

TITLE 56.
MOTOR VEHICLES

CHAPTER 16

Regulation of Motorcycle Manufacturers, Distributors, Dealers, and Wholesalers

SECTION 56-16-10. Definitions.

As used in this chapter:

Text of (a) effective until November 19, 2018.

(a) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than two wheels in contact with the ground. This section shall not apply to bicycles with helper motors or vehicles defined in Section 56-1-1710.

Text of (a) effective November 19, 2018.

(a) "Motorcycle" is defined in Section 56-1-10. This chapter does not apply to bicycles with helper motors.

(b) "Manufacturer" means any person, resident, or nonresident who manufactures or assembles new motorcycles, or imports for distribution through distributors of motor vehicles, including any person, partnership, or corporation which acts for and is under the control of a manufacturer or assembler in connection with the distribution of motorcycles and includes distributor and factory branch.

(c) "Dealership facilities" means the real estate, buildings, fixtures, and improvements devoted to the conduct of business under the franchise by the new motorcycle dealer.

(d) "Franchise" means the written agreement or contract between any new motorcycle manufacturer, and any new motorcycle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.

(e) "Factory branch" means a branch office maintained by a manufacturer which manufactures or assembles motorcycles for sale to distributors or motorcycle dealers or which is maintained for directing and supervising the representatives of the manufacturer.

(f) "Distributor branch" means a branch office maintained by a distributor who sells or distributes new or used motorcycles to motorcycle dealers.

(g) "Factory representative" means a representative employed by a manufacturer or by a factory branch for the purpose of making or promoting the sale of motorcycles or for supervising, servicing, instructing, or contracting with motorcycle dealers or prospective motorcycle dealers.

(h) "Distributor representative" means a representative employed by a distributor branch or distributor.

(i) "Franchiser" means a manufacturer, distributor, or wholesaler who grants a franchise to a motorcycle dealer.

(j) "Franchisee" means a motorcycle dealer to whom a franchise is offered or granted.

(k) "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motorcycle or interest therein or of any franchise related thereto and any option, subscription, or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motorcycle or franchise with respect thereto, with or as a bonus on account of the sale of anything, is a sale of such motorcycle or franchise.

(l) “Fraud” means, in addition to its normal legal connotation: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

(m) “Person” means a natural person, corporation, partnership, trust, or other entity, and, in case of an entity, it includes any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors, and other persons in active control of the activities of each such entity.

(n) “New motorcycle” means a motorcycle which has not been previously sold to any person except a distributor or wholesaler or motorcycle dealer for resale.

(o) “Distributor” means any person who sells or distributes new motorcycles to motorcycle dealers or who maintains distributor representatives within the State.

(p) “Dealer” or “motorcycle dealer” means any person who sells or attempts to effect the sale of any motorcycle. These terms do not include:

(1) distributors or wholesalers.

(2) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment, or order of any court.

(3) public officers while performing their official duties.

(4) persons disposing of motorcycles acquired for their own use and so used in good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motorcycles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter.

(5) finance companies or other financial institutions who sell repossessed motorcycles and insurance companies who sell motorcycles they own as an incident to payment made under policies of insurance.

(q) “Wholesaler” or “motorcycle wholesaler” means any person who sells or attempts to effect the sale of any used motorcycle exclusively to motorcycle dealers or to other wholesalers.

(r) [Deleted]

HISTORY: 1984 Act No. 511, Section 1; 1993 Act No. 181, Section 1486; 1996 Act No. 459, Section 246A; 2017 Act No. 89 (H.3247), Section 30, eff November 19, 2018.

Effect of Amendment

2017 Act No. 89, Section 30, rewrote (a), providing that “motorcycle” is defined in Section 56-1-10.

SECTION 56-16-20. Manufacturer’s specification of dealer’s delivery and preparation obligations.

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motorcycle dealers prior to delivery of new motorcycles to retail buyers. A copy of the delivery and preparation obligations of its motorcycle dealers and a schedule or statement of the compensation to be paid or credited to its motorcycle dealers for the work and services they are required to perform in connection with the delivery and preparation obligations must be filed with the Department of Motor Vehicles by every motorcycle manufacturer and is a dealer’s only responsibility for product liability as between dealer and manufacturer. The compensation as set forth on such schedule or statement must be reasonable and paid or credited as set out in Section 56-16-30.

