

House File 300 - Introduced

HOUSE FILE _____
BY MERTZ

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to certain watercraft dealership agreements.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 1189HH 83
4 av/nh/8

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1 1 Section 1. Section 462A.2, Code 2009, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 11A. "Dealership agreement" means a
1 4 contract or agreement, either express or implied, oral or
1 5 written, between a manufacturer and a dealer, by which the
1 6 dealer is granted the right to sell or distribute goods or
1 7 services or use a trade name, trademark, service mark,
1 8 logotype, advertising, or other commercial symbol in which
1 9 there is a community of interest in the business of buying,
1 10 selling, or exchanging vessels either outright or on
1 11 conditional sale, bailment, lease, security, interest, or
1 12 otherwise. For the purposes of this subsection, "vessel"
1 13 means a motorboat or other motorized watercraft, a personal
1 14 watercraft, or a sailboat of more than twelve feet, but does
1 15 not include a watercraft having as the only means of
1 16 propulsion a paddle or oars.
1 17 Sec. 2. NEW SECTION. 462A.56 DEALERSHIP AGREEMENTS ==
1 18 TERMINATION == NOTICE == REPURCHASE OF INVENTORY.
1 19 1. A manufacturer shall not, directly or indirectly,
1 20 terminate, cancel, fail to renew, or substantially change the
1 21 competitive circumstances of a dealership agreement without
1 22 good cause.
1 23 2. Any of the following reasons may constitute good cause
1 24 for the purposes of this section:
1 25 a. The dealer has transferred an interest in the
1 26 dealership without the manufacturer's written consent.
1 27 b. The dealer is insolvent, there has been an assignment
1 28 of dealership assets for the benefit of creditors, or the
1 29 dealer has filed a voluntary petition in bankruptcy or has had
1 30 an involuntary petition in bankruptcy filed against the dealer
1 31 which has not been discharged within thirty days after the
1 32 filing.
1 33 c. There has been a closeout or sale of a substantial part
1 34 of the dealer's assets related to the dealership or there has
1 35 been a commencement of or dissolution or liquidation of the
2 1 dealership.
2 2 d. There has been a change in the location of the dealer's
2 3 established place of business under the dealership agreement
2 4 without the prior written approval of the manufacturer.
2 5 e. The dealer has defaulted under any chattel mortgage or
2 6 other security agreement between the dealer and the
2 7 manufacturer or there has been a revocation or discontinuance
2 8 of any guarantee of the dealer's present or future obligations
2 9 to the manufacturer.
2 10 f. The dealer has failed to operate in the normal course
2 11 of business for fifteen consecutive days or has otherwise
2 12 abandoned the business which is the subject of the dealership
2 13 agreement, unless the closing is due to an act of God, strike
2 14 or labor difficulty, or other cause over which the dealer has
2 15 no control.
2 16 g. The dealer or an owner of the dealer has pleaded guilty
2 17 to or has been convicted of a felony affecting the
2 18 relationship between the dealer and the manufacturer.
2 19 h. The dealer has engaged in conduct which is injurious or
2 20 detrimental to the dealer's customers or to the public
2 21 welfare.

2 22 i. The dealer has made a material misrepresentation to the
2 23 manufacturer.

2 24 j. The dealer's license to do business has been suspended,
2 25 revoked, or nonrenewed.

2 26 k. The extent of the affected dealer's penetration in the
2 27 relevant market area is inadequate under the terms of the
2 28 dealership agreement.

2 29 l. The nature and extent of the dealer's investment in the
2 30 business is inadequate under the terms of the dealership
2 31 agreement.

2 32 m. The dealer's service facilities, equipment, parts,
2 33 supplies, and personnel are inadequate under the terms of the
2 34 dealership agreement.

2 35 n. The extent and quality of the dealer's service under
3 1 warranties is inadequate under the terms of the dealership
3 2 agreement.

3 3 o. The dealer's performance is inadequate under the terms
3 4 of the dealership agreement.

3 5 p. The dealer is carrying out the terms of the dealership
3 6 agreement in bad faith.

3 7 3. Except as otherwise provided in this section, a
3 8 manufacturer shall provide a dealer with at least one hundred
3 9 twenty days' prior written notice of termination,
3 10 cancellation, nonrenewal, or substantial change in the
3 11 competitive circumstances of a dealership agreement.

