

**Representative Francis D. Gibson** proposes the following substitute bill:

**MOTORBOAT AGREEMENTS ACT**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Francis D. Gibson**

Senate Sponsor: Don L. Ipson

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**LONG TITLE**

**General Description:**

This bill enacts the Motorboat Agreements Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires certain provisions in an agreement;
- ▶ enacts provisions related to performance standards;
- ▶ enacts provisions related to a motorboat dealer's default and curing a default; and
- ▶ enacts provisions related to the termination or nonrenewal of an agreement.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**13-58-101**, Utah Code Annotated 1953

**13-58-102**, Utah Code Annotated 1953

**13-58-201**, Utah Code Annotated 1953



- 26 [13-58-202](#), Utah Code Annotated 1953
- 27 [13-58-301](#), Utah Code Annotated 1953
- 28 [13-58-302](#), Utah Code Annotated 1953
- 29 [13-58-401](#), Utah Code Annotated 1953
- 30 [13-58-402](#), Utah Code Annotated 1953

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **13-58-101** is enacted to read:

34 **CHAPTER 58. MOTORBOAT AGREEMENTS ACT**

35 **Part 1. General Provisions**

36 **13-58-101. Title.**

37 This chapter is known as the "Motorboat Agreements Act."

38 Section 2. Section **13-58-102** is enacted to read:

39 **13-58-102. Definitions.**

40 As used in this chapter:

41 (1) "Agreement" means an agreement between:

42 (a) a motorboat dealer; and

43 (b) (i) a manufacturer; or

44 (ii) a distributor.

45 (2) "Distributor" means a person who:

46 (a) has a franchise from a manufacturer of motorboats to distribute motorboats within

47 this state; and

48 (b) in whole or in part sells or distributes motorboats to motorboat dealers.

49 (3) "Manufacturer" means a person engaged in the business of constructing,  
50 manufacturing, assembling, producing, or importing new motorboats for the purpose of sale or  
51 trade.

52 (4) "Motorboat" means the same as that term is defined in Section [73-18-2](#).

53 (5) "Motorboat dealer" means a person who:

54 (a) is engaged in the business of buying, selling, offering for sale, or exchanging new

55 motorboats either outright or on conditional sale, bailment, lease, chattel mortgage, or

56 otherwise; and

57 (b) has established in this state a place of business for the sale, lease, trade, or display  
58 of new motorboats.

59 (6) "Performance standard" means a reasonable standard that a manufacturer and a  
60 motorboat dealer develop and agree to regarding a motorboat dealer's:

61 (a) achievement of market share for the manufacturer products sold in a territory;

62 (b) achievement of a level of performance in the manufacturer's certified dealer  
63 program, if any; and

64 (c) participation in a plan that addresses improvement, if needed, in the motorboat  
65 dealer's performance.

66 Section 3. Section 13-58-201 is enacted to read:

67 **Part 2. Agreements**

68 **13-58-201. Terms of agreements.**

69 (1) A person may not act as a motorboat dealer in this state without entering into an  
70 agreement.

71 (2) An agreement shall include:

72 (a) each performance standard and marketing standard, if any;

73 (b) each working capital standard, inventory standard, facility standard, equipment  
74 standard, and tool standard, if any, including each agreed upon minimum product stocking  
75 requirement;

76 (c) provisions for termination or nonrenewal of the agreement;

77 (d) the designation of a successor motorboat dealer in the event of the motorboat  
78 dealer's death or disability;

79 (e) the obligations of the manufacturer, distributor, and motorboat dealer in the  
80 preparation and delivery of, and warranty service on, new boats and new boat motors;

81 (f) the obligations of the manufacturer, distributor, and new motorboat dealer upon  
82 termination of the agreement, including obligations in relation to:

83 (i) inventory of new boats;

84 (ii) inventory of new boat motors;

85 (iii) inventory of parts;

86 (iv) equipment;

87 (v) furnishings;

88 (vi) special tools; and

89 (vii) required signs;

90 (g) each standard for maintenance of:

91 (i) a dedicated or self-funded line of credit, if any; and

92 (ii) a trade-in line of credit or self-funded trade-in line of credit, if any; and

93 (h) dispute resolution procedures.

