

The House Committee on Judiciary offers the following substitute to HB 117:

A BILL TO BE ENTITLED
AN ACT

To amend provisions of the Official Code of Georgia Annotated relating to motorcycles and all-terrain 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 motorcycles, all-terrain vehicles, and utility 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 motorcycle, all-terrain vehicle, and utility 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 upon termination of a dealership; to provide that it is illegal for a grantor to coerce a dealer to purchase its parts or accessories; to provide that a grantor 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 an effective date; 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 revising paragraph (10) of Code Section 10-1-622, relating to definitions relative to motor vehicle franchises, as follows:

"(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, construction equipment, motorcycles as defined in paragraph (7) of subsection (a) of Code Section 10-1-725,

H. B. 117 (SUB)

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

5 **SECTION 2.**

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

8 "ARTICLE 25A

9 10-1-725.

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

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

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

17 (3) 'Dealer' means a person who performs retail sales of new motorcycles, all-terrain
18 vehicles, or utility vehicle products situated in Georgia.

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

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

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

1 drive system that functions directly or automatically only, not requiring clutching or
2 shifting by the operator after the drive system is engaged.

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

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

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

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

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

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

23 (B) The geographic area within a radius of 10 miles of any existing dealer of the same
24 line or make of vehicle that is located in a county with a population of more than
25 200,000 persons according the most recent United States decennial census or within a
26 radius of 15 miles of an existing dealer of the same line or make of vehicle that is
27 located in a county with a population of 200,000 or fewer persons according to the most
28 recent United States decennial census.

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

32 (13) 'Utility vehicle' means any motorized vehicle designed and manufactured for
33 off-road use only which has a gross vehicle weight of 850 pounds or more and which is
34 equipped with four or more low pressure tires, with one or more bench or bucket seats
35 for the operator and passengers, with a steering wheel for steering control, and with a
36 cargo bed.

(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 motorcycle, all-terrain vehicle, or utility vehicle warranties; and
- (6) The dealer's performance under the terms of its franchise agreement.

10-1-725.1.

(a) This article shall be reasonably 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 motorcycle, all-terrain vehicle, and utility vehicle dealers and grantors and in the continuation of motorcycle, all-terrain vehicle, and utility vehicle dealerships on a fair basis;
- (2) To protect motorcycle, all-terrain vehicle, and utility vehicle dealers against unfair treatment by grantors who inherently have superior economic power and superior bargaining power in the negotiations of motorcycle, all-terrain vehicle, and utility vehicle dealerships;
- (3) To provide motorcycle, all-terrain vehicle, and utility vehicle dealers with rights and remedies in addition to those existing by contract or common law; and
- (4) To govern all franchise agreements for motorcycle, all-terrain vehicle, and utility 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.

10-1-725.2.

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

1 10-1-725.3.

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

6 10-1-725.4.

7 Except as provided in this Code section, a grantor shall provide a motorcycle, all-terrain
8 vehicle, or utility vehicle dealer written notice of intent to terminate, cancel, or nonrenew.
9 The motorcycle, all-terrain vehicle, or utility vehicle dealer shall have 120 days following
10 receipt of notice in which to rectify any claimed deficiency. If the deficiency is rectified
11 within 120 days, the notice shall be void. The notice provisions of Code Section
12 10-1-725.3 shall not apply if the reason for termination, cancellation, or nonrenewal is
13 insolvency; the occurrence of an assignment for the benefit of creditors; bankruptcy; failure
14 of the dealer to conduct its customary sales and service operations during its customary
15 business hours for seven consecutive business days, except for acts of God or
16 circumstances beyond the control of the dealer; conviction of the dealer, general manager,
17 or managing executive or any owner with a substantial interest therein of any crime which
18 materially relates to the operation of the dealership or any felony which is punishable by
19 imprisonment; suspension or revocation for a period of more than 14 days of any license
20 which the dealer is required to have to operate a dealership; or fraud or intentional
21 misrepresentation by the dealer that materially affects the franchise. In such event, the
22 termination, cancellation, or nonrenewal shall become effective 15 days after receipt of
23 notice by the dealer.

24 10-1-725.5.

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

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

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

(b) The repurchase price shall be at the original invoice price plus freight, destination, delivery, and distribution charges and sales taxes incurred by the motorcycle, all-terrain vehicle, or utility vehicle dealer. 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.

