

House Bill 117

By: Representatives Heard of the 104th, Knox of the 24th, Lewis of the 15th, Hembree of the 67th, Yates of the 73rd, and others

A BILL TO BE ENTITLED
AN ACT

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

19 Part 1 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
20 relating to general considerations regarding motor vehicle franchises, is amended by revising
21 paragraph (10) of Code Section 10-1-622, relating to definitions relative to motor vehicle
22 franchises, as follows:

23 "(10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and
24 operation on the public highways, except farm tractors and other machines and tools used
25 in the production, harvesting, and care of farm products, construction equipment,
26 motorcycles as defined in paragraph (7) of subsection (a) of Code Section 10-1-725,
27 all-terrain vehicles as defined in paragraph (1) of subsection (a) of Code Section

1 10-1-725, utility vehicles as defined in paragraph (12) of subsection (a) of Code Section
 2 10-1-725, and recreational vehicles as defined in paragraph (5) of subsection (a) of Code
 3 Section 10-1-679."

4 SECTION 2.

5 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
 6 trade practices, is amended by inserting a new Article 25A to read as follows:

7 "ARTICLE 25A

8 10-1-725.

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

10 (1) 'All-terrain vehicle' means any motorized vehicle designed for off-road use which is
 11 equipped with three or more low pressure tires and with a seat to be straddled by the
 12 operator and with handlebars for steering control.

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

16 (3) 'Dealer' means a person who is a grantee of a motorcycle, all-terrain vehicle, or utility
 17 vehicle dealership situated in Georgia.

18 (4) 'Franchise' means an oral or written agreement for a definite or indefinite period of
 19 time in which a manufacturer grants to a motorcycle, all-terrain vehicle, or utility vehicle
 20 dealer permission to use a trade name, service mark, or related characteristic and in which
 21 there is a community of interest in the marketing of motorcycle, all-terrain vehicle, or
 22 utility vehicle products or services related thereto at wholesale or retail, whether by
 23 leasing, sale, or otherwise.

24 (5) 'Grantor' means a person who grants a motorcycle, all-terrain vehicle, or utility
 25 vehicle dealership.

26 (6) 'Moped' or 'scooter' means a motor driven cycle equipped with two wheels, with or
 27 without foot pedals to permit muscular propulsion, and an independent power source
 28 providing a maximum of two brake horsepower. If a combustion engine is used, the
 29 maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters)
 30 regardless of the number of chambers in such power source. The power source shall be
 31 capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour
 32 (48.28 kilometers per hour) on level road surfaces and shall be equipped with a power
 33 drive system that functions directly or automatically only, not requiring clutching or
 34 shifting by the operator after the drive system is engaged.

1 (7) 'Motorcycle' means every motor vehicle having a seat or saddle for the use of the
2 rider and designed to travel on not more than three wheels in contact with the ground, but
3 excluding a tractor, all-terrain vehicle, utility vehicle, and moped.

4 (8) 'Motorcycle, all-terrain vehicle, or utility vehicle dealer' means a person who is a
5 grantee of a motorcycle, all-terrain vehicle, or utility vehicle dealership situated in
6 Georgia.

7 (9) 'Motorcycle, all-terrain vehicle, or utility vehicle dealership' means an established
8 place of business engaged in the marketing of new motorcycle, all-terrain vehicle, or
9 utility vehicle products or services related thereto at wholesale or retail, whether by
10 leasing, sale, or otherwise, and which is marked by an appropriate permanent sign; which
11 has a working telephone with a telephone number listed in the local phone directory;
12 which derives at least 75 percent of its revenue from the sale of new motorcycles,
13 all-terrain vehicles, and utility vehicles and from the sale of motorcycle, all-terrain
14 vehicle, and utility vehicle related products and services; and which provides services or
15 repair for such vehicles.

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

18 (11) 'Relevant market area' means the larger of the following:

19 (A) The area of responsibility defined in the franchise agreement of an existing dealer;
20 or

21 (B) The geographic area within a radius of 15 miles of any existing dealer of the same
22 line or make of vehicle that is located in a county with a population of more than
23 200,000 persons according the most recent United States decennial census or within a
24 radius of 25 miles of an existing dealer of the same line or make of vehicle that is
25 located in a county with a population of 200,000 or fewer persons according to the most
26 recent United States decennial census.

27 (12) 'Tractor' means any self-propelled vehicle designed for use as a traveling power
28 plant or for drawing other vehicles but having no provision for carrying loads
29 independently.

