

Senate Bill 188

By: Senators Jackson of the 50th, Starr of the 44th, Cheeks of the 23rd, Dean of the 31st and Kemp of the 3rd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to regulate disposition of marine dealers' inventory following
3 termination of a franchise, selling, or other contractual agreement; to provide legislative
4 findings and declarations; to define certain terms; to provide for applicability; to repeal
5 conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

8 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
9 trade practices, is amended by inserting a new Article 22A to read as follows:

10 "ARTICLE 22A

11 10-1-675.

12 The General Assembly finds and declares that the distribution of marine vessels and
13 products in the State of Georgia vitally affects the general economy of the state and the
14 public interest and public welfare and, in the exercise of its police power, it is necessary
15 to regulate marine manufacturers, distributors, and dealers and their representatives doing
16 business in Georgia in order to prevent unfair business practices, unfair methods of
17 competition, impositions, and other abuses upon its citizens.

18 10-1-676.

19 As used in this article, the term:

20 (1) 'Distributor' or 'wholesaler' means any person, company, or corporation who sells or
21 distributes marine products to marine dealers and who maintains distributor
22 representatives within the state.

1 (2) 'Franchise' means an oral or written agreement for definite or indefinite period of
2 time in which a manufacturer grants to a marine dealer permission to use a trade name,
3 service mark, or related characteristic and in which there is a community of interest in the
4 marketing of marine products or services related thereto at wholesale or retail, whether
5 by leasing, sale, or otherwise.

6 (3) 'Manufacturer' means any person, firm, association, corporation, or trust, resident or
7 nonresident, that fabricates, manufactures, or assembles new and unused marine products.
8 It does not include a person, firm, association, corporation, or trust which converts,
9 modifies, or otherwise alters a marine product manufactured by another person, firm,
10 association, corporation, or trust.

11 (4) 'Manufacturer sales representative' means any officer, agent, or employee employed
12 by a person, firm, association, corporation, or trust that fabricates, manufactures, or
13 assembles marine products or by a factory branch for the purpose of making or promoting
14 the sale of marine products or supervising or contacting marine dealers or prospective
15 dealers.

16 (5) 'Marine dealer' means any person who holds a bona fide contract, agreement, or
17 franchise with a manufacturer or distributor of marine products.

18 (6) 'Marine product' means a new or used watercraft, boat, vessel, or motor primarily
19 designed for recreational or commercial use on water. The term also includes an
20 outboard motor or a boat outfitted with an inboard or outboard motor. The term shall not
21 mean a watercraft designed primarily for commercial use.

22 10-1-677.

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

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

1 (b) After notice by the marine dealer to the manufacturer by registered or certified mail or
2 statutory overnight delivery, return receipt requested, within 30 days of the termination of
3 the franchise, selling, or other contractual agreement, the manufacturer, distributor, or
4 wholesaler shall repurchase that inventory previously purchased from him or her, including
5 all new and unused marine products of the current or immediate prior model year and parts
6 on hand and held by the dealer on the date of termination of the contract. The
7 manufacturer, distributor, or wholesaler shall pay an amount equivalent to the wholesale
8 value of a similar item in the *National Automobile Dealers Association Marine Appraisal*
9 *Guide, National Edition*, plus reasonable actual freight cost, for any new, unused,
10 undamaged, and complete marine vessel or other unit of marine products which is resalable
11 and 100 percent of the price paid by the dealer for any new, unused, and undamaged repair
12 parts and accessories which are listed in the manufacturer's current parts price list. The
13 manufacturer, distributor, or wholesaler shall pay the dealer the reasonable actual cost of
14 handling, packing, and loading returned repair parts. The manufacturer, distributor, or
15 wholesaler shall have the option of performing the handling, packing, and loading in lieu
16 of paying the sum imposed by this subsection for 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 complete
32 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

36 (9) Any inventory which was acquired by the dealer from any source other than the
37 manufacturer, distributor, or wholesaler.

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

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

20 10-1-678.

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

26 SECTION 2.

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