3 12 a. The notice shall state all of the reasons constituting
3 13 good cause for termination, cancellation, nonrenewal, or
3 14 substantial change in the competitive circumstances of the
3 15 dealership agreement and shall provide the dealer with one
3 16 hundred twenty days from receipt of the notice in which to
3 17 cure any claimed deficiencies.

3 18 b. The termination, cancellation, nonrenewal, or
3 19 substantial change in the competitive circumstances of the
3 20 dealership agreement shall take effect thirty days after the
3 21 dealer's receipt of the manufacturer's notice unless the
3 22 dealer notifies the manufacturer within that time of the
3 23 dealer's intent to cure the deficiencies. However, if the
3 24 dealer has new and untitled inventory on hand, at the dealer's
3 25 request, such termination, cancellation, nonrenewal, or
3 26 substantial change in the competitive circumstances shall take
3 27 effect upon the sale of the remaining new and untitled
3 28 inventory but in no event later than one hundred twenty days
3 29 from receipt of the manufacturer's notice.

3 30 4. Notwithstanding subsection 3, the termination,
3 31 cancellation, failure to renew, or substantial change in the
3 32 competitive circumstances of the dealership agreement shall
3 33 take effect thirty days after the dealer's receipt of the
3 34 manufacturer's notice and the dealer shall not have the right
3 35 to cure the deficiencies if the termination, cancellation,
4 1 nonrenewal, or substantial change in the competitive
4 2 circumstances of the dealership agreement is for any of the
4 3 following reasons:

4 4 a. The dealer has made a material misrepresentation to the
4 5 manufacturer.

4 6 b. The dealer's license to do business has been suspended,
4 7 revoked, or nonrenewed.

4 8 c. The dealer is insolvent, there has been an assignment
4 9 of dealership assets for the benefit of creditors, or the
4 10 dealer has filed a voluntary petition in bankruptcy or has had
4 11 an involuntary petition in bankruptcy filed against the dealer
4 12 which has not been discharged within thirty days after the
4 13 filing.

4 14 d. The dealer has failed to operate in the normal course
4 15 of business for fifteen consecutive days or has otherwise
4 16 abandoned the business which is the subject of the dealership
4 17 agreement, unless the closing is due to an act of God, strike
4 18 or labor difficulty, or other cause over which the dealer has
4 19 no control.

4 20 e. The dealer or an owner of the dealer has pleaded guilty
4 21 to or has been convicted of a felony affecting the
4 22 relationship between the dealer and the manufacturer.

4 23 5. A manufacturer has the burden of proof to show good
4 24 cause to support the termination, cancellation, failure to
4 25 renew, or substantial change in competitive circumstances of a
4 26 dealership agreement.

4 27 6. A dealer may terminate, cancel, or fail to renew a
4 28 dealership agreement at any time by giving written notice to
4 29 the manufacturer at least ninety days prior to the effective
4 30 date of such termination, cancellation, or nonrenewal of the
4 31 agreement.

4 32 7. In the event of lawful termination, cancellation,

4 33 failure to renew, or substantial change in competitive
4 34 circumstances of a dealership agreement, the manufacturer, at
4 35 the dealer's request, shall repurchase any new, unused
5 1 inventory purchased by the dealer from the manufacturer at the
5 2 current dealer invoice price, plus freight expenses.

5 3 Sec. 3. NEW SECTION. 462A.57 SALE OR TRANSFER OF
5 4 DEALERSHIP.

5 5 1. A dealer who is a party to a dealership agreement shall
5 6 give a manufacturer thirty days' written notice, prior to
5 7 closing, of any proposed change in ownership of the dealership
5 8 by the sale of business assets, stock transfer, or otherwise,
5 9 including all supporting documentation as required by the
5 10 manufacturer.

5 11 2. The manufacturer shall not refuse to agree, disapprove,
5 12 or withhold approval of the proposed change in ownership
5 13 except upon a showing that such refusal is reasonable, based
5 14 on the manufacturer's reasonable criteria, including but not
5 15 limited to the prospective transferee's business experience,
5 16 moral character, financial qualifications, or criminal record.