30 (13) 'Utility vehicle' means any motorized vehicle designed and manufactured for
31 off-road use only which is equipped with four or more low pressure tires, with one or
32 more bench or bucket seats for the operator and passengers, with a steering wheel for
33 steering control, and with a cargo bed.

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

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

37 (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 motorcycle, all-terrain vehicle,
5 or utility vehicle warranties; and

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

7 10-1-725.1.

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 motorcycle, all-terrain vehicle, and utility vehicle dealers and grantors and in the
13 continuation of motorcycle, all-terrain vehicle, and utility vehicle dealerships on a fair
14 basis;

15 (2) To protect motorcycle, all-terrain vehicle, and utility vehicle dealers against unfair
16 treatment by grantors who inherently have superior economic power and superior
17 bargaining power in the negotiations of motorcycle, all-terrain vehicle, and utility vehicle
18 dealerships;

19 (3) To provide motorcycle, all-terrain vehicle, and utility vehicle dealers with rights and
20 remedies in addition to those existing by contract or common law; and

21 (4) To govern all franchise agreements for motorcycle, all-terrain vehicle, and utility
22 vehicle dealerships, including any renewals or amendments, to the full extent consistent
23 with the Constitutions of Georgia and the United States.

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

26 10-1-725.2.

27 Sales of motorcycles, all-terrain vehicles, and utility vehicles by grantors or distributors
28 shall be in accordance with published prices, charges, and terms of sale in effect at any
29 given time.

30 10-1-725.3.

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

1 10-1-725.4.

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

10 10-1-725.5.

11 (a) If a motorcycle, all-terrain vehicle, or utility vehicle dealership franchise agreement is
12 terminated, canceled, or not renewed by the grantor, the grantor, at the option of the
13 motorcycle, all-terrain vehicle, or utility vehicle dealer, shall repurchase:

14 (1) All inventories of motorcycles, all-terrain vehicles, or utility vehicles, parts, and
15 accessories sold by the grantor to the motorcycle, all-terrain vehicle, or utility vehicle
16 dealer for resale; and

17 (2) All diagnostic equipment, special tools, other equipment and machinery, and signage
18 as were required to meet the dealer's service responsibilities in accordance with
19 manufacturer's guides and applicable customer service bulletins and signs sold under the
20 motorcycle, all-terrain vehicle, or utility vehicle dealership agreement.

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

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

35 (d) The grantor shall reimburse the dealer for 100 percent of the current net prices as
36 published in the grantor's current price lists or catalogs on accessories and parts, including

1 superseded parts, plus 40 percent of the current net price of all grantor's accessories and
2 parts returned to compensate the dealer for handling, packing, and loading the parts.

3 10-1-725.6.

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

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

7 (2) To coerce, or attempt to coerce, any dealer to enter into an agreement with such
8 grantor or do any other act unfair to such dealer by threatening to cancel any motorcycle,
9 all-terrain vehicle, or utility vehicle dealership franchise agreement existing between such
10 grantor and such dealer.

11 10-1-725.7.

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

21 10-1-725.8.

22 (a) It shall be unlawful for any grantor to fail to provide a motorcycle, all-terrain vehicle,
23 or utility vehicle dealer with an opportunity, at the time of signing a motorcycle, all-terrain
24 vehicle, or utility vehicle dealership franchise agreement or at a reasonable time thereafter,
25 to designate a member of his or her family as a successor to the dealership in the event of
26 the death or incapacity of the dealer. A dealer may from time to time during the term of
27 the franchise agreement change the beneficiary by providing a written notification to the
28 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 that 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
35 conditions which make such succession unreasonable under the circumstances; but the

1 grantor shall bear the burden of proving the unreasonableness of such succession. No
2 member of the family of the deceased or incapacitated dealer may succeed to a motorcycle,
3 all-terrain vehicle, or utility vehicle dealership unless the succession to such dealership will
4 not involve, without the grantor's consent, a relocation of the business.

5 10-1-725.9.

