

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

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

(8) 'Warrantor' means a person, firm, corporation, or business entity that gives a warranty in connection with a new recreational vehicle or parts, accessories, or components thereof. Such term does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

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

10-1-679.1.

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

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

- (1) To promote the compelling interest of the public in fair business relations between recreational vehicle dealers and grantors and in the continuation of recreational vehicle dealerships on a fair basis;
- (2) To protect recreational vehicle dealers against unfair treatment by grantors who inherently have superior economic power and superior bargaining power in the negotiations of recreational vehicle dealerships;
- (3) To provide recreational vehicle dealers with rights and remedies in addition to those existing by contract or common law; and
- (4) To govern all franchise agreements for recreational vehicle dealerships, including any renewals or amendments, to the full extent consistent with the Constitutions of Georgia and the United States.

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

10-1-679.2.

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

10-1-679.3.

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

10-1-679.4.

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

10-1-679.5.

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

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

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

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

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

(4) A significant misrepresentation by the recreational dealer.

10-1-679.6.

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

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

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

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

10-1-679.7.

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

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

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

10-1-679.8.

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

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

10-1-679.9.

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

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

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

10-1-679.10.

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

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

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

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

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

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

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

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

10-1-679.11.

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

10-1-679.12.

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

10-1-679.13.

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

10-1-679.14.

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

10-1-679.15.

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

SECTION 3.

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