



September 1, 2010

Governor Arnold Schwarzenegger
Attention: Legislative Affairs Unit
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing manufacturers and distributors of motorcycles, scooters, motorcycle/ATV parts and accessories and members of allied trades. The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers and distributors of all-terrain vehicles (ATVs) in the United States. The majority of our member manufacturers and distributors are headquartered in California, as are the MIC and SVIA executive offices.

We urge you to veto AB 2597. The bill would add a new layer of regulation pertaining only to certain "motorsports vehicle" franchises to the already extensive motor vehicle franchise law. Motorsports franchises should not be singled out for special regulation over and above what already exists in California statute for all motor vehicle franchises.

The legislation would increase the burden on the Department of Motor Vehicles by having two different sets of laws to administer (one for dealers that carry a single vehicle from a franchisor; one for dealers that carry multiple vehicles from a franchisor) and increase the Department workload by increasing the probable number of disputes and investigations to enforce a law that discriminates among franchises for like or similar products and would appear to prohibit long-standing business practices that benefit all affected stakeholders.

The following bullet points briefly highlight some of our grave concerns with the legislation:

- The bill mandates that the Legislature establish the Terms of Contracts between motorsports dealers and manufacturers, violating the U.S. Constitution - "*No state shall pass any law impairing the obligation of contracts.*"
- The bill is discriminatory as it applies only to those dealers who carry more than one type of motorsports vehicle (motorcycles, ATVs, or snowmobiles), whereas franchises that deal in only one of these types of vehicle would not be regulated. There is no principled basis for this distinction and it appears to be an accommodation to Harley-Davidson, a non-California based manufacturer with a very large percentage of the market share in California. Without any stated justification, the bill regulates single-line motorsports dealers differently from multi-line motorsports dealers, even though those dealers may be carrying the exact same brand. Moreover, motorsports manufacturers will be subject to this law when dealing with multi-line dealers, but not when they deal with a single-line dealership.
- One of the most egregious provisions in the bill is the requirement that manufacturers sell a vehicle, parts, or accessory to their dealers at the same "actual price" regardless of the volume a dealer does with a certain manufacturer. Preferred wholesale purchasing terms for volume ordering are common in the marketplace making lower prices available to the customer. As an example, Costco gets a better wholesale price for purchasing two truckloads of product "X" than does a 7-11 that only purchases a pallet of product. Costco is then able to pass the savings on to the consumer. Likewise, when motorsports manufacturers offer preferred wholesale prices and flooring incentives, the lower prices can then be passed on to the consumer. This bill would eliminate lower prices for customers. This "same actual price" provision would

not apply to dealers in neighboring states, so consumers in California would be able to take advantage of lower prices at dealerships in bordering states.

- The bill prohibits a motorsports manufacturer from requiring a dealer to maintain a vehicle inventory in excess of a reasonable minimum requirement not to exceed a 60-day supply based on dealer's sales for the preceding 90 days. This is ill-conceived and unworkable in practice for both dealers and manufacturers. For dealers, it will ensure that they almost never have the correct amount of inventory because motorsports sales are highly seasonal, fluctuating up and down considerably throughout the year. This proposed scheme will always lag with the current selling season, it will do nothing but ensure that California dealers will not have enough product when they do need it and too much product when they don't need it.
- Ultimately, allowing the legislature to regulate contracts between manufacturers and dealers is bad for California customers and is unfair to the five major motorcycle and ATV distributors based in California who employ over 1,000 employees.

Public policy should strive to balance the best interests of all stakeholders, including motorcycle and ATV consumers in California, the dealer body, and manufacturers. Instead, AB 2597 locks in unworkable business practices in perpetuity. Both manufacturers and dealers need the flexibility to adapt to changing market and economic conditions. Unpredictable market dynamics and economic fluctuations make the job of every party involved in the distribution channel that much more challenging and each needs flexibility to adjust to meet changing consumer needs. Both must also have the corresponding incentive and responsibility to manage their own risk. Very few businesses in the free enterprise system enjoy the protections provided by existing law, much less by the provisions of AB 2597 that would single out and further insulate certain motorsports franchises.

There is a reason that no state in the country has ever passed legislation of this nature and we continue to be optimistic that California will not be the first.

Please veto AB 2597. Thank you for your consideration.

Sincerely,



Sr. Vice President, Government Relations