94 Section 4. Section **13-58-202** is enacted to read:

95 **13-58-202. Performance standards.**

96 (1) A manufacturer who enters into an agreement with a motorboat dealer shall make  
97 reasonable efforts to provide the dealer with information regarding the dealer's compliance  
98 with each performance standard.

99 (2) A manufacturer and motorboat dealer who enter into an agreement shall evaluate  
100 each performance standard on an annual basis.

101 Section 5. Section **13-58-301** is enacted to read:

102 **Part 3. Default**

103 **13-58-301. Motorboat dealer default.**

104 A motorboat dealer defaults on an agreement if the motorboat dealer:

105 (1) materially fails to:

106 (a) meet minimum product stocking requirements as specified under the agreement;

107 (b) make timely payment of a material obligation as specified under the agreement;

108 (c) meet an applicable performance standard as specified by the agreement for a  
109 defined one model-year marketing cycle;

110 (d) meet an applicable marketing standard as specified by the agreement; or

111 (e) meet an applicable standard, as specified by the agreement, for:

112 (i) a dedicated or self-funded line of credit; or

113 (ii) a trade-in or self-funded trade-in line of credit; or

114 (2) markets the manufacturer's boats outside of the motorboat dealer's territory in  
115 violation of the agreement.

116 Section 6. Section **13-58-302** is enacted to read:

117 **13-58-302. Cure of default.**

118 (1) If a motorboat dealer defaults as described in Section [13-58-301](#), the manufacturer

119 or distributor who is part of the agreement shall:

120 (a) give the dealer written notice of the dealer's default; and

121 (b) allow the dealer to cure the default within the period described in Subsection (2).

122 (2) A motorboat dealer may cure a default no later than:

123 (a) 30 days after the day on which the dealer receives the notice described in

124 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(b) or (2);

125 (b) 60 days after the day on which the dealer receives the notice described in

126 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(a), (d), or (e);

127 and

128 (c) 160 days after the day on which the dealer receives the notice described in

129 Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(c).

130 Section 7. Section 13-58-401 is enacted to read:

131 **Part 4. Termination or Nonrenewal of Agreements**

132 **13-58-401. Termination or nonrenewal of agreement -- Notice -- Repurchase**  
133 **obligations.**

134 (1) Except as provided in Section 13-58-402, a manufacturer or distributor may not  
135 terminate or fail to renew an agreement with a motorboat dealer unless:

136 (a) the motorboat dealer defaults as described in Section 13-58-301;

137 (b) the manufacturer or distributor gives the motorboat dealer written notice as  
138 described in Subsection 13-58-302 that clearly and concisely states:

139 (i) the default; and

140 (ii) that if the dealer fails to cure the default, the manufacturer or distributor may  
141 terminate the agreement;

142 (c) the manufacturer or distributor provides the motorboat dealer the applicable period  
143 to cure the default as described in Subsection 13-58-302(2); and

144 (d) the motorboat dealer fails to cure the default during the applicable period described  
145 in Subsection 13-58-302(2).

146 (2) If an agreement is terminated or not renewed in violation of this section, the  
147 manufacturer shall pay to the motorboat dealer:

148 (a) an amount that equals:

149 (i) the dealer's cost of each new, undamaged, unsold, and unregistered motorboat,