HISTORY: 1984 Act No. 511, Section 1; 1993 Act No. 181, Section 1487.

SECTION 56-16-30. Obligation to fulfill warranty agreement.

Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall fulfill any warranty agreement and compensate each of its motorcycle dealers for labor and parts. In determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration is the prevailing wage rates paid by dealers in the community in which the dealer is doing business. The hourly labor rate paid to a dealer for warranty services must not be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service and repairs unless the rate is determined to be unreasonable. Dealers must be reimbursed for the current manufacturer suggested retail price for parts used on warranty work. All claims made by motorcycle dealers hereunder and under Section 56-16-20 for labor and parts must be paid within thirty days following their approval. All such claims are either approved or disapproved within thirty days after their receipt. When any claim is disapproved the motorcycle dealer who submits it must be notified in writing of its disapproval within such period, and each notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, which is not uniformly required of all dealers of the type make, may be enforced after thirty days' notice in writing and upon good and sufficient reason.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-40. Notification to dealerships of manufacturer's intention to establish new dealership or relocate existing dealership; civil action challenging new dealership or relocation.

If a manufacturer seeks to enter into a franchise establishing an additional new motorcycle dealership or relocating an existing new motorcycle dealership in a relevant market area where the line make is represented, the manufacturer shall, in writing, first notify each new motorcycle dealer in this line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership in the market area. The relevant market area is a radius of three miles around an existing dealership. Within fifteen days of receiving the notice or within fifteen days after the end of any appeal procedure provided by the manufacturer, the new motorcycle dealership may commence a civil action in a court of competent jurisdiction challenging the establishing or relocating of the new motorcycle dealership. Thereafter, the manufacturer shall not establish or relocate the proposed new motorcycle dealership unless the court has determined that there is good cause for permitting the establishment or relocation of the motorcycle dealership.

The reopening in a relevant market area of a new motorcycle dealership within two miles of a location at which a former dealership of the same line make had been in operation within the previous two years is not considered the establishment of a new motorcycle dealership.

The relocation of an existing dealer within its area of responsibility as defined in the franchise agreement is not subject to this section if the proposed relocation site is not within five miles of an existing dealer of the same line make.

In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

- (a) the permanency of the investment;
- (b) the effect on the retail new motorcycle business and the consuming public in the relevant market area;
- (c) whether it is injurious to the public welfare for an additional new motor dealership to be established;
- (d) whether the new motorcycle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motorcycles of the line make in the market area including the adequacy of motorcycle sales and service facilities, equipment, supply of motorcycle parts, and qualified service personnel;
- (e) whether the new motorcycle dealers of the same line make in the relevant market area are providing adequate market penetration and representation. Good cause is not shown solely by a desire for further market penetration;
- (f) whether the establishment of an additional new motorcycle dealership would increase competition and therefore be in the public interest; and
- (g) the growth or decline in population and new motorcycle registrations in the relevant market area.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-50. Compensation of dealer upon termination, nonrenewal, or cancellation of franchise by manufacturer or distributor.

(a) Upon the termination, nonrenewal, or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motorcycle dealer must be allowed fair and reasonable compensation by the manufacturer for the:

(1) new motorcycle inventory which has been acquired from the manufacturer within eighteen months, at a price not to exceed the original manufacturer's price to the dealer, which has not been altered or damaged, and which has not been driven more than two hundred miles, and for which no certificate of title has been issued;

(2) unused, undamaged, and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, if the supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

(3) equipment and furnishings which have not been altered or damaged and which have been required by the manufacturer or distributor to be purchased by the new motorcycle dealer from the manufacturer or distributor, or their approved sources;

(4) special tools which have not been altered or damaged and which have been required by the manufacturer or distributor to be purchased by the new motorcycle dealer from the manufacturer or distributor, or their approved sources, within five years immediately preceding the termination, nonrenewal, or cancellation of the franchise.

(b) Fair and reasonable compensation for the above must be paid by the manufacturer within ninety days of the effective date of termination, cancellation, or nonrenewal, if the new motorcycle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-60. Manufacturer's compensation of dealer for rental value or rental expense with respect to dealership facilities upon termination, cancellation, or nonrenewal of dealership.