5 17 3. The manufacturer shall give written notice to the
5 18 dealer of its approval or disapproval, including reasons for
5 19 disapproval, within thirty days after receipt of notification
5 20 of the proposed change in ownership and complete supporting
5 21 documentation. If such notice is not received by the dealer
5 22 within thirty days, the change in ownership shall be deemed
5 23 approved.

5 24 4. A manufacturer has the burden of proof to show that its
5 25 disapproval of a change in ownership is reasonable.

5 26 Sec. 4. NEW SECTION. 462A.58 CAUSE OF ACTION == DAMAGES
5 27 == REMEDIES.

5 28 If a manufacturer wrongfully terminates, cancels, fails to
5 29 renew, or substantially changes the competitive circumstances
5 30 of a dealership agreement, the dealer may bring an action
5 31 against such manufacturer in any court of competent
5 32 jurisdiction for damages sustained by the dealer as a result
5 33 of the wrongful conduct, together with actual costs of the
5 34 action, including reasonable attorney fees. The dealer may
5 35 also be granted injunctive relief against such wrongful
6 1 termination, cancellation, failure to renew, or substantial
6 2 change in competitive circumstances of a dealership agreement.
6 3 The remedies set forth in this subsection shall not be deemed
6 4 exclusive and shall be in addition to any other remedies
6 5 permitted by law.

6 6 EXPLANATION

6 7 This bill relates to changes in certain watercraft
6 8 dealership agreements, sale or transfer of such dealerships,
6 9 and causes of action, damages, and other remedies.

6 10 New Code section 462A.56 provides that a manufacturer of
6 11 certain watercraft shall not terminate, cancel, fail to renew,
6 12 or substantially change the competitive circumstances of an
6 13 agreement with one of its dealers without good cause. Reasons
6 14 that may constitute good cause for such changes to a
6 15 dealership agreement are enumerated in the bill.

6 16 Generally, a manufacturer is required to provide a dealer
6 17 with at least 120 days' prior written notice of such proposed
6 18 changes in a dealership agreement along with the reasons for
6 19 the changes and an opportunity to cure the claimed
6 20 deficiencies before the changes take effect. If the dealer
6 21 does not notify the manufacturer of its intent to attempt to
6 22 cure the deficiencies within 30 days after receiving such
6 23 notice, the changes instead take effect at the end of 30 days,
6 24 unless the dealer requests up to 120 days to sell remaining
6 25 new and untitled inventory in the dealer's possession.

6 26 However, such termination, cancellation, failure to renew,
6 27 or substantial change in the competitive circumstances of a
6 28 dealership agreement shall take effect within 30 days of
6 29 notice and without allowing the dealer to attempt to cure any
6 30 deficiencies if the dealer has made a material
6 31 misrepresentation to the manufacturer; lost its license to do
6 32 business; is insolvent, has assigned assets to creditors, or
6 33 is bankrupt; has failed to operate or abandoned its business;
6 34 or has pleaded guilty to or been convicted of a felony.

6 35 The manufacturer has the burden of proof to show good cause
7 1 to support a change to the dealership agreement. A dealer may
7 2 terminate, cancel, or fail to renew such an agreement upon 90
7 3 days' prior written notice. Also, if such change to a
7 4 dealership agreement is lawfully made, the manufacturer is
7 5 required, at the dealer's request, to repurchase any new,
7 6 unused inventory purchased by the dealer from the manufacturer
7 7 at the current dealer invoice price, plus freight expenses.

7 8 New Code section 462A.57 requires a dealer to give a

7 9 manufacturer 30 days' prior written notice before any proposed
7 10 change in ownership of the dealership by the sale of business
7 11 assets, stock transfer, or otherwise, with supporting
7 12 documentation as required by the manufacturer. The
7 13 manufacturer shall not refuse to agree, disapprove, or
7 14 withhold approval to the proposed ownership change except upon
7 15 a showing that such refusal is reasonable. If the
7 16 manufacturer does not give written notice to the dealer of its
7 17 approval or disapproval within 30 days of receipt of the
7 18 notice and supporting documentation regarding the proposed
7 19 ownership change, the change is deemed approved.

7 20 New Code section 462A.58 allows a dealer to bring an action
7 21 in court against a manufacturer for damages, including actual
7 22 costs and attorney fees, and for injunctive relief, sustained
7 23 as a result of wrongful termination, cancellation, failure to
7 24 renew, or substantial change in the competitive circumstances
7 25 of a dealership agreement.

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