

The House Committee on Judiciary offers the following substitute to SB 155:

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 or warrantor upon
10 termination of a dealership; to provide that it is illegal for a grantor or warrantor to coerce
11 a dealer to purchase its parts or accessories; to provide that a grantor or warrantor must
12 approve a sale of a dealership if the terms are reasonable; to provide for succession of the
13 dealership to the dealer's named beneficiaries; to provide for warranty obligations; to provide
14 for dispute resolution; to provide for applicability; to provide for related matters; to repeal
15 conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **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."

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

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

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

5 (3) The adequacy of the dealer's service facilities, equipment, parts, supplies, and
6 personnel;

7 (4) The effect of the proposed action on the community;

8 (5) The extent and quality of the dealer's service under recreational vehicle warranties;
9 and

10 (6) The dealer's performance under the terms of its franchise agreement.

11 10-1-679.1.

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

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

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

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

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

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

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

28 10-1-679.2.

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

1 10-1-679.3.

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

4 10-1-679.4.

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

9 10-1-679.5.

10 (a) Except as provided in this Code section, a grantor shall provide a recreational vehicle
11 dealer at least 120 days' prior written notice of termination, cancellation, nonrenewal, or
12 substantial change in competitive circumstances and shall provide that the recreational
13 vehicle dealer has 120 days in which to rectify any claimed deficiency. The notice shall
14 state all the reasons for termination, cancellation, or nonrenewal and shall further state that
15 if, within 30 days following the receipt of the grantor's notice, the recreational vehicle
16 dealer provides to the grantor a written notice to cure all claimed deficiencies, the
17 recreation vehicle dealer shall then have 120 days from the date of the notice to rectify such
18 deficiencies. If the deficiency is rectified within 120 days, the notice shall be void. The
19 notice provisions of this Code section shall not apply if the reason for termination,
20 cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit
21 of creditors, or bankruptcy.

22 (b) The 120 days' notice shall be reduced to 30 days' notice if the grounds for termination,
23 cancellation, or nonrenewal is due to:

24 (1) Conviction or pleas of nolo contendere to a felony of a recreational vehicle dealer or
25 one of its principal owners;

26 (2) The business operation of the recreational vehicle dealer has been abandoned or
27 closed for ten consecutive days, unless the closing is due to an act of God, strike, or labor
28 difficulty or other cause over which the dealer has no control;

29 (3) The suspension, revocation, or refusal to renew the recreational vehicle dealer's
30 license; or

31 (4) A significant misrepresentation by the recreational dealer.

1 10-1-679.6.

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

5 (1) All new, untitled recreational vehicle inventory acquired from the manufacturer
6 within 12 months prior to the effective date of the termination, cancellation, or
7 nonrenewal which has not been materially altered or substantially damaged. The grantor
8 shall reimburse the dealer for 100 percent of the net invoice cost of such inventory,
9 including transportation, less applicable rebates and discounts to the dealer.

10 (2) All functioning diagnostic equipment, special tools, other equipment and machinery,
11 accessories and proprietary parts, and signage as were required to meet the dealer's
12 service responsibilities in accordance with manufacturer's guides and applicable
13 customer service bulletins and signs sold under the recreational vehicle dealership
14 agreement.

15 (b) The manufacturer shall reimburse the dealer for 100 percent of the current net prices
16 as published in the manufacturer's current price lists or catalogs on accessories and parts,
17 including superseded parts, provided it was purchased by the dealer within five years
18 before termination and can no longer be used in the normal course of the dealer's business,
19 plus 5 percent of the current net price of all manufacturer's accessories and parts returned
20 to compensate the dealer for handling, packing, and loading the parts, plus the cost of
21 freight to return said parts. The grantor shall pay the dealer within 30 days of receipt of the
22 returned items. This Code section shall apply only to merchandise with a name, trademark,
23 label, or other mark on it which identifies the grantor or with proof of purchase from the
24 grantor.

25 10-1-679.7.

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

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

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

32 10-1-679.8.

33 It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer of
34 the ownership of a recreational vehicle dealership by the sale of the business assets, stock
35 transfer, or otherwise, or a change in executive management or principal operator of the

1 dealership if the new owner, principal operator, or management is creditworthy, has not
2 been convicted of a felony, and is properly licensed; the sale or transfer shall not result in
3 a relocation of the business; and the sale or transfer is otherwise reasonable under the
4 circumstances. The recreational vehicle dealer must give the manufacturer 30 days' written
5 notice prior to the closing of such agreement. If the manufacturer rejects a proposed
6 change or sale, the manufacturer shall give written notice of its reasons to the recreational
7 vehicle dealer within 30 days after receipt of the dealer notification and complete
8 documentation. If no such notice is given to the recreational vehicle dealer, the change or
9 sale shall be deemed approved. The burden of proving that any sale or transfer is not
10 reasonable shall be on the grantor.