In the event of the termination, cancellation, or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation, or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

(a) Subject to paragraph (c), if the new motorcycle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motorcycle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

(b) Subject to paragraph (c), if the new motorcycle dealer owns the dealership facilities, the manufacturer shall pay the new motorcycle dealers a sum equivalent to the reasonable rental value of the dealership facilities for one year.

(c) Nothing in this section shall relieve a lessee or owner, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections (a) and (b), nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease, or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages must be deducted from the amount due from the manufacturer.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-70. Dealer's voluntary cancellation, nonrenewal, or termination of franchise agreement.

The provisions of paragraphs (d) and (e) of Section 56-16-40 are not applicable when the termination, nonrenewal, or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-80. Persons to whom chapter applies; jurisdiction of courts.

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motorcycle within this State is subject to the provisions of this chapter and is subject to the jurisdiction of the courts of this State upon service of process in accordance with the provisions of Chapter 9 of Title 15.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-90. Unfair competition and unfair or deceptive acts or practices.

(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-16-100 are declared to be unlawful.

(b) In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45).

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-100. Particular unlawful acts; duty of Office of Administrator with regard to investigation and enjoining of abuses involving motorcycles.

(1) It is a violation of paragraph (a) of Section 56-16-90 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative, or motorcycle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

(2) It is a violation of paragraph (a) of Section 56-16-90 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent, or other representative thereof, to coerce, or attempt to coerce, any motorcycle dealer:

(a) To order or accept delivery of any motorcycle, appliances, equipment, parts, or accessories therefor, or any other commodity or commodities which such motorcycle dealer has not voluntarily ordered.

(b) To order or accept delivery of any motorcycle with special features, appliances, accessories, or equipment not included in the list price of the motorcycle as publicly advertised by the manufacturer thereof.

(c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(3) It is a violation of paragraph (a) of Section 56-16-90 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent, or other representative thereof:

(a) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motorcycle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor branch or division, factory branch or division, or wholesale branch or division, any such motorcycles as are covered by such franchise or contract specifically publicly advertised by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to be available for immediate delivery. The failure to deliver any motorcycle is not a violation of this chapter if the failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty, shortage of materials, freight embargo, or other cause over which the manufacturer, distributor, or wholesaler, or any agent thereof, has no control.

(b) To coerce, or attempt to coerce, any motorcycle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representative thereof, or to do any other act prejudicial to such dealer by threatening to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, and such dealer. Notice in good faith to any motorcycle dealer of such dealer's violation of any terms or provisions of such franchise or contractual agreement is not a violation of this chapter.

(c) To terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, is an unfair

termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representatives thereof shall notify a motorcycle dealer in writing of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for such termination or cancellation; and such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representative thereof shall notify a motorcycle dealer in writing at least sixty days before the contractual term of his franchise or selling agreement expires that it will not be renewed, stating the specific grounds for such nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the motorcycle dealer involved, prior to the expiration of at least sixty days following such written notice. During the sixty-day period, either party may in appropriate circumstances petition a court to modify the sixty-day stay or to extend it pending a final determination of the proceedings on the merits. The court has authority to grant preliminary and final injunctive relief.

(d) To resort to or use any false or misleading advertisement in connection with his business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representative thereof.

(e) To offer to sell or to sell any new motorcycle to any motorcycle dealer at a lower actual price therefor than the actual price offered to any other motorcycle dealer for the same model cycle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price. The provisions of this item do not apply to sales to a motorcycle dealer for resale to any unit of the United States Government, the State, or any of its political subdivisions. The provisions of this paragraph do not apply to sales to a motorcycle dealer of any motorcycle ultimately sold, donated, or used by the dealer in a driver education program. The provisions of this paragraph do not apply so long as a manufacturer, distributor, or wholesaler, or any agent thereof, offers to sell or sells new motorcycles to all motorcycle dealers at an equal price. This provision does not apply to sales by manufacturer, distributor, or wholesaler to the United States Government or any agency thereof.

(f) To offer to sell or to sell parts or accessories to any new motorcycle dealer for use in his own business for the purpose of repairing or replacing it on a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motorcycle dealer for similar parts or accessories for use in his own business. In those cases where motorcycle dealers operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing herein contained may be construed to prevent a manufacturer, distributor, or wholesaler, or any agent thereof, from selling to a motorcycle dealer who operates and services as a wholesaler of parts and accessories, such parts and accessories as may be ordered by such motorcycle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motorcycle dealer who does not operate or serve as a wholesaler of parts and accessories.

