

The Senate Finance and Public Utilities Committee offered the following substitute to HB 1303:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 22A of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to marine manufacturers, so as to change certain provisions relating to termination
3 of contractual relationship between dealer and manufacturer; to change certain provisions
4 relating to application of said article; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

6 Article 22A of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
7 marine manufacturers, is amended by striking Code Section 10-1-677, relating to termination
8 of contractual relationship between dealer and manufacturer, and inserting in lieu thereof the
9 following:
10

11 "10-1-677.

12 (a)(1) Whenever any marine dealer enters into a franchise, selling, or other contractual
13 agreement with a manufacturer, distributor, or wholesaler wherein the dealer agrees to
14 maintain an inventory of marine products or repair parts, the manufacturer, distributor,
15 or wholesaler shall not terminate such agreement in case of breach by the dealer unless
16 and until 90 days after notice of such intention to terminate has been sent by certified
17 mail or statutory overnight delivery, return receipt requested, to the dealer and the dealer
18 has failed to correct the breach within such period.

19 (2) If the franchise, selling, or other contractual agreement is terminated as a result of
20 any action by the manufacturer ~~or dealer~~ and the dealer is not in breach of such
21 agreement, the manufacturer, distributor, or wholesaler shall repurchase the inventory as
22 provided in this article. The dealer may keep the inventory if he or she desires. If the
23 dealer has any outstanding debts to the manufacturer, distributor, or wholesaler, then the
24 repurchase amount may be credited to the dealer's account.

1 (3) If the franchise, selling, or other contractual agreement is terminated as a result of
 2 any action by the dealer and the manufacturer is not in breach of such agreement, the
 3 manufacturer shall not be required to repurchase the inventory as provided in this article.
 4 Provided, however, if the franchise, selling, or other contractual agreement is terminated
 5 as a result of any action by the dealer and the manufacturer is in breach of such
 6 agreement, the manufacturer shall be required to repurchase the inventory as provided in
 7 this article.

8 (4) It shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor,
 9 without due cause and pursuant to its own initiating action, to fail to renew a franchise,
 10 selling, or other contractual agreement on terms then equally available to all its marine
 11 dealers, unless the manufacturer repurchases the inventory as provided for in this Code
 12 section. The tests for determining what constitutes due cause for a manufacturer or
 13 distributor to fail to renew a franchise, selling, or other contractual agreement shall
 14 include whether the dealer:

15 (A) Has made a material misrepresentation in applying for or acting under the
 16 franchise agreement;

17 (B) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in
 18 bankruptcy filed against the dealer which has not been discharged within 30 days after
 19 the filing, is in default under the provisions of a security agreement in effect with the
 20 receivership;

21 (C) Has engaged in an unfair business practice;

22 (D) Has engaged in conduct which is injurious or detrimental to the public welfare;

23 (E) Has failed to comply with an applicable licensing law;

24 (F) Has been convicted of a crime, the effect of which would be detrimental to the
 25 manufacturer, distributor, or dealership;

26 (G) Has failed to operate in the normal course of business for seven consecutive
 27 business days; or

28 (H) Has failed to comply with the terms of the dealership or franchise agreement.

29 (5) In the event that the manufacturer, wholesaler, distributor, or franchisor does not
 30 intend to renew a franchise, selling, or other contractual agreement, such manufacturer,
 31 wholesaler, distributor, or franchisor shall give the dealer 90 days written notice prior to
 32 the effective date thereof by certified mail or statutory overnight delivery, return receipt
 33 requested;

34 ~~(b) After notice by the marine dealer to the manufacturer by registered or certified mail or~~
 35 ~~statutory overnight delivery, return receipt requested, within Within 30 days of the~~
 36 ~~termination of the franchise, selling, or other contractual agreement, the manufacturer,~~

