

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

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

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

Subdivision 1. **Scope.** For the purposes of sections 80G.01 to 80G.07, the terms
defined in this section have the meanings given them.

Subd. 2. **Outdoor sport equipment.** "Outdoor sport equipment" means
snowmobiles as defined in section 84.81, subdivision 3; all-terrain vehicles as defined in
section 84.92, subdivision 8; personal watercraft as defined in section 86B.005, subdivision
14a; watercraft as defined in section 86C.01; and motorcycles, as defined in section
65B.001, subdivision 5, and all attachments and repair parts for all of this equipment.

Subd. 3. **Outdoor sport equipment manufacturer or manufacturer.** "Outdoor
sport equipment manufacturer" or "manufacturer" means a person, partnership,
corporation, association, or other form of business enterprise engaged in the
manufacturing, assembly, or wholesale distribution of outdoor sport equipment. The term
also includes any successor in interest of the outdoor sport equipment manufacturer,
including any purchaser of assets or stock, any surviving corporation resulting from a
merger or liquidation, any receiver or assignee, or any trustee of the original outdoor
sport equipment manufacturer.

Subd. 4. **Outdoor sport equipment dealer or dealer.** "Outdoor sport equipment
dealer" or "dealer" means a person, partnership, corporation, association, or other form of

2.1 business enterprise engaged in acquiring outdoor sport equipment from a manufacturer
2.2 and reselling the outdoor sport equipment at wholesale or retail.

2.3 Subd. 5. **Dealership agreement.** "Dealership agreement" means an oral or
2.4 written agreement of definite or indefinite duration between an outdoor sport equipment
2.5 manufacturer and an outdoor sport equipment dealer, which enables the dealer to purchase
2.6 equipment from the manufacturer and provides for the rights and obligations of the parties
2.7 with respect to the purchase or sale of outdoor sport equipment.

2.8 Sec. 2. **[80G.02] TERMINATIONS OR CANCELLATIONS.**

2.9 Subdivision 1. **Good cause required.** No outdoor sport equipment manufacturer,
2.10 directly or through an officer, agent, or employee may terminate, cancel, fail to renew,
2.11 or substantially change the competitive circumstances of a dealership agreement without
2.12 good cause. "Good cause" means failure by an outdoor sport equipment dealer to
2.13 substantially comply with essential and reasonable requirements imposed upon the dealer
2.14 by the dealership agreement, if the requirements are not different from those requirements
2.15 imposed on other similarly situated dealers by their terms. In addition, good cause exists
2.16 whenever:

2.17 (1) without the consent of the outdoor sport equipment manufacturer who shall not
2.18 withhold consent unreasonably: (i) the outdoor sport equipment dealer has transferred an
2.19 interest in the outdoor sport equipment dealership; (ii) there has been a withdrawal from
2.20 the dealership of an individual proprietor, partner, major shareholder, or the manager of
2.21 the dealership; or (iii) there has been a substantial reduction in interest of a partner or
2.22 major stockholder;

2.23 (2) the outdoor sport equipment dealer has filed a voluntary petition in bankruptcy
2.24 or has had an involuntary petition in bankruptcy filed against it, which has not been
2.25 discharged within 30 days after the filing, there has been a closeout or sale of a substantial
2.26 part of the dealer's assets related to the outdoor sport equipment business, or there has
2.27 been a commencement of dissolution or liquidation of the dealer;

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

2.30 (4) the outdoor sport equipment dealer has defaulted under a chattel mortgage or
2.31 other security agreement between the dealer and the outdoor sport equipment manufacturer
2.32 or there has been a revocation or discontinuance of a guarantee of the dealer's present or
2.33 future obligations to the outdoor sport equipment manufacturer;

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

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

(7) the outdoor sport equipment dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare; or

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

Subd. 2. **Notice.** Except as otherwise provided in this subdivision, an outdoor sport equipment manufacturer shall provide an outdoor sport equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (1) to (7).

Subd. 3. **Obligation to repurchase.** If a dealership agreement is terminated, canceled, or discontinued, the outdoor sport equipment manufacturer shall pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent of the net cost of all unused outdoor sport equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. This amount must include transportation and reasonable assembly charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right.

Subd. 4. **Repair parts.** (a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held by the

dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date;

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement;

(4) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the dealer purchased from the manufacturer or an approved vendor of the manufacturer to meet the minimum requirements for the hardware and software as set forth by the manufacturer; and

(5) an amount equal to 75 percent of the net cost to the dealer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the dealer pursuant to the requirements of the manufacturer. Specialized repair tools or signage that have never been used must be repurchased at 100 percent of the dealer's cost. Specialized repair tools must be unique to the manufacturer's product line, specifically required by the manufacturer, and must be in complete and usable condition. The manufacturer may require by contract or agreement that the dealer resell to the manufacturer such specialized repair tools and signage for the amounts established in this section or the amount specified in the dealership agreement or contract or fair market value, whichever is greater.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage back to the manufacturer unless the manufacturer elects to perform inventory, packing, and loading of the parts. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the outdoor sport equipment passes to the manufacturer. However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Subd. 5. **Payment; interest.** Payment required to be made under this section must be made not later than 60 days from the date the outdoor sport equipment is received by the manufacturer, and if not by then paid, the amount payable by the manufacturer bears interest at the maximum rate allowed by law from the date the agreement was terminated, canceled, or discontinued until the date payment is received by the dealer.