(g) To prevent or attempt to prevent by contract or otherwise, any motorcycle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, and

provided the change by the dealer does not result in a change in the executive management of the dealership.

(h) To prevent or attempt to prevent by contract or otherwise, any motorcycle dealer or any officer, partner, or stockholder of any motorcycle dealer from selling or transferring any part of the interest of any of them to any other person or party. No dealer, officer, partner, or stockholder has the right to sell, transfer, or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor, or wholesaler except that the consent is being unreasonably withheld.

(i) To obtain money, goods, services, anything of value, or any other benefit from any other person with whom the motorcycle dealer does business, on account of or in relation to the transactions between the dealer and such other person, unless the benefit is promptly accounted for and transmitted to the motorcycle dealer.

(j) To require a motorcycle dealer to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this chapter.

(4) It is a violation of paragraph (a) of Section 56-16-90 for a motorcycle dealer:

(a) To require a purchaser of a new motorcycle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts, or accessories not desired or requested by the purchaser. This prohibition does not apply as to special features, appliances, equipment, parts, or accessories which are already installed on the motorcycle when received by the dealer provided the motorcycle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph.

(b) To represent and sell as a new motorcycle any motorcycle which has been used and operated for demonstration purposes or which is otherwise a used motorcycle.

(c) To resort to or use any false or misleading advertisement in connection with his business as such motorcycle dealer.

(5) There is created the Office of Administrator, within the Attorney General's office, and he shall appoint such personnel within his office for the purpose of regulating this chapter. The Administrator has the power to investigate, issue cease and desist orders and injunctive relief on any valid abuse connected with the sale, rental, or leasing of a new or used motorcycle. This power only applies after reasonable attempts by the consumer have been made with the seller, dealer, manufacturer, or lessor of the motorcycle to alleviate the complaint.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-110. Manufacturer's specification of dealer's delivery and preparation obligations.

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motorcycle dealers prior to delivery of new motorcycles to retail buyers. A copy of the delivery and preparation obligations of its motorcycle dealers and a schedule or statement of the compensation to be paid or credited to its motorcycle dealers for the work and services they are required to perform in connection with such delivery and preparation obligations must be filed with the Department of Motor Vehicles by every motorcycle manufacturer and shall constitute any such dealer's only responsibility for product liability as between the dealer and the manufacturer. The compensation as set forth on the schedule or statement is reasonable and paid or credited as set out in Section 56-16-30.

HISTORY: 1984 Act No. 511, Section 1; 1993 Act No. 181, Section 1488.

SECTION 56-16-120. Imposition of restrictions on motorcycle dealer or franchisee.

It is unlawful directly or indirectly to impose unreasonable restrictions on the motorcycle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards, and assertion of legal or equitable rights.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-130. Manufacturer's, distributor's, or wholesaler's offer of inducement to dealer in connection with sale of motorcycle to state or political subdivision.

In connection with a sale of a motorcycle to the State or to any political subdivision thereof, no manufacturer, distributor, or wholesaler may offer any discounts, refunds, or any other similar type of inducement to any dealer without making the same offer to all other of its dealers within the relevant market area and, if such inducements are made, the manufacturer, distributor, or wholesaler must give simultaneous notice thereof to all of its dealers within the relevant market area who have requested such notice.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-140. License for dealer or wholesaler; exhibition license; fees; penalties for noncompliance.

(A)(1) Before engaging in business as a motorcycle dealer or wholesaler in this State, every person must first make application to the Department of Motor Vehicles for a license. Every license issued expires twelve months from the date of issue and must be prominently displayed at the established place of business. The fee for the license is fifty dollars. The license applies to only one place of business of the applicant and is not transferable to any other person or place of business, except as provided in item (2).

(2)(a) A licensed dealer may exhibit motorcycles and their related products at fairs, recreational or sports shows, vacation shows, and other similar events or shows upon obtaining a dealer's exhibition license. Before exhibiting motorcycles and their related products as provided in this item, the dealer shall first apply to the department for an exhibition license. The applicant shall provide the department with the name, location, and dates of the particular exhibition for which he is seeking an exhibition license.

