

House Bill 217

By: Representatives Battles of the 15th, Maxwell of the 17th, and Neal of the 1st

A BILL TO BE ENTITLED
AN ACT

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

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 SECTION 1.

17 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
18 trade practices, is amended by revising paragraph (10) of Code Section 10-1-622, relating
19 to definitions relative to motor vehicle franchises, as follows:

20 "(10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and
21 operation on the public highways, except farm tractors and other machines and tools used
22 in the production, harvesting, and care of farm products, construction equipment,
23 motorcycles as defined in paragraph (7) of subsection (a) of Code Section 10-1-725,
24 all-terrain vehicles as defined in paragraph (1) of subsection (a) of Code
25 Section 10-1-725, utility vehicles as defined in paragraph (12) of subsection (a) of Code

26 Section 10-1-725, and recreational vehicles as defined in paragraph (5) of subsection (a)
 27 of Code Section 10-1-679."

28 **SECTION 2.**

29 Said chapter is further amended by adding a new Article 25A to read as follows:

30 "ARTICLE 25A

31 10-1-725.

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

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

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

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

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

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

49 (6) 'Moped' or 'scooter' means a motor driven cycle equipped with two wheels, with or
 50 without foot pedals to permit muscular propulsion, and an independent power source
 51 providing a maximum of two brake horsepower. If a combustion engine is used, the
 52 maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters)
 53 regardless of the number of chambers in such power source. The power source shall be
 54 capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour
 55 (48.28 kilometers per hour) on level road surfaces and shall be equipped with a power
 56 drive system that functions directly or automatically only, not requiring clutching or
 57 shifting by the operator after the drive system is engaged.

58 (7) 'Motorcycle' means every motor vehicle having a seat or saddle for the use of the
59 rider and designed to travel on not more than three wheels in contact with the ground, but
60 excluding tractors, all-terrain vehicles, utility vehicles, and mopeds.

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

64 (9) 'Motorcycle, all-terrain vehicle, or utility vehicle dealership' means an established
65 place of business engaged in the marketing of new motorcycle, all-terrain vehicle, or
66 utility vehicle products or services related thereto at wholesale or retail, whether by
67 leasing, sale, or otherwise, and which is marked by an appropriate permanent sign; which
68 has a working telephone with a telephone number listed in the local phone directory;
69 which derives at least 75 percent of its revenue from the sale of new motorcycles,
70 all-terrain vehicles, or utility vehicles and from the sale of motorcycle, all-terrain vehicle,
71 or utility vehicle related products and services; and which provides services or repair for
72 such vehicles on site; provided, however, that any dealer as defined in Code
73 Section 13-8-12 and subject to the provisions of Article 2 of Chapter 8 of Title 13 which
74 is also engaged in the marketing of new motorcycle, all-terrain vehicle, or utility vehicle
75 products or services related thereto shall not be subject to the criteria of this paragraph
76 requiring that at least 75 percent of its revenue be derived from the sale of new
77 motorcycles, all-terrain vehicles, or utility vehicles and from the sale of motorcycle,
78 all-terrain vehicle, or utility vehicle related products and services.

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

81 (11) 'Tractor' means any self-propelled vehicle designed for use as a traveling power
82 plant or for drawing other vehicles but having no provision for carrying loads
83 independently.

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

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

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

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

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

- 95 (4) The effect of the proposed action on the community;
96 (5) The extent and quality of the dealer's service under motorcycle, all-terrain vehicle,
97 or utility vehicle warranties; and
98 (6) The dealer's performance under the terms of its franchise agreement.

99 10-1-725.1.

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

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

103 (1) To promote the compelling interest of the public in fair business relations between
104 motorcycle, all-terrain vehicle, and utility vehicle dealers and grantors and in the
105 continuation of motorcycle, all-terrain vehicle, and utility vehicle dealerships on a fair
106 basis;

107 (2) To protect motorcycle, all-terrain vehicle, and utility vehicle dealers against unfair
108 treatment by grantors who inherently have superior economic power and superior
109 bargaining power in the negotiation of motorcycle, all-terrain vehicle, and utility vehicle
110 dealerships;

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

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

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

118 10-1-725.2.

