the establishment of the new or additional franchise. ~~Any~~ An existing franchise dealer of the*  
 262 *same line make that is serving all or a substantial portion of the market area likely to be served by the*  
 263 *proposed new or additional dealer franchise may file a written protest with the Commissioner within*  
 264 *~~thirty~~ 30 days of the date the notice is received. Every protest filed under this subdivision shall include*  
 265 *(i) a statement by the existing dealer that it directly and substantially represents the line-make in all or*  
 266 *a substantial portion of the same market area likely to be served by the proposed new dealer and (ii)*  
 267 *documentation of such asserted representation by the protesting dealer. Such documentation shall*  
 268 *include the protesting dealer's motorcycle sales volume of the same line-make as the proposed new*  
 269 *dealer for the prior 4 years in the market area likely to be served by the proposed new dealer. The*  
 270 *Commissioner, in his discretion, shall determine whether such protesting dealer's assertion of*  
 271 *representation of the line-make is sufficiently substantiated that the protesting dealer should be afforded*  
 272 *a formal hearing under § 2.2-4020 to determine whether the protesting dealer or dealers are providing*  
 273 *inadequate representation of such line-make motorcycles in the market area likely to be served by the*  
 274 *proposed new dealer. No hearing shall be granted to a protesting dealer unless that dealer is either (a)*  
 275 *a dealer of the same line-make that is geographically the closest dealer to the site of the proposed new*  
 276 *dealer or (b) a dealer who has been joined in the protest by the geographically closest dealer. ~~The~~ If a*  
 277 *hearing is granted, burden of proof in establishing inadequate representation by the protesting dealer or*  
 278 *dealers of such line-make motorcycles in the market area likely to be served by the proposed new*  
 279 *dealer shall be on the manufacturer, factory branch, distributor, distributor branch, or factory or*  
 280 *distributor representative. If the Commissioner determines that the manufacturer, factory branch,*  
 281 *distributor or factory or distributor representative has failed to carry its burden of proof, he shall*  
 282 *disallow the establishment of the proposed new dealer.*

283 6. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,  
 284 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the  
 285 dealer and the Commissioner have received written notice of the franchisor's intentions at least ~~sixty~~ 60  
 286 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise,  
 287 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested  
 288 in writing by the dealer within the sixty-day period, and after a hearing on the matter, that there is good  
 289 cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is  
 290 made to the Commissioner for a determination as to good cause for the termination, cancellation, or  
 291 nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's  
 292 decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In  
 293 any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor  
 294 takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue  
 295 in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this  
 296 subdivision, notice of termination, cancellation, or nonrenewal may be provided to a dealer by a  
 297 franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or  
 298 nonrenewal when the grounds for such action are any of the following:

299 a. Insolvency of the franchised motorcycle dealer or filing of any petition by or against the  
 300 franchised motorcycle dealer, under any bankruptcy or receivership law, leading to liquidation or which  
 301 is intended to lead to liquidation of the franchisee's business;

302 b. Failure of the franchised motorcycle dealer to conduct its customary sales and service operations  
 303 during its posted business hours for seven consecutive business days, except where the failure results  
 304 from acts of God or circumstances beyond the direct control of the franchised motorcycle dealer;

305 c. Revocation of any license which the franchised motorcycle dealer is required to have to operate a  
306 dealership;

307 d. Conviction of the dealer or any principal of the dealer of a felony.

308 The change or discontinuance of a marketing or distribution system of a particular line-make product  
309 by a manufacturer or distributor, while the name identification of the product is continued in substantial  
310 form by the same or different manufacturer or distributor, may be considered to be a franchise  
311 termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and  
312 discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in  
313 which such a change or discontinuance occurring prior to that date has been challenged as constituting a  
314 termination, cancellation or nonrenewal.

315 7. To fail to provide continued parts and service support to a dealer which holds a franchise in a  
316 discontinued line-make for at least ~~five~~ 5 years from the date of such discontinuance. This requirement  
317 shall not apply to a line-make which was discontinued prior to January 1, 1989.

318 8. To fail to allow a dealer the right at any time to designate a member of his family as a successor  
319 to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or  
320 refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated  
321 dealer if the franchisor has not provided to the member of the family previously designated by the  
322 dealer as his successor written notice of its objections to the succession and of such person's right to  
323 seek a hearing on the matter before the Commissioner pursuant to this article, and the Commissioner  
324 determines, if requested in writing by such member of the family within ~~thirty~~ 30 days of receipt of  
325 such notice from the franchisor, and after a hearing on the matter before the Commissioner pursuant to  
326 this article, that the failure to permit or honor the succession is unreasonable under the circumstances.  
327 No member of the family may succeed to a franchise unless (i) the franchisor has been given written  
328 notice as to the identity, financial ability, and qualifications of the member of the family in question and  
329 (ii) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the  
330 business.

331 9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new motorcycles of  
332 each make, series, and model needed by the dealer to receive a percentage of total new motorcycle sales  
333 of each make, series, and model equitably related to the total new motorcycle production or importation  
334 currently being achieved nationally by each make, series, and model covered under the franchise. Upon  
335 the written request of any dealer holding its sales or sales and service franchise, the manufacturer or  
336 distributor shall disclose to the dealer in writing the basis upon which new motorcycles are allocated,  
337 scheduled, and delivered to the dealers of the same line-make. If allocation is at issue in a request for a  
338 hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide  
339 to the dealer, within ~~thirty~~ 30 days of such demand, all records of sales and all records of distribution of  
340 all motorcycles to the same line-make dealers who compete with the dealer requesting the hearing.

341 10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

342 11. To include in any franchise with a motorcycle dealer terms that are contrary to, prohibited by, or  
343 otherwise inconsistent with the requirements of this chapter.

344 12. For any franchise agreement to require a motorcycle dealer to pay the attorney's fees of the  
345 manufacturer or distributor related to hearings and appeals brought under this article.

346 13. To fail to include in any franchise with a motorcycle dealer the following language: "If any  
347 provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this  
348 agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by  
349 such laws or regulations, such provision shall be deemed to be modified to conform to such laws or  
350 regulations, and all other terms and provisions shall remain in full force," or words to that effect.

351 14. To include in any franchise agreement with a motorcycle dealer terms that prohibit a motorcycle  
352 dealer from exercising his right to a trial by jury in any action where such right otherwise exists.