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

(d) The grantor shall reimburse the dealer for 100 percent of the current net prices as published in the grantor's current price lists or catalogs on accessories and parts, including superseded parts, plus 7 percent of the current net price of all grantor's accessories and parts returned to compensate the dealer for handling, packing, and loading the parts.

10-1-725.6.

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 motorcycle, all-terrain vehicle, or utility vehicle dealership franchise agreement existing between such grantor and such dealer.

10-1-725.7.

It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer of the ownership of a motorcycle, all-terrain vehicle, or utility 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 will not result in a relocation of the business; and the sale or transfer is otherwise reasonable under the circumstances. The burden of proving that any sale or transfer is not

1 reasonable shall be on the grantor; provided, however, that the grantor and the dealer may
2 mutually agree to a relocation of the business.

3 10-1-725.8.

4 (a) It shall be unlawful for any grantor to fail to provide a motorcycle, all-terrain vehicle,
5 or utility vehicle dealer with an opportunity, at the time of signing a motorcycle, all-terrain
6 vehicle, or utility vehicle dealership franchise agreement or at a reasonable time thereafter,
7 to designate a member of his or her family as a successor to the dealership in the event of
8 the death or incapacity of the dealer. A dealer may from time to time during the term of
9 the franchise agreement change the beneficiary by providing a written notification to the
10 manufacturer.

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

15 (c) Grounds for objection shall be lack of creditworthiness, conviction of a felony,
16 inability to obtain necessary licenses by the beneficiary, lack of required licenses, or other
17 conditions which make such succession unreasonable under the circumstances; but the
18 grantor shall bear the burden of proving the unreasonableness of such succession. No
19 member of the family of the deceased or incapacitated dealer may succeed to a motorcycle,
20 all-terrain vehicle, or utility vehicle dealership unless the succession to such dealership will
21 not involve, without the grantor's consent, a relocation of the business.

22 10-1-725.9.

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

31 (b) Time allowances for the diagnosis and performance of warranty work and service shall
32 be reasonable and adequate for the work to be performed. In the determination of what
33 constitutes reasonable compensation under this Code section, the principal factors to be
34 given consideration shall be the prevailing wage rates being paid by the dealer and the
35 prevailing labor rate being charged by the dealer in the community in which the dealer is

1 doing business. In no event shall such compensation of a dealer for warranty service be
2 less than the rates charged by the dealer for like service to retail customers for nonwarranty
3 service and repairs so long as such rates are reasonable.

4 (c) A grantor shall reimburse the dealer for warranty parts at actual wholesale costs plus
5 a minimum 25 percent handling charge and the cost, if any, of freight to return warranty
6 parts to the manufacturer. Warranty audits of dealer records may be conducted by the
7 grantor on a reasonable basis. A grantor must disapprove warranty claims in writing within
8 30 days of the date of submission by the dealer in the manner and form prescribed by the
9 grantor. Claims not specifically disapproved in writing within this 30 days shall be
10 construed to be approved and shall be paid or credited within 45 days.

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

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

16 (1) Fail to perform any of its warranty obligations with respect to a motorcycle,
17 all-terrain vehicle, or utility vehicle and motorcycle, all-terrain vehicle, or utility vehicle
18 components;

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

21 (3) Fail to include written notices of factory recalls to vehicle owners and dealers and the
22 expected date by which necessary parts and equipment will be available to dealers for the
23 correction of such defects;

24 (4) Fail to compensate any of its motorcycle, all-terrain vehicle, or utility vehicle dealers
25 licensed in Georgia for repairs effected by such dealer of merchandise damaged in
26 manufacture or transit to the dealer where the carrier is designated by the manufacturer,
27 factory branch, distributor, or distributor branch;

28 (5) Fail to compensate its motorcycle, all-terrain vehicle, or utility vehicle dealers
29 licensed in this state for warranty parts, work, and service in accordance with the
30 schedule of compensation provided the dealer pursuant to subsection (a) of this Code
31 section or for legal costs and expenses incurred by such dealers in connection with
32 warranty obligations for which the grantor is legally responsible or which the grantor
33 imposes upon the dealer;

34 (6) Misrepresent in any way purchases of motorcycles, all-terrain vehicles, or utility
35 vehicles that contain warranties with respect to the manufacture, performance, or design
36 of the vehicles which are made by the dealer, either as warrantor or co-warrantor; or

1 (7) Require the dealer to make warranties to customers in any manner related to the
2 manufacture of a motorcycle, all-terrain vehicle, or utility vehicle.