5.1 Subd. 6. **Notice of intent to return.** In lieu of returning the outdoor sport equipment
5.2 to the manufacturer, the dealer may advise the manufacturer that the dealer has outdoor
5.3 sport equipment that the dealer intends to return. The notice of the dealer's intention to
5.4 return must be in writing and sworn to before a notary public as to the accuracy of the
5.5 listing of outdoor sport equipment and that all of the items are in usable condition. The
5.6 notice must include the name and business address of the person or business who has
5.7 possession and custody of the items and where they may be inspected. The list may be
5.8 verified by the manufacturer. The notice must also state the name and business address of
5.9 the person or business who has the authority to serve as the escrow agent of the dealer, to
5.10 accept payment or a credit to the dealer's account on behalf of the dealer, and to release the
5.11 outdoor sport equipment to the manufacturer. The notice constitutes the appointment of
5.12 the escrow agent to act on the dealer's behalf.

5.13 Subd. 7. **Manufacturer inspection.** (a) The manufacturer has 30 days from the date
5.14 of the mailing of the notice under subdivision 6, which must be by certified mail, in which
5.15 to inspect the outdoor sport equipment and verify the accuracy of the dealer's list.

5.16 (b) The manufacturer shall, within ten days after inspection:

5.17 (1) pay the escrow agent;

5.18 (2) give evidence that a credit to the account of the dealer has been made if the
5.19 dealer has an outstanding amount due the manufacturer; or

5.20 (3) send to the escrow agent a "dummy credit list" and shipping labels for the return
5.21 of the outdoor sport equipment to the manufacturer that are acceptable as returns.

5.22 Subd. 8. **Payment or credit requirements.** If the manufacturer sends a credit
5.23 list as provided under subdivision 7 to the escrow agent, payment or a credit against
5.24 the dealer's indebtedness in accordance with this subdivision for the acceptable returns
5.25 must accompany the credit list. On the receipt of the payment, evidence of a credit
5.26 to the account of the dealer or the credit list with payment, the title to, and the right to
5.27 possess the outdoor sport equipment acceptable as returns passes to the manufacturer. The
5.28 escrow agent shall ship or cause to be shipped the outdoor sport equipment acceptable
5.29 as returns to the manufacturer unless the manufacturer elects to personally perform the
5.30 inventory, packing, and loading of the outdoor sport equipment. When the equipment has
5.31 been received by the manufacturer, notice of its receipt shall be sent by certified mail
5.32 to the escrow agent who shall then disburse 90 percent of the payment it has received,
5.33 less its actual expenses and a reasonable fee for its services, to the dealer. The escrow
5.34 agent shall keep the balance of the funds in the dealer's escrow account until it is notified
5.35 that an agreement has been reached as to the nonreturnables. After being notified of
5.36 the agreement, the escrow agent shall disburse the remaining funds and dispose of any

remaining outdoor sport equipment as provided in the agreement. If no agreement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

Subd. 9. **Provisions of contract supplemented.** This section is supplemental to an agreement between the dealer and the manufacturer covering the return of outdoor sport equipment. The dealer may elect to pursue either the dealer's contract remedy or the remedy provided in this section. An election by the dealer to pursue the contract remedy does not bar the dealer's right to the remedy provided in this section as to the outdoor sport equipment not affected by the contract remedy. Notwithstanding any contrary provision in this section, the rights of a manufacturer to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods is not affected.

Subd. 10. **Death of dealer; repurchase from heirs.** In the event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer under subdivision 1.

Subd. 11. **Failure to pay sums specified on cancellation of contracts; liability.** In the event that a manufacturer, upon the cancellation of a dealership agreement, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer is liable in a civil action to be brought by the dealer or the dealer's heir or heirs for:

(1) 100 percent of the net cost of the outdoor sport equipment;

(2) transportation and reasonable assembly charges, which have been paid by the dealer;

(3) 95 percent of the current net price of repair parts, 100 percent of invoiced prices, and 50 percent of the price of all other parts as provided in subdivision 4;

(4) payment for data processing and communication hardware and software, or specialized repair tools or signage as outlined in subdivision 4; and

(5) five percent for handling, packing, and loading, if applicable.

Subd. 12. **Exceptions.** Unless a dealer has delivered parts to an escrow agent pursuant to subdivision 6, this section does not require the repurchase from a dealer of a repair part where the dealer previously has failed to return the repair part to the

manufacturer after being offered a reasonable opportunity to return the repair part at a price not less than:

(1) 100 percent of the net price of the repair part as listed in the then-current price list or catalog;

(2) 100 percent of the invoiced price; and

(3) 50 percent of the most recent published price as provided in subdivision 4.