(b) A dealer must hold a valid dealer's license pursuant to this section to be issued an exhibition license. Exhibition licenses are valid for a period not to exceed ten consecutive days, must be prominently displayed at the exhibition site, apply to only the licensee, and may not be transferred to another dealer or exhibition location. A dealer may not purchase more than six exhibition licenses in any licensing period.

(B) A person who fails to secure a license as required in this chapter is guilty of a misdemeanor and, upon conviction, must be fined:

(1) not less than fifty dollars nor more than two hundred dollars or imprisoned for not more than thirty days for the first offense;

(2) not less than two hundred dollars nor more than one thousand dollars or imprisoned for not more than six months, or both, for the second offense; and

(3) not less than one thousand dollars nor more than ten thousand dollars or imprisoned for not more than two years, or both, for the third or any subsequent offense.

For purposes of this subsection, the sale of each motorcycle constitutes a separate offense.

HISTORY: 1984 Act No. 511, Section 1; 1996 Act No. 459, Section 229; 2014 Act No. 217 (S.998), Section 1, eff June 2, 2014.

SECTION 56-16-150. Application for dealer's or wholesaler's license; bond; duty to notify Department of Motor Vehicles where information given by applicant changes or licensee ceases operations.

(1) Before any license as a "wholesaler" or "dealer" is issued to an applicant, he must file an application with the Department of Motor Vehicles and furnish the information the Department may require, including, but not limited to, information adequately identifying by name and address any individual who owns or controls ten percent or more of the interest in the business. The policy of this section is full disclosure.

(2) Each applicant for licensure as a motorcycle dealer or wholesaler must furnish a surety bond in the penal amount of fifteen thousand dollars on a form to be prescribed by the director of the department. The bond must be given to the Department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the license and as indemnification for any loss or damage suffered by an owner of a motorcycle, or his legal representative, by reason of any fraud practiced or fraudulent representation made in connection with the sale or transfer of a motorcycle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or any loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent, of any of the provisions of this chapter. An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. A new bond or a proper continuation certificate must be delivered to the Department annually before the license is renewed. However, regardless of the number of years a bond remains in effect, the aggregate liability of the surety for any and all claims is limited to fifteen thousand dollars on each bond and to the amount of the actual loss incurred. The surety has the right to terminate its liability under the bond by giving the Department thirty days' written notice of its intent to cancel the bond. The cancellation does not affect any liability incurred or accrued prior to the cancellation.

(3) If, during any license year, there is any change in the information that a dealer or wholesaler gave the Department in obtaining or retaining a license under this section, the licensee shall report the change to the Department within thirty days after the change occurs on the form the Department requires.

(4) In the event a licensee ceases being a dealer or wholesaler, he shall, within ten days thereafter, notify the Department of this fact and return to the Department any license issued pursuant to this chapter and all current dealer license plates issued to the dealer or wholesaler.

HISTORY: 1984 Act No. 511, Section 1; 1993 Act No. 181, Section 1489.

SECTION 56-16-160. Requirement as to dealer's maintenance of bona fide established place of business; size of business; permanent sign.

No dealer may be issued or allowed to maintain a motorcycle dealer's license unless:

(1) The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motorcycles which must be the principal business conducted from the fixed location. The sale of motorcycles or motor driven cycles need not be the principal business conducted from the fixed location. A bona fide established place of business for any motorcycle dealer includes a permanent, enclosed building or structure, not excluding a permanently installed mobile home containing at least ninety-six square feet of floor space, actually occupied by the applicant and easily accessible by the public, at which a permanent business of bartering, trading, or selling of motorcycles or displaying vehicles for bartering, trading, or selling is carried on, wherein the public may contact the owner or operator at all reasonable times and in which must be kept and maintained the books, records, and files required by this chapter. A bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.

(2) The dealer's place of business must display a permanent sign with letters at least six inches in height, clearly readable from the nearest major avenue of traffic. The sign must clearly identify the licensed business.

(3) The dealer's place of business must have a reasonable area or lot to properly display motorcycles.

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-170. Records of transfers; organization and legibility; penalties.