3 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for
4 any grantor to fail to indemnify and hold harmless its motorcycle, all-terrain vehicle, or
5 utility vehicle dealers against any losses or damages arising out of claims, costs, judgments,
6 expenses including reasonable attorney's fees, or suits relating to the manufacture,
7 assembly, or design of motorcycles, all-terrain vehicles, or utility vehicles, parts, or
8 accessories, or other functions by the grantor beyond the control of the dealer, including,
9 without limitation, the selection by the grantor of parts or components for the motorcycle,
10 all-terrain vehicle, or utility vehicle or any damages to merchandise occurring in transit to
11 the dealer where the carrier is designated by the grantor. The dealer shall give notice to the
12 grantor of pending suits in which allegations are made which fall under within this
13 subsection whenever reasonably practicable to do so. Any motorcycle, all-terrain vehicle,
14 or utility vehicle dealer franchise agreement issued to, amended, or renewed for
15 motorcycles, all-terrain vehicles, or utility vehicles in Georgia on or after July 1, 2007,
16 shall be deemed to incorporate provisions consistent with the requirements of this
17 subsection.

18 (g) Whenever a new motorcycle, all-terrain vehicle, or utility vehicle is damaged in transit
19 when the carrier or means of transportation is determined by the grantor or distributor or
20 whenever a motorcycle, all-terrain vehicle, or utility vehicle is otherwise damaged prior to
21 delivery to the motorcycle, all-terrain vehicle, or utility vehicle dealer or if a new
22 motorcycle, all-terrain vehicle, or utility vehicle is found to have substantial box or chassis
23 defects upon arrival at the motorcycle, all-terrain vehicle, or utility vehicle dealership, the
24 dealer must notify the grantor or distributor of such damage or such defects within ten
25 business days from the date of delivery or within a reasonable amount of additional time
26 or, if longer, such time as specified in the motorcycle, all-terrain vehicle, or utility vehicle
27 dealership franchise agreement and either:

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

30 (2) Reject the vehicle.

31 If the dealer exercises the option to refuse delivery of the vehicle, the motorcycle,
32 all-terrain vehicle, or utility vehicle manufacturer must immediately repurchase such
33 vehicle.

34 (h) If the grantor or distributor refuses or fails to authorize repair of such damage within
35 ten days after receipt of notification or if the dealer rejects a motorcycle, all-terrain vehicle,
36 or utility vehicle because of damage, ownership of the new motorcycle, all-terrain vehicle,
37 or utility vehicle shall revert to the grantor or distributor and the motorcycle, all-terrain

1 vehicle, or utility vehicle dealer shall have no obligations, financial or otherwise, with
2 respect to such motorcycle, all-terrain vehicle, or utility vehicle.

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

5 10-1-725.10.

6 If any grantor violates this article, a motorcycle, all-terrain vehicle, or utility vehicle dealer
7 may bring an action against such grantor in a court of competent jurisdiction in the county
8 of the motorcycle, all-terrain vehicle, or utility vehicle dealer for damages sustained as a
9 consequence of the grantor's violation, together with the actual costs of the action
10 including reasonable attorney's fees; and the dealer also may be granted injunctive relief
11 against unlawful termination, cancellation, or nonrenewal and refusal to permit transfer of
12 ownership in accordance with this article.

13 10-1-725.11.

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

18 10-1-725.12.

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

22 10-1-725.13.

23 It shall be unlawful for any dealer to sell or distribute any new motorcycle, all-terrain
24 vehicle, or utility vehicle in Georgia unless the dealer has a franchise dealership agreement
25 with a grantor with the express right to sell or distribute motorcycles, all-terrain vehicles,
26 or utility vehicles in Georgia, operates a motorcycle, all-terrain vehicle, or utility vehicle
27 dealership, and meets all of the requirements and definitions provided in this article. Any
28 dealer who does not meet the requirements of this article may participate in events where
29 motorcycles, all-terrain vehicles, or utility vehicles are exhibited or demonstrated and
30 seminars are provided but shall be prohibited from contracting to sell or distribute
31 motorcycles, all-terrain vehicles, or utility vehicles to the public."

SECTION 3.

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

SECTION 4.

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