11 10-1-679.9.

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

18 (b) It shall be unlawful to prevent or refuse to honor the succession to a dealership by a
19 family member of the deceased, incapacitated, or retired dealer unless the grantor has
20 provided to the family member so designated written notice of its objections. The burden
21 of proving that such transfer is not reasonable shall be on the grantor.

22 (c) Grounds for objection shall be lack of creditworthiness, conviction of a felony,
23 inability to obtain necessary and required licenses by the beneficiary, lack of required
24 licenses, or other conditions which make such succession unreasonable under the
25 circumstances, but the grantor shall bear the burden of proving the unreasonableness of
26 such succession. No family member of the deceased, incapacitated, or retired dealer may
27 succeed to a recreational vehicle dealership unless the succession to the recreational vehicle
28 dealership will not involve, without the grantor's consent, a relocation of the business.

29 10-1-679.10.

30 (a) Each grantor or warrantor, where applicable, shall specify in writing to each of its
31 recreational vehicle dealers licensed in Georgia the dealer's obligation for preparation,
32 delivery, and warranty service on its products; shall compensate the dealer for warranty
33 service required of the dealer by the grantor or warrantor; and shall provide the dealer the
34 schedule of compensation to be paid to such dealers for parts, work, and service in
35 connection with warranty service and the time allowances for the performance of such

1 work and service. In no event shall such schedule of compensation fail to include
2 reasonable compensation for diagnostic work as well as repair service and labor.

3 (b) Time allowances for the diagnosis and performance of warranty work and service shall
4 be reasonable and adequate for the work to be performed. In the determination of what
5 constitutes reasonable compensation under this Code section, the principal factors to be
6 considered shall be the actual wage rates being paid by the dealer and the actual retail labor
7 rates being charged by the dealer in the community in which the dealer is doing business.
8 In no event shall such compensation of a dealer for warranty labor be less than the retail
9 rates charged by the dealer for like service to retail customers for nonwarranty labor and
10 repairs as long as such rates are reasonable.

11 (c) A grantor or warrantor, where applicable, shall reimburse the dealer for warranty parts
12 at actual wholesale costs plus a minimum 30 percent handling charge and the cost, if any,
13 of freight to return warranty parts to the grantor or warrantor. Warranty audits of dealer
14 records may be conducted by the grantor or warrantor, where applicable, on a reasonable
15 basis. A grantor or warrantor, where applicable, must disapprove warranty claims in
16 writing within 30 days of the date of submission by the dealer in the manner and form
17 prescribed by the grantor or warrantor. Claims not specifically disapproved in writing
18 within this 30 day period shall be construed to be approved and shall be paid within 45
19 days.

20 (d) Dealer claims for warranty compensation shall not be denied except for good cause,
21 such as performance of nonwarranty repairs, lack of material documentation, fraud, or
22 misrepresentation. Claims for dealer compensation must be submitted within 45 days of
23 completing the work. The dealer must notify the warrantor verbally or in writing if the
24 dealer is unable to promptly perform material or repetitive warranty repairs. All claims
25 shall be paid within 30 days of dealer submission or rejected in writing for stated reasons.

26 (e) It shall be a violation of this article for any grantor or warrantor, where applicable, to:

27 (1) Fail to perform any of its warranty obligations with respect to a recreational vehicle
28 and recreational vehicle components;

29 (2) Fail to assume all responsibility for any liability resulting from structural or
30 production defects;

31 (3) Fail to include written notices of factory recalls to vehicle owners and dealers and the
32 expected date by which necessary parts and equipment will be available to dealers for the
33 correction of such defects. The grantor or warrantor, where applicable, may ship parts
34 in quantity to the dealer to effect such campaign work, and if such parts are in excess of
35 the dealer's requirements, the dealer may return unused parts to the grantor or warrantor
36 for credit after completion of the campaign;

1 (4) Fail to compensate any of its recreational vehicle dealers licensed in Georgia for
2 repairs effected by such dealer of merchandise damaged in manufacture or transit to the
3 dealer where the carrier is designated by the grantor, factory branch, distributor, or
4 distributor branch;

5 (5) Fail to compensate its recreational vehicle dealers licensed in this state for warranty
6 parts, work, and service in accordance with the schedule of compensation provided the
7 dealer pursuant to subsection (a) of this Code section if performed in a timely and
8 competent manner, or for legal costs and expenses incurred by such dealers in connection
9 with warranty obligations for which the grantor or warrantor, where applicable, is legally
10 responsible or which the grantor or warrantor imposes upon the dealer;

11 (6) Misrepresent in any way purchases of recreational vehicles that contain warranties
12 with respect to the manufacture, performance, or design of the vehicles which are made
13 by the dealer, either as warrantor or co-warrantor; or

14 (7) Require the dealer to make warranties to customers in any manner related to the
15 manufacture of a recreational vehicle.

