

## HB0314S03 compared with HB0314S02

~~{deleted text}~~ shows text that was in HB0314S02 but was deleted in HB0314S03.

inserted text shows text that was not in HB0314S02 but was inserted into HB0314S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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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:

## HB0314S03 compared with HB0314S02

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

~~13-58-202, Utah Code Annotated 1953~~

13-58-301, Utah Code Annotated 1953

13-58-302, Utah Code Annotated 1953

13-58-401, Utah Code Annotated 1953

13-58-402, Utah Code Annotated 1953

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

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

### CHAPTER 58. MOTORBOAT AGREEMENTS ACT

#### Part 1. General Provisions

#### 13-58-101. Title.

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

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

#### 13-58-102. Definitions.

As used in this chapter:

(1) "Agreement" means an agreement between:

(a) a motorboat dealer; and

(b) (i) a manufacturer; or

(ii) a distributor.

(2) "Distributor" means a person who:

(a) has ~~franchise from~~ an agreement with a manufacturer of motorboats to distribute motorboats within this state; and

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

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

## HB0314S03 compared with HB0314S02

trade.

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

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

(a) is engaged in the business of buying, selling, offering for sale, or exchanging new motorboats either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise; and

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

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

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

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

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

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

### **Part 2. Agreements**

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

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

(2) An agreement shall include:

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

‡ (~~f~~~~b~~)~~a~~) each working capital standard, inventory standard, facility standard, equipment standard, and tool standard, if any, including each agreed upon minimum product stocking requirement;

(~~f~~~~c~~)~~b~~) provisions for termination or nonrenewal of the agreement;

(~~f~~~~d~~)~~c~~) the designation of a successor motorboat dealer in the event of the motorboat dealer's death or disability;

(~~f~~~~e~~)~~d~~) the obligations of the manufacturer, distributor, and motorboat dealer in the preparation and delivery of, and warranty service on, new ~~{boats}~~motorboats and new ~~{boat}~~motorboat motors;

## HB0314S03 compared with HB0314S02

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

- (i) inventory of new ~~{boats}~~ motorboats;
  - (ii) inventory of new ~~{boat}~~ motorboat motors;
  - (iii) inventory of parts;
  - (iv) equipment;
  - (v) furnishings;
  - (vi) special tools; and
  - (vii) required signs;
- ~~(g)f~~ each standard for maintenance of:
- (i) a dedicated or self-funded line of credit, if any; and
  - (ii) a trade-in line of credit or self-funded trade-in line of credit, if any; and
- ~~(h)g~~ dispute resolution procedures.

Section 4. Section ~~{13-58-202}~~ 13-58-301 is enacted to read:

### ~~{13-58-202. Performance standards:~~

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

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

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

### ~~}{Part 3. Default~~

#### 13-58-301. Motorboat dealer default.

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

- (1) materially fails to:
  - (a) meet minimum product stocking requirements as specified under the agreement;
  - (b) make timely payment of a material obligation as specified under the agreement;~~f~~
  - ~~— (c) meet an applicable performance standard as specified by the agreement for a defined one model-year marketing cycle;~~
  - ~~— (d) meet an applicable marketing standard as specified by the agreement;}~~ or
- (~~e~~c) meet an applicable standard, as specified by the agreement, for:

## HB0314S03 compared with HB0314S02

- (i) a dedicated or self-funded line of credit; or
- (ii) a trade-in or self-funded trade-in line of credit; or
- (2) markets the manufacturer's ~~boats~~ motorboats outside of the motorboat dealer's territory in violation of the agreement.

Section ~~6~~5. Section **13-58-302** is enacted to read:

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

(1) If a motorboat dealer defaults as described in Section 13-58-301, the manufacturer or distributor who is part of the agreement shall:

- (a) give the dealer written notice of the dealer's default; and
- (b) allow the dealer to cure the default within the period described in Subsection (2).

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

- (a) 30 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(b) or (2);
  - (b) 60 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(a), (d), or (e);
- and

(c) 160 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(c).

Section ~~7~~6. Section **13-58-401** is enacted to read:

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

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

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

- (a) the motorboat dealer defaults as described in Section 13-58-301;
- (b) the manufacturer or distributor gives the motorboat dealer written notice as

described in Subsection 13-58-302 that clearly and concisely states:

- (i) the default; and
- (ii) that if the dealer fails to cure the default, the manufacturer or distributor may

terminate the agreement;

(c) the manufacturer or distributor provides the motorboat dealer the applicable period

## HB0314S03 compared with HB0314S02

to cure the default as described in Subsection 13-58-302(2); and

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

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

(a) an amount that equals:

(i) the dealer's cost of each new, undamaged, unsold, and unregistered motorboat, motorboat motor, and trailer in the dealer's inventory that the dealer:

(A) acquired from the manufacturer or from another dealer; and

(B) invoiced during the 24-month period immediately before the day on which the agreement terminates or is not renewed; minus

(ii) each applicable dealer rebate and discount;

(b) for each charge the manufacturer made for distribution, delivery, or taxes;

(c) an amount that equals the dealer's cost for accessories added on a motorboat or trailer;

(d) an amount that equals:

(i) the cost of all new, undamaged, and unsold supplies, parts, and accessories, as advertised in the manufacturer's catalog or website on the day on which the agreement terminates or is not renewed; minus

(ii) all allowance the manufacturer paid or credited to the dealer;

(e) an amount that equals the greater of the fair market value for or the dealer's depreciated acquisition cost of a sign, if:

(i) the manufacturer required or recommended the dealer to acquire the sign;

(ii) the sign bears the manufacturer's name, trade name, or trademark;

(iii) the sign is undamaged; and

(iv) the dealer owns the sign;

(f) an amount that equals the greater of the fair market value for or the dealer's depreciated acquisition cost of all special tools, equipment, and furnishings:

(i) acquired from the manufacturer or a source the manufacturer approved;

(ii) that the manufacturer required the dealer to acquire; and

(iii) that are in good and usable condition; and

## HB0314S03 compared with HB0314S02

(g) the cost of transporting, handling, packing, and loading all motorboats, motorboat motors, trailers, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(3) A manufacturer shall pay a motorboat dealer the amounts described in Subsection (2) within 90 days after the day on which the tender of the property to the manufacturer occurs, if the dealer has:

(a) clear title to the property; or

(b) the manufacturer's statement of origin.

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

(a) the motorboat dealer; and

(b) the holder of the security interest.

Section ~~{8}~~7. Section **13-58-402** is enacted to read:

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

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

(1) the motorboat dealer:

(a) financially defaults to the manufacturer, the distributor, or a financing source;

(b) becomes subject to an order for relief, as defined in 11 U.S.C. Sec. 102;

(c) files a voluntary petition in bankruptcy;

(d) has had an involuntary petition in bankruptcy filed against the motorboat dealer;

(e) engages in an act of material fraud in relation to the performance of a right or obligation under the agreement;

(f) is a corporation that ceases to exist;

(g) becomes insolvent;

(h) takes or fails to take an action that constitutes an admission of inability to pay debts as the debts mature;

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

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

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

## **HB0314S03 compared with HB0314S02**

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

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

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

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

(p) makes a material misrepresentation;

(2) there is a closeout or sale of a substantial part of the dealer's assets related to the motorboat dealership;

(3) there is a commencement or dissolution or liquidation of the motorboat dealership;

(4) there is a change without the prior written approval of the manufacturer in the location of the motorboat dealer's principal place of business under the dealership agreement;

or

(5) the motorboat dealer's license is suspended, revoked, or is not renewed.