This section does not require the repurchase from a dealer of repair parts that have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets, and batteries, unless those items have been purchased from the manufacturer within the past two years; repair parts which, because of their condition, are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the dealer ordered them.

Subd. 13. **Fraud by dealer; effect on repurchase obligations.** (a) If the dealer committed fraud upon the manufacturer, which resulted in provable financial loss to the manufacturer, the manufacturer may offset an amount equal to a reasonable estimate of the amount of that financial loss against the manufacturer's repurchase obligations under this section. Before doing so, the manufacturer shall provide the dealer with a written statement of what the alleged fraud was and how the manufacturer determined the reasonable estimate of the loss.

(b) This subdivision does not affect the rights or remedies of either party if either party commences an action to resolve any dispute involving the alleged fraud.

Sec. 3. [80G.03] VIOLATIONS.

(a) It is a violation of sections 80G.01 to 80G.07 for an outdoor sport equipment manufacturer to coerce an outdoor sport equipment dealer to accept delivery of outdoor sport equipment, which the outdoor sport equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 80G.01 to 80G.07 for an outdoor sport equipment manufacturer to:

(1) condition or attempt to condition the sale of outdoor sport equipment on a requirement that the outdoor sport equipment dealer also purchase other goods or services, except that an outdoor sport equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any outdoor sport equipment used in the trade area and telecommunication necessary to communicate with the outdoor sport equipment manufacturer;

(2) coerce an outdoor sport equipment dealer into a refusal to purchase the outdoor sport equipment manufactured by another outdoor sport equipment manufacturer;

(3) discriminate in the prices charged for outdoor sport equipment of like grade and quality sold by the outdoor sport equipment manufacturer to similarly situated outdoor sport equipment dealers. This clause does not prevent the use of differentials, which make only due allowance for difference in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the outdoor sport equipment is sold or delivered, by the outdoor sport equipment manufacturer; or

(4) attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat is based on the results of a natural disaster, including a sustained drought in the dealership market area, a labor dispute, or other circumstance beyond the dealer's control.

Sec. 4. [80G.04] WARRANTIES.

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

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

Subd. 3. **Posttermination claims.** If, after termination of a dealership agreement, a dealer submits a warranty claim for warranty work performed before the effective date of the termination, the outdoor sport equipment manufacturer shall approve or disapprove the claim within 30 days of receipt.

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

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

9.5 Subd. 6. **Compensation for parts.** All parts used by the dealer in performing
9.6 warranty work must be paid to the dealer in the amount equal to the dealer's net price
9.7 for the parts, plus a minimum of 15 percent to reimburse the dealer for reasonable
9.8 costs of doing business in performing warranty service on the outdoor sport equipment
9.9 manufacturer's behalf, including, but not limited to, freight and handling costs.

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

9.12 Subd. 8. **Alternate terms and conditions.** A dealer may choose to accept alternate
9.13 reimbursement terms and conditions in lieu of the requirements of subdivisions 2 to
9.14 7, provided there is a written dealer agreement between the outdoor sport equipment
9.15 manufacturer and the dealer providing for compensation to the dealer for warranty labor
9.16 costs either as:

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

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

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

9.23 **Sec. 5. [80G.05] STATUS OF INCONSISTENT AGREEMENTS.**

9.24 A term of a dealership agreement either expressed or implied, including a choice of
9.25 law provision, which is inconsistent with sections 80G.01 to 80G.07 or that purports to
9.26 waive an outdoor sport equipment manufacturer's compliance with sections 80G.01 to
9.27 80G.07 is void and unenforceable and does not waive any rights which are provided to
9.28 a person by sections 80G.01 to 80G.07.

9.29 **Sec. 6. [80G.06] REMEDIES.**

9.30 If an outdoor sport equipment manufacturer violates sections 80G.01 to 80G.07, an
9.31 outdoor sport equipment dealer may bring an action against the manufacturer in a court
9.32 of competent jurisdiction for damages sustained by the dealer as a consequence of the
9.33 manufacturer's violation, together with the actual costs of the action, including reasonable
9.34 attorney fees, and the dealer also may be granted injunctive relief against unlawful

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10.1 termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

10.2 The remedies in this section are in addition to any other remedies permitted by law.

10.3 Sec. 7. **[80G.07] APPLICABILITY.**

10.4 Sections 80G.01 to 80G.06 are effective August 1, 2007, and apply to all dealership
10.5 agreements now in effect, which have no expiration date and which are continuing

10.6 contracts, and all other contracts entered into, amended, or renewed after August 1, 2007.

10.7 Any contract in force and effect on August 1, 2007, which terminates after that date and is

10.8 not renewed is governed by the law as it existed before August 1, 2007.