(A) Every dealer or wholesaler shall keep complete records of each transaction under which a motorcycle is transferred for a period of not less than four years from the date of the transaction. The records must show the true name and correct address of the person or persons from whom the motorcycle was acquired and the date of the transaction; a correct description of the motorcycle, when transferred; the true name and correct address of the person to whom the motorcycle was transferred; and the date of the transaction. The description of the motorcycle must include the motorcycle identification number, make, model, type of body, and the odometer readings at the time the motorcycle was transferred to and from the dealer or wholesaler. These records must be open at all reasonable times for inspection and copying by the Department of Motor Vehicles or any of its duly authorized agents.

(B) The records kept by the dealer or wholesaler must be maintained in a reasonably organized and orderly fashion with all entries being legible to the ordinary person upon inspection. Any records which are illegible or incapable of accurate interpretation by either the recordkeeper or the department's inspector or agent are not in compliance with this section.

(C) If any dealer or wholesaler fails to keep the required records or fails to make them available to the department or its duly authorized agents immediately upon a reasonable request, the dealer or wholesaler is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than two hundred dollars or imprisoned for up to thirty days. The failure to keep or to make available to the department or its duly authorized agents complete records on each separate motorcycle constitutes a separate offense.

HISTORY: 1984 Act No. 511, Section 1; 1996 Act No. 459, Section 230.

SECTION 56-16-180. Denial, suspension, or revocation of license.

Any license issued under this chapter may be denied, suspended, or revoked if the applicant or licensee or an agency of the applicant or licensee acting for the applicant or licensee is determined by the Department of Motor Vehicles to have:

- (a) Made a material misstatement in the application for the license;
- (b) Violated any provision of this chapter;
- (c) Been found by a court or competent jurisdiction to have committed any fraud connected with the sale or transfer of a motorcycle;
- (d) Employed fraudulent devices, methods, or practices in connection with meeting the requirements placed on dealers and wholesalers by the laws of this State;
- (e) Been convicted of any violation of law involving the acquisition or transfer of a title to a motorcycle or of any violation of law involving tampering with, altering, or removing motorcycle identification numbers or markings;
- (f) Been found by a court of competent jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering, or other unlawful tampering with a motorcycle odometer, including the provisions of 49 U.S.C. 32701-32711 (Title 49, Subtitle VI, Part C, Chapter 327);
- (g) Refused or failed to comply with the Department's reasonable requests to inspect or copy the records, books, and files of the dealer or wholesaler or failed to maintain records of each motorcycle transaction as required by this chapter or by state and federal law pertaining to odometer records; or
- (h) Given, loaned, or sold a dealer license plate to any person or otherwise to have allowed the use of any dealer license plate in any way not authorized by Section 56-3-2320. Any dealer license plate issued to a dealer or wholesaler pursuant to Section 56-3-2320 which is determined by the department to be improperly displayed on any motorcycle or in the possession of any unauthorized person is prima facie evidence of a violation of this section by the dealer or wholesaler to whom the license plate was originally issued.

The department shall notify the licensee or applicant in writing at the mailing address provided in his application of its intention to deny, suspend, or revoke his license at least twenty days in advance and shall provide the licensee an opportunity for a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure and the Administrative Procedures Act of this State. A licensee desiring a hearing shall request it in writing within ten days of receiving notice of the proposed denial, suspension, or revocation of his dealer's or wholesaler's license.

Upon the denial, suspension, or revocation of a license, the licensee shall immediately return to the department the license and all dealer license plates.

HISTORY: 1984 Act No. 511, Section 1; 2006 Act No. 304, Section 2, eff May 24, 2006; 2008 Act No. 279, Section 13, eff October 1, 2008.

SECTION 56-16-200. Civil actions; damages; effect of judgments as prima facie evidence.

- (1) In addition to temporary or permanent injunctive relief as provided in Section 56-16-100(3)
- (c), any person who is injured in his business or property by reason of anything forbidden in this

chapter may sue therefor in the court of common pleas and recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(2) When the action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

(3) In an action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.

(4) A final judgment, order, or decree rendered against a person in any civil, criminal, or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter constitutes prima facie evidence against the person subject to the conditions of the United States Antitrust Law (15 U.S.C. Section 16).

HISTORY: 1984 Act No. 511, Section 1.

SECTION 56-16-210. Contracts violating provisions of this chapter.

Any contract or part thereof or practice thereunder in violation of any provision of this chapter is against public policy and is void and unenforceable.

HISTORY: 1984 Act No. 511, Section 1.