150 motorboat motor, and trailer in the dealer's inventory that the dealer:  
151 (A) acquired from the manufacturer or from another dealer; and  
152 (B) invoiced during the 24-month period immediately before the day on which the  
153 agreement terminates or is not renewed; minus  
154 (i) each applicable dealer rebate and discount;  
155 (b) for each charge the manufacturer made for distribution, delivery, or taxes;  
156 (c) an amount that equals the dealer's cost for accessories added on a motorboat or  
157 trailer;  
158 (d) an amount that equals:  
159 (i) the cost of all new, undamaged, and unsold supplies, parts, and accessories, as  
160 advertised in the manufacturer's catalog or website on the day on which the agreement  
161 terminates or is not renewed; minus  
162 (ii) all allowance the manufacturer paid or credited to the dealer;  
163 (e) an amount that equals the greater of the fair market value for or the dealer's  
164 depreciated acquisition cost of a sign, if:  
165 (i) the manufacturer required or recommended the dealer to acquire the sign;  
166 (ii) the sign bears the manufacturer's name, trade name, or trademark;  
167 (iii) the sign is undamaged; and  
168 (iv) the dealer owns the sign;  
169 (f) an amount that equals the greater of the fair market value for or the dealer's  
170 depreciated acquisition cost of all special tools, equipment, and furnishings:  
171 (i) acquired from the manufacturer or a source the manufacturer approved;  
172 (ii) that the manufacturer required the dealer to acquire; and  
173 (iii) that are in good and usable condition; and  
174 (g) the cost of transporting, handling, packing, and loading all motorboats, motorboat  
175 motors, trailers, supplies, parts, accessories, signs, special tools, equipment, and furnishings.  
176 (3) A manufacturer shall pay a motorboat dealer the amounts described in Subsection  
177 (2) within 90 days after the day on which the tender of the property to the manufacturer occurs,  
178 if the dealer has:  
179 (a) clear title to the property; or  
180 (b) the manufacturer's statement of origin.

181 (4) If an item described in Subsection (2) is subject to a security interest, the  
182 manufacturer may make payment jointly to:

- 183 (a) the motorboat dealer; and  
184 (b) the holder of the security interest.

185 Section 8. Section **13-58-402** is enacted to read:

186 **13-58-402. Termination without time to cure.**

187 A manufacturer or distributor may terminate an agreement with a motorboat dealer  
188 upon written notice and without a cure period described in Section [13-58-302](#), if:

189 (1) the motorboat dealer:

- 190 (a) financially defaults to the manufacturer, the distributor, or a financing source;  
191 (b) becomes subject to an order for relief, as defined in 11 U.S.C. Sec. 102;  
192 (c) files a voluntary petition in bankruptcy;  
193 (d) has had an involuntary petition in bankruptcy filed against the motorboat dealer;  
194 (e) engages in an act of material fraud in relation to the performance of a right or

195 obligation under the agreement;

196 (f) is a corporation that ceases to exist;

197 (g) becomes insolvent;

198 (h) takes or fails to take an action that constitutes an admission of inability to pay debts

199 as the debts mature;

200 (i) makes a general assignment for the benefit of creditors to an agent authorized to  
201 liquidate any substantial amount of assets;

202 (j) applies to a court for the appointment of a receiver for any assets or properties;

203 (k) fails to substantially comply with a federal, state, or local law, rule, regulation,  
204 ordinance, or order applicable to the agreement;

205 (l) receives three valid notices of a default under Section [13-58-302](#) for the same  
206 default within a 12-month period, regardless of whether the dealer cures the default;

207 (m) transfers an interest in the dealership without the manufacturer's written consent;

208 (n) has pleaded guilty to or has been convicted of a felony, or of any misdemeanor  
209 relating to the relationship between the motorboat dealer and manufacturer;

210 (o) or one of the owners of the motorboat dealer is convicted or enters a plea of nolo  
211 contendere to a felony; or

- 212           (p) makes a material misrepresentation;  
213           (2) there is a closeout or sale of a substantial part of the dealer's assets related to the  
214 motorboat dealership;  
215           (3) there is a commencement or dissolution or liquidation of the motorboat dealership;  
216           (4) there is a change without the prior written approval of the manufacturer in the  
217 location of the motorboat dealer's principal place of business under the dealership agreement;  
218 or  
219           (5) the motorboat dealer's license is suspended, revoked, or is not renewed.