

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

**A BILL TO BE ENTITLED
AN ACT**

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 22A

10-1-675.

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

10-1-676.

As used in this article, the term:

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

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

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

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

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

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

10-1-677.

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

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

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

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

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

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration;

(2) Any single repair part which is priced as a set of two or more items;

(3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;

(4) Any inventory for which the dealer is unable to furnish evidence that is reasonably satisfactory to the manufacturer, distributor, or wholesaler of good title, free and clear of all claims, liens, and encumbrances;

(5) Any inventory which the dealer desires to keep, provided that the dealer has a contractual right to do so;

(6) Any marine vessel or product which is not in new, unused, undamaged, and complete condition;

(7) Any repair parts which are not in new, unused, and undamaged condition;

(8) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise, selling, or other contractual agreement; or

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

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

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

10-1-678.

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

SECTION 2.

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