1 distributor, or wholesaler shall repurchase that inventory previously purchased from him
 2 or her, including all new and unused marine products of the current or immediate prior
 3 model year and parts on hand and held by the dealer on the date of termination of the
 4 contract. The manufacturer, distributor, or wholesaler shall pay an amount equivalent to
 5 the ~~wholesale value of a similar item in the National Automobile Dealers Association~~
 6 ~~Marine Appraisal Guide, National Edition, plus reasonable actual freight cost, cost actually~~
 7 ~~paid by the dealer less discounts or rebates per unit~~ for any new, unused, undamaged,
 8 unaltered from original invoice and delivery, and complete marine vessel ~~or other unit of~~
 9 ~~marine products which is resalable and 100 percent of the.~~ The manufacturer shall also pay
 10 an amount equal to the price paid by the dealer for any new, unused, and undamaged repair
 11 parts and accessories which are listed in the manufacturer's current parts price list and are
 12 not more than two model years old. ~~The manufacturer, distributor, or wholesaler shall pay~~
 13 ~~the dealer the reasonable actual cost of handling, packing, and loading returned repair parts.~~
 14 ~~The manufacturer, distributor, or wholesaler shall have the option of performing the~~
 15 ~~handling, packing, and loading in lieu of paying the sum imposed by this subsection for~~
 16 ~~these services.~~

17 (c) Upon payment within a reasonable time of the repurchase amount to the dealer, the
 18 title, if any, and right of possession to the repurchased inventory shall transfer to the
 19 manufacturer, distributor, or wholesaler, as the case may be.

20 (d) The provisions of this article shall not require the repurchase from a dealer of:

- 21 (1) Any repair part which has a limited storage life or is otherwise subject to
 22 deterioration;
- 23 (2) Any single repair part which is priced as a set of two or more items;
- 24 (3) Any repair part which, because of its condition, is not resalable as a new part without
 25 repackaging or reconditioning;
- 26 (4) Any inventory for which the dealer is unable to furnish evidence that is reasonably
 27 satisfactory to the manufacturer, distributor, or wholesaler of good title, free and clear of
 28 all claims, liens, and encumbrances;
- 29 (5) Any inventory which the dealer desires to keep, provided that the dealer has a
 30 contractual right to do so;
- 31 (6) Any marine vessel or product which is not in new, unused, undamaged, and
 32 complete condition;
- 33 (7) Any repair parts which are not in new, unused, and undamaged condition;
- 34 (8) Any inventory which was ordered by the dealer on or after the date of receipt of the
 35 notification of termination of the franchise, selling, or other contractual agreement; ~~or~~

1 (9) Any inventory which was acquired by the dealer from any source other than the
2 manufacturer, distributor, or wholesaler; or

3 (10) Boats that have been altered substantially from original delivery.

4 (e) If any manufacturer, distributor, or wholesaler shall fail or refuse to repurchase any
5 inventory as required by this article within 60 days after termination of a dealer's contract
6 and submission by the dealer to the manufacturer, by certified mail or statutory overnight
7 delivery, return receipt requested, of a final inventory of marine products and parts on
8 hand, he or she shall be civilly liable not only for the amounts provided in subsection (b)
9 of this Code section but also the dealer's reasonable attorney's fees, court costs, and
10 interest on the amount due for such inventory computed at the legal interest rate from the
11 sixty-first day after termination.

12 (f) In the event of the death or incapacity of the dealer or the majority stockholder of a
13 corporation operating as a dealer, the manufacturer, distributor, or wholesaler shall, at the
14 option of the heirs at law if the dealer died intestate or the devisees or transferees under the
15 terms of the deceased dealer's last will and testament if said dealer died testate, repurchase
16 the inventory from said heirs or devisees as if the manufacturer, distributor, or wholesaler
17 had terminated the contract, and the inventory repurchase provisions of this Code section
18 shall apply. The heirs or devisees shall have until the end of the contract term or one year
19 from the date of the death of the retailer or majority stockholder, whichever comes first,
20 to exercise their option under this article; provided, however, that nothing in this article
21 shall require the repurchase of inventory if the heirs or devisees and the manufacturer,
22 distributor, or wholesaler enter into a new franchise agreement to operate the retail
23 dealership."

24 SECTION 2.

25 Said article is further amended by striking Code Section 10-1-678, relating to application of
26 said article, and inserting in lieu thereof the following:

27 "10-1-678.

28 The provisions of this article shall apply to any contract now in effect which has no
29 expiration date and is a continuing contract and any other contract entered into or renewed
30 on or after July 1, ~~2001~~ 2002. Any contract in force and effect prior to July 1, ~~2001~~ 2002,
31 which by its own terms will terminate on a date subsequent thereto shall be governed by
32 the law as it existed prior to July 1, ~~2001~~ 2002."

33 SECTION 3.

34 All laws and parts of laws in conflict with this Act are repealed.