

Senate Bill 155

By: Senators Tolleson of the 20th, Whitehead, Sr. of the 24th, Cagle of the 49th, Johnson of the 1st, Starr of the 44th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend provisions of the Official Code of Georgia Annotated relating to recreational  
2 vehicles; to amend Part 1 of Article 22 of Chapter 1 of Title 10 of the Official Code of  
3 Georgia Annotated, relating to general considerations regarding motor vehicle franchises, so  
4 as to exempt recreational vehicles from the definition of motor vehicle; to amend Chapter 1  
5 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade  
6 practices, so as to provide for definitions; to provide purposes and policies to protect  
7 recreational vehicle dealers; to provide for sales areas; to provide for changing or terminating  
8 sales areas only for good cause; to provide for notice of termination or substantial change to  
9 a sales area; to provide for repurchase of inventories by the grantor upon termination of a  
10 dealership; to provide that it is illegal for a grantor to coerce a dealer to purchase its parts or  
11 accessories; to provide that a grantor must approve a sale of a dealership if the terms are  
12 reasonable; to provide for succession of the dealership to the dealer's named beneficiaries;  
13 to provide for warranty obligations; to provide for dispute resolution; to provide for  
14 applicability; to provide for related matters; to repeal conflicting laws; and for other  
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 style="text-align:center">**SECTION 1.**

18 Part 1 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,  
19 relating to general considerations regarding motor vehicle franchises, is amended by striking  
20 paragraph (10) of Code Section 10-1-622, relating to definitions relative to motor vehicle  
21 franchises, and inserting in its place the following:

22 "(10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and  
23 operation on the public highways, except farm tractors and other machines and tools used  
24 in the production, harvesting, and care of farm products, ~~and except construction~~  
25 ~~equipment, and recreational vehicles as defined in paragraph (5) of subsection (a) of Code~~  
26 Section 10-1-679."

**SECTION 2.**

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 22B to read as follows:

**"ARTICLE 22B**

10-1-679.

(a) As used in this article, the term:

(1) 'Community of interest' means a continuing financial interest between the grantor and the grantee in either the operation of the dealership business or the marketing of such goods or services.

(2) 'Franchise' means an oral or written agreement for a definite or indefinite period of time in which a manufacturer grants to a recreational vehicle 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 recreational vehicle products or services related thereto at wholesale or retail, whether by leasing, sale, or otherwise.

(3) 'Grantor' means a person who grants a recreational vehicle dealership.

(4) 'Person' means a natural person, partnership, joint venture, corporation, or other entity.

(5) 'Recreational vehicle' means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use which either has its own motive power or is mounted on or towed by another vehicle. The basic entities are as follows: travel trailer, camping trailer, truck camper, motor home, park trailer, and fifth wheel travel trailer.

(6) 'Recreational vehicle dealer' or 'dealer' means a person who is a grantee of a recreational vehicle dealership situated in Georgia.

(7) 'Recreational vehicle dealership' means an established place of business engaged in the marketing of new recreational vehicle products or services related thereto at wholesale or retail, whether by leasing, sale, or otherwise, and which is marked by an appropriate permanent sign, a working telephone with a telephone number listed in the local phone directory, and which derives at least 75 percent of its revenue from the sale of new recreational vehicles and recreational vehicle related products and services.

(b) For purposes of this article when determining whether there is 'good cause' for a proposed action, the trier of fact shall consider:

(1) The volume of the affected dealer's business in the relevant market area;

(2) The nature and extent of the dealer's investment in its business;

- 1 (3) The adequacy of the dealer's service facilities, equipment, parts, supplies, and  
2 personnel;
- 3 (4) The effect of the proposed action on the community;
- 4 (5) The extent and quality of the dealer's service under recreational vehicle warranties;  
5 and
- 6 (6) The dealer's performance under the terms of its franchise agreement.

7 10-1-679.1.

8 (a) This article shall be liberally construed and applied to promote its underlying remedial  
9 purposes and policies.

10 (b) The underlying purposes and policies of this article are:

11 (1) To promote the compelling interest of the public in fair business relations between  
12 recreational vehicle dealers and grantors and in the continuation of recreational vehicle  
13 dealerships on a fair basis;

14 (2) To protect recreational vehicle dealers against unfair treatment by grantors who  
15 inherently have superior economic power and superior bargaining power in the  
16 negotiations of recreational vehicle dealerships;

17 (3) To provide recreational vehicle dealers with rights and remedies in addition to those  
18 existing by contract or common law; and

19 (4) To govern all franchise agreements for recreational vehicle dealerships, including any  
20 renewals or amendments, to the full extent consistent with the Constitutions of Georgia  
21 and the United States.

22 (c) The effect of this article may not be varied by contract or agreement. Any contract or  
23 agreement purporting to do so is void and unenforceable to that extent only.

24 10-1-679.2.

25 The grantor shall designate in writing the area of sales responsibility assigned to a  
26 recreational vehicle dealer and shall not change such area nor establish another recreational  
27 vehicle dealer in the same area unless the grantor can show good cause for the addition of  
28 the new recreational vehicle dealer, including reasonable evidence that the market will  
29 support the establishment of a new dealership.

30 10-1-679.3.

31 Sales of recreational vehicles by grantors or distributors shall be in accordance with  
32 published prices, charges, and terms of sale in effect at any given time.

1 10-1-679.4.

2 No grantor, directly or through any officer, agent, or employee, may terminate, cancel, fail  
3 to renew, or substantially change the competitive circumstances, including the area of sales  
4 responsibility, of a recreational vehicle dealership agreement without good cause. The  
5 burden of proving good cause shall be on the grantor.

6 10-1-679.5.

7 Except as provided in this Code section, a grantor shall provide a recreational vehicle  
8 dealer at least 180 days' prior written notice of termination, cancellation, nonrenewal, or  
9 substantial change in competitive circumstances and shall provide that the recreational  
10 vehicle dealer has 180 days in which to rectify any claimed deficiency. If the deficiency  
11 is rectified within 180 days, the notice shall be void. The notice provisions of this Code  
12 section shall not apply if the reason for termination, cancellation, or nonrenewal is  
13 insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

14 10-1-679.6.

15 (a) If a recreational vehicle dealership franchise agreement is terminated, canceled, or not  
16 renewed by the grantor, the grantor, at the option of the recreational vehicle dealer, shall  
17 repurchase:

18 (1) All inventories of recreational vehicles, parts, and accessories sold by the grantor to  
19 the recreational vehicle dealer for resale; and

20 (2) All diagnostic equipment, special tools, other equipment and machinery, and signage  
21 as were required to meet the dealer's service responsibilities in accordance with  
22 manufacturer's guides and applicable customer service bulletins and signs sold under the  
23 recreational vehicle dealership agreement.

24 (b) The repurchase price shall be at the original invoice price plus freight, destination,  
25 delivery, and distribution charges and sales taxes incurred by the recreational vehicle  
26 dealer. The grantor shall pay the dealer within 30 days of receipt of the returned items.  
27 This Code section shall apply only to merchandise with a name, trademark, label, or other  
28 mark on it which identifies the grantor or with proof of purchase from the grantor.

29 (c) The grantor shall reimburse the dealer for 100 percent of the net cost to the dealer,  
30 including transportation, of all new current model year and new current year recreational  
31 vehicle inventory acquired from the manufacturer which has not been materially altered or  
32 substantially damaged, and all new recreational vehicle inventory not of the current model  
33 year which has not been materially altered or substantially damaged, provided the  
34 noncurrent model year vehicles were acquired from the manufacturer within 12 months  
35 prior to the effective date of the termination, cancellation, or nonrenewal.

1 (d) The manufacturer shall reimburse the dealer for 100 percent of the current net prices  
2 as published in the manufacturer's current price lists or catalogs on accessories and parts,  
3 including superseded parts, plus 40 percent of the current net price of all manufacturer's  
4 accessories and parts returned to compensate the dealer for handling, packing, and loading  
5 the parts.

6 10-1-679.7.

7 It shall be unlawful for any grantor, directly or through any officer, agent, or employee:

8 (1) To coerce, or attempt to coerce, any dealer to accept delivery of any parts or  
9 accessories or any other commodities which have not been ordered by such dealer; or

10 (2) To coerce, or attempt to coerce, any dealer to enter into an agreement with such  
11 grantor or do any other act unfair to such dealer by threatening to cancel any recreational  
12 vehicle dealership franchise agreement existing between such grantor and such dealer.

13 10-1-679.8.

14 It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer of  
15 the ownership of a recreational vehicle dealership by the sale of the business assets, stock  
16 transfer, or otherwise, or a change in executive management or principal operator of the  
17 dealership if the new owner, principal operator, or management is creditworthy, has not  
18 been convicted of a felony, and is properly licensed; the sale or transfer will not result in  
19 a relocation of the business; and the sale or transfer is otherwise reasonable under the  
20 circumstances. The burden of proving that any sale or transfer is not reasonable shall be  
21 on the grantor.

22 10-1-679.9.

23 (a) It shall be unlawful for any grantor to fail to provide a recreational vehicle dealer with  
24 an opportunity, at the time of signing a recreational vehicle dealership franchise agreement  
25 or at a reasonable time thereafter, to designate a member of his or her family as a successor  
26 to the dealership in the event of the death or incapacity of the dealer. A dealer may from  
27 time to time during the term of the franchise agreement change the beneficiary by  
28 providing a written notification to the manufacturer.

29 (b) It shall be unlawful to prevent or refuse to honor the succession to a dealership by a  
30 member of the family of the deceased or incapacitated dealer unless the grantor has  
31 provided to the member of the family so designated written notice of its objections. The  
32 burden of proving such transfer is not reasonable shall be on the grantor.

33 (c) Grounds for objection shall be lack of creditworthiness, conviction of a felony,  
34 inability to obtain necessary licenses by the beneficiary, lack of required licenses, or other

1 conditions which make such succession unreasonable under the circumstances, but the  
2 grantor shall bear the burden of proving the unreasonableness of such succession. No  
3 member of the family of the deceased or incapacitated dealer may succeed to a recreational  
4 vehicle dealership unless the succession to the recreational vehicle dealership will not  
5 involve, without the grantor's consent, a relocation of the business.

6 10-1-679.10.

7 (a) Each grantor shall specify in writing to each of its recreational vehicle dealers licensed  
8 in Georgia the dealer's obligation for preparation, delivery, and warranty service on its  
9 products; shall compensate the dealer for warranty service required of the dealer by the  
10 manufacturer; and shall provide the dealer the schedule of compensation to be paid to such  
11 dealers for parts, work, and service in connection with warranty service and the time  
12 allowances for the performance of such work and service. In no event shall such schedule  
13 of compensation fail to include reasonable compensation for diagnostic work as well as  
14 repair service and labor.

15 (b) Time allowances for the diagnosis and performance of warranty work and service shall  
16 be reasonable and adequate for the work to be performed. In the determination of what  
17 constitutes reasonable compensation under this Code section, the principal factors to be  
18 given consideration shall be the prevailing wage rates being paid by the dealer and the  
19 prevailing labor rate being charged by the dealer in the community in which the dealer is  
20 doing business. In no event shall such compensation of a dealer for warranty service be  
21 less than the rates charged by the dealer for like service to retail customers for nonwarranty  
22 service and repairs as long as such rates are reasonable.

23 (c) A grantor shall reimburse the dealer for warranty parts at actual wholesale costs plus  
24 a minimum 40 percent handling charge and the cost, if any, of freight to return warranty  
25 parts to the manufacturer. Warranty audits of dealer records may be conducted by the  
26 grantor on a reasonable basis. A grantor must disapprove warranty claims in writing within  
27 30 days of the date of submission by the dealer in the manner and form prescribed by the  
28 manufacturer. Claims not specifically disapproved in writing within this 30 days shall be  
29 construed to be approved and shall be paid within 45 days.

30 (d) Dealer claims for warranty compensation shall not be denied except for good cause  
31 such as performance of nonwarranty repairs, lack of material documentation, fraud, or  
32 misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer  
33 submission or rejected in writing for stated reasons.

34 (e) It shall be a violation of this article for any grantor to:

- 35 (1) Fail to perform any of its warranty obligations with respect to a recreational vehicle  
36 and recreational vehicle components;