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

122 10-1-725.3.

123 (a) No grantor, directly or through any officer, agent, or employee, shall terminate, cancel,
124 fail to renew, or substantially change the area of sales responsibility of a motorcycle,
125 all-terrain vehicle, or utility vehicle dealership agreement without good cause. The burden
126 of proving good cause shall be on the grantor.

127 (b) The area of responsibility for a dealer shall be 20 miles for urban areas and 35 miles
128 for rural areas. As used in this subsection, the term 'urban' means a population of greater
129 than or equal to 150,000, and 'rural' means a population of less than 150,000.

130 10-1-725.4.

131 Except as provided in this Code section, a grantor shall provide a motorcycle, all-terrain
132 vehicle, or utility vehicle dealer with written notice of intent to terminate, cancel, or
133 nonrenew. The motorcycle, all-terrain vehicle, or utility vehicle dealer shall have 90 days
134 following receipt of notice in which to rectify any claimed deficiency. If the deficiency is
135 rectified within 90 days, the notice shall be void. The provisions of Code Section
136 10-1-725.3 shall not apply if the reason for termination, cancellation, or nonrenewal is
137 insolvency; the occurrence of an assignment for the benefit of creditors; bankruptcy; failure
138 of the dealer to conduct its customary sales and service operations during its customary
139 business hours for seven consecutive business days, except for acts of God or
140 circumstances beyond the control of the dealer; conviction of the dealer, general manager,
141 or managing executive or any owner with a substantial interest therein of any crime which
142 materially relates to the operation of the dealership or any felony which is punishable by
143 imprisonment; suspension or revocation for a period of more than 14 days of any license
144 which the dealer is required to have to operate a dealership; or fraud or intentional
145 misrepresentation by the dealer that materially affects the franchise. In such event, the
146 termination, cancellation, or nonrenewal shall become effective 15 days after receipt of
147 notice by the dealer.

148 10-1-725.5.

149 (a) If a motorcycle, all-terrain vehicle, or utility vehicle dealership franchise agreement is
150 terminated, canceled, or not renewed without good cause by the grantor, the grantor, at the
151 option of the motorcycle, all-terrain vehicle, or utility vehicle dealer, shall repurchase:

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

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

159 (b) The repurchase price shall be at the original invoice price plus freight, destination,
160 delivery, and distribution charges and sales taxes incurred by the motorcycle, all-terrain
161 vehicle, or utility vehicle dealer. The grantor shall pay the dealer within 30 days of receipt

162 of the returned items. This Code section shall apply only to merchandise with a name,
163 trademark, label, or other mark on it which identifies the grantor or with proof of purchase
164 from the grantor.

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

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

177 10-1-725.6.

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

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

181 (2) To coerce, or attempt to coerce, any dealer to enter into an agreement with such
182 grantor or do any other act unfair to such dealer by threatening to cancel any motorcycle,
183 all-terrain vehicle, or utility vehicle dealership franchise agreement existing between such
184 grantor and such dealer; or

185 (3) To mandate purchases of products to receive rebates and programs.

186 10-1-725.7.

187 (a) It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer
188 of the ownership of a motorcycle, all-terrain vehicle, or utility vehicle dealership by the
189 sale of the business assets, stock transfer, or otherwise or a change in executive
190 management or principal operator of the dealership if the new owner, principal operator,
191 or management is creditworthy, has not been convicted of a felony, and is properly
192 licensed; the sale or transfer will not result in a relocation of the business; and the sale or
193 transfer is otherwise reasonable under the circumstances. The burden of proving that any
194 sale or transfer is not reasonable shall be on the grantor; provided, however, that the grantor
195 