16 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for
17 any grantor or warrantor, where applicable, to fail to indemnify and hold harmless its
18 recreational vehicle dealers against any losses or damages arising out of claims, costs,
19 judgments, and expenses, including reasonable attorney's fees, or suits relating to the
20 manufacture, assembly, or design of recreational vehicles, parts, or accessories, or other
21 functions by the grantor or warrantor beyond the control of the dealer, including, without
22 limitation, the selection by the grantor or warrantor, where applicable, of parts or
23 components for the recreational vehicle or any damages to merchandise occurring in transit
24 to the dealer where the carrier is designated by the grantor or warrantor. The dealer shall
25 give notice to the grantor or warrantor of pending suits in which allegations are made
26 which come within this subsection whenever reasonably practicable to do so. Any
27 recreational vehicle dealer franchise agreement issued to, amended, or renewed for
28 recreational vehicles in Georgia on or after July 1, 2005, shall be deemed to incorporate
29 provisions consistent with the requirements of this subsection.

30 (g) On any new recreational vehicle, any uncorrected and significant damage, or any
31 corrected damage exceeding 5 percent of the manufacturer's suggested retail price or
32 \$500.00 or more in paint damage, must be disclosed to the dealer in writing prior to
33 delivery. Factory mechanical repair and damage to glass, tires, and bumpers is excluded
34 from disclosure when properly replaced by identical manufacturer's or distributor's
35 original equipment or parts.

36 (h) Whenever a new recreational vehicle is damaged in transit when the carrier or means
37 of transportation is determined by the manufacturer or distributor or whenever a

1 recreational vehicle is otherwise damaged prior to delivery to the recreational vehicle
2 dealer or if a new recreational vehicle is found to have substantial box or chassis defects
3 upon arrival at the recreational vehicle dealership, the dealer must notify the grantor or
4 distributor of such damage or such defects within three business days from the date of
5 delivery or within a reasonable amount of additional time or such time as specified in the
6 recreational vehicle dealership franchise agreement and either:

- 7 (1) Request from the grantor, warrantor, or distributor authorization to replace the
8 components, parts, and accessories damaged or otherwise correct the damage; or
- 9 (2) Reject the vehicle within the three day grace period.

10 If the dealer exercises the option to refuse delivery of the vehicle, the recreational vehicle
11 grantor must immediately repurchase such vehicle.

12 (i) If the grantor, warrantor, or distributor refuses or fails to authorize repair of such
13 damage within ten days after receipt of notification or if the dealer rejects a recreational
14 vehicle because of damage, ownership of the new recreational vehicle shall revert to the
15 grantor or distributor and the recreational vehicle dealer shall have no obligations, financial
16 or otherwise, with respect to such recreational vehicle.

17 (j) It shall be a violation of this article for any recreational vehicle dealer to:

- 18 (1) Fail to perform predelivery inspection functions, if required, in a competent and
19 timely manner;
- 20 (2) Fail to perform warranty service work, authorized by the vehicle warrantor, in a
21 reasonably timely and competent manner on any transient customer's vehicle of the same
22 line-make, whether sold by that dealer or not;
- 23 (3) Intentionally misrepresent the terms of any warranty.

24 (k) All grantors, warrantors, and distributors of recreational vehicle components shall be
25 subject to the provisions of this article.

26 10-1-679.11.

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

1 10-1-679.12.

2 In any action brought by a recreational vehicle dealer against a grantor or warrantor under
3 this article, any violation of this article by the grantor or warrantor shall be deemed an
4 irreparable injury to the recreational vehicle dealer for determining if a temporary
5 injunction should be issued.

6 10-1-679.13.

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

9 10-1-679.14.

10 It shall be unlawful for any dealer to sell or distribute any new recreational vehicle in
11 Georgia unless the dealer has a franchise dealership agreement with a grantor with the
12 express right to sell or distribute recreational vehicles in Georgia and meets the
13 requirements and definitions provided in this article. Any dealer who does not meet the
14 requirements of this article may participate in events where recreational vehicles are
15 exhibited or demonstrated and seminars are provided but shall be prohibited from
16 contracting to sell or distribute recreational vehicles to the public. Notwithstanding the
17 foregoing, this section shall not apply to the sale of recreational vehicles at events
18 sponsored by a Georgia based recreational vehicle grantor with manufacturing facilities
19 located in the state, where recreational vehicles are sold or contracted for by its franchised
20 out-of-state recreational vehicle dealers.

21 10-1-679.15.

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

23 **SECTION 3.**

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