- 1 (2) Fail to assume all responsibility for any liability resulting from structural or  
2 production defects;
- 3 (3) Fail to include written notices of factory recalls to vehicle owners and dealers and the  
4 expected date by which necessary parts and equipment will be available to dealers for the  
5 correction of such defects;
- 6 (4) Fail to compensate any of its recreational vehicle dealers licensed in Georgia for  
7 repairs effected by such dealer of merchandise damaged in manufacture or transit to the  
8 dealer where the carrier is designated by the manufacturer, factory branch, distributor, or  
9 distributor branch;
- 10 (5) Fail to compensate its recreational vehicle dealers licensed in this state for warranty  
11 parts, work, and service in accordance with the schedule of compensation provided the  
12 dealer pursuant to subsection (a) of this Code section or for legal costs and expenses  
13 incurred by such dealers in connection with warranty obligations for which the grantor  
14 is legally responsible or which the grantor imposes upon the dealer;
- 15 (6) Misrepresent in any way purchases of recreational vehicles that contain warranties  
16 with respect to the manufacture, performance, or design of the vehicles which are made  
17 by the dealer, either as warrantor or co-warrantor; or
- 18 (7) Require the dealer to make warranties to customers in any manner related to the  
19 manufacture of a recreational vehicle.
- 20 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for  
21 any grantor to fail to indemnify and hold harmless its recreational vehicle dealers against  
22 any losses or damages arising out of claims, costs, judgments, and expenses, including  
23 reasonable attorney's fees, or suits relating to the manufacture, assembly, or design of  
24 recreational vehicles, parts, or accessories, or other functions by the grantor beyond the  
25 control of the dealer, including, without limitation, the selection by the grantor of parts or  
26 components for the recreational vehicle or any damages to merchandise occurring in transit  
27 to the dealer where the carrier is designated by the grantor. The dealer shall give notice to  
28 the grantor of pending suits in which allegations are made which come within this  
29 subsection whenever reasonably practicable to do so. Any recreational vehicle dealer  
30 franchise agreement issued to, amended, or renewed for recreational vehicles in Georgia  
31 on or after July 1, 2005, shall be deemed to incorporate provisions consistent with the  
32 requirements of this subsection.
- 33 (g) On any new recreational vehicle, any uncorrected and significant damage, or any  
34 corrected damage exceeding 5 percent of the manufacturer's suggested retail price or  
35 \$500.00 or more in paint damage, must be disclosed to the dealer in writing prior to  
36 delivery. Factory mechanical repair and damage to glass, tires, and bumpers is excluded

1 from disclosure when properly replaced by identical manufacturer's or distributor's  
2 original equipment or parts.

3 (h) Whenever a new recreational vehicle is damaged in transit when the carrier or means  
4 of transportation is determined by the manufacturer or distributor or whenever a  
5 recreational vehicle is otherwise damaged prior to delivery to the recreational vehicle  
6 dealer or if a new recreational vehicle is found to have substantial box or chassis defects  
7 upon arrival at the recreational vehicle dealership, the dealer must notify the manufacturer  
8 or distributor of such damage or such defects within ten business days from the date of  
9 delivery or within a reasonable amount of additional time or, if longer, such time as  
10 specified in the recreational vehicle dealership franchise agreement and either:

11 (1) Request from the manufacturer or distributor authorization to replace the  
12 components, parts, and accessories damaged or otherwise correct the damage; or

13 (2) Reject the vehicle.

14 If the dealer exercises the option to refuse delivery of the vehicle, the recreational vehicle  
15 manufacturer must immediately repurchase such vehicle.

16 (i) If the manufacturer or distributor refuses or fails to authorize repair of such damage  
17 within ten days after receipt of notification or if the dealer rejects a recreational vehicle  
18 because of damage, ownership of the new recreational vehicle shall revert to the  
19 manufacturer or distributor and the recreational vehicle dealer shall have no obligations,  
20 financial or otherwise, with respect to such recreational vehicle.

21 (j) All manufacturers, distributors, and suppliers of recreational vehicle components shall  
22 be subject to the provisions of this article.

23 10-1-679.11.

24 If any grantor violates this article, a recreational vehicle dealer may bring an action against  
25 such grantor in a court of competent jurisdiction in the county of the recreational vehicle  
26 dealer for damages sustained as a consequence of the grantor's violation, together with the  
27 actual costs of the action including reasonable attorney's fees, and the dealer also may be  
28 granted injunctive relief against unlawful termination, cancellation, nonrenewal, or  
29 substantial change of competitive circumstances and refusal to permit transfer of ownership  
30 in accordance with Code Sections 10-1-679.2 and 10-1-679.3.

31 10-1-679.12.

32 In any action brought by a recreational vehicle dealer against a grantor under this article,  
33 any violation of this article by the grantor shall be deemed an irreparable injury to the  
34 recreational vehicle dealer for determining if a temporary injunction should be issued.



1 10-1-679.13.

2 It shall be unlawful for a grantor to establish a new recreational vehicle dealership unless  
3 the dealer meets the requirements and definitions provided in this article.

4 10-1-679.14.

5 It shall be unlawful for any dealer to sell or distribute any new recreational vehicle in  
6 Georgia unless the dealer has a franchise dealership agreement with a grantor with the  
7 express right to sell or distribute recreational vehicles in Georgia and meets the  
8 requirements and definitions provided in this article. Any dealer who does not meet the  
9 requirements of this article may participate in events where recreational vehicles are  
10 exhibited or demonstrated and seminars are provided but shall be prohibited from  
11 contracting to sell or distribute recreational vehicles to the public.

12 10-1-679.15.

13 Any person who violates the provisions of this article shall be guilty of a misdemeanor."

14 **SECTION 3.**

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