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

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

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

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

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

- 34 (1) Fail to perform any of its warranty obligations with respect to a motorcycle,
35 all-terrain vehicle, or utility vehicle and motorcycle, all-terrain vehicle, or utility vehicle
36 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 motorcycle, all-terrain vehicle, or utility vehicle dealers
7 licensed in Georgia for repairs effected by such dealer of merchandise damaged in
8 manufacture or transit to the dealer where the carrier is designated by the manufacturer,
9 factory branch, distributor, or distributor branch;
- 10 (5) Fail to compensate its motorcycle, all-terrain vehicle, or utility vehicle dealers
11 licensed in this state for warranty parts, work, and service in accordance with the
12 schedule of compensation provided the dealer pursuant to subsection (a) of this Code
13 section or for legal costs and expenses incurred by such dealers in connection with
14 warranty obligations for which the grantor is legally responsible or which the grantor
15 imposes upon the dealer;
- 16 (6) Misrepresent in any way purchases of motorcycles, all-terrain vehicles, or utility
17 vehicles that contain warranties with respect to the manufacture, performance, or design
18 of the vehicles which are made by the dealer, either as warrantor or co-warrantor; or
- 19 (7) Require the dealer to make warranties to customers in any manner related to the
20 manufacture of a motorcycle, all-terrain vehicle, or utility vehicle.
- 21 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for
22 any grantor to fail to indemnify and hold harmless its motorcycle, all-terrain vehicle, or
23 utility vehicle dealers against any losses or damages arising out of claims, costs, judgments,
24 expenses including reasonable attorney's fees, or suits relating to the manufacture,
25 assembly, or design of motorcycles, all-terrain vehicles, or utility vehicles, parts, or
26 accessories, or other functions by the grantor beyond the control of the dealer, including,
27 without limitation, the selection by the grantor of parts or components for the motorcycle,
28 all-terrain vehicle, or utility vehicle or any damages to merchandise occurring in transit to
29 the dealer where the carrier is designated by the grantor. The dealer shall give notice to the
30 grantor of pending suits in which allegations are made which fall under within this
31 subsection whenever reasonably practicable to do so. Any motorcycle, all-terrain vehicle,
32 or utility vehicle dealer franchise agreement issued to, amended, or renewed for
33 motorcycles, all-terrain vehicles, or utility vehicles in Georgia on or after July 1, 2007,
34 shall be deemed to incorporate provisions consistent with the requirements of this
35 subsection.
- 36 (g) Whenever a new motorcycle, all-terrain vehicle, or utility vehicle is damaged in transit
37 when the carrier or means of transportation is determined by the grantor or distributor or
38 whenever a motorcycle, all-terrain vehicle, or utility vehicle is otherwise damaged prior to

1 delivery to the motorcycle, all-terrain vehicle, or utility vehicle dealer or if a new
2 motorcycle, all-terrain vehicle, or utility vehicle is found to have substantial box or chassis
3 defects upon arrival at the motorcycle, all-terrain vehicle, or utility vehicle dealership, the
4 dealer must notify the grantor or distributor of such damage or such defects within ten
5 business days from the date of delivery or within a reasonable amount of additional time
6 or, if longer, such time as specified in the motorcycle, all-terrain vehicle, or utility vehicle
7 dealership franchise agreement and either:

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

10 (2) Reject the vehicle.

11 If the dealer exercises the option to refuse delivery of the vehicle, the motorcycle,
12 all-terrain vehicle, or utility vehicle manufacturer must immediately repurchase such
13 vehicle.

14 (h) If the grantor or distributor refuses or fails to authorize repair of such damage within
15 ten days after receipt of notification or if the dealer rejects a motorcycle, all-terrain vehicle,
16 or utility vehicle because of damage, ownership of the new motorcycle, all-terrain vehicle,
17 or utility vehicle shall revert to the grantor or distributor and the motorcycle, all-terrain
18 vehicle, or utility vehicle dealer shall have no obligations, financial or otherwise, with
19 respect to such motorcycle, all-terrain vehicle, or utility vehicle.

20 (i) All manufacturers, distributors, and suppliers of motorcycle, all-terrain vehicle, or
21 utility vehicle components shall be subject to the provisions of this article.

22 10-1-725.10.

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

30 10-1-725.11.

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

35 10-1-725.12.

1 It shall be unlawful for a grantor to establish a new motorcycle, all-terrain vehicle, or utility
2 vehicle dealership unless the dealer meets the requirements and definitions provided in this
3 article.

4 10-1-725.13.

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

13 10-1-725.14.

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

15 **SECTION 3.**

16 This Act shall become effective on July 1, 2007, and shall apply to any agreement entered
17 into on or after July 1, 2007, and to any renewal, modification, or amendment made on or
18 after July 1, 2007, to any such agreement.

19 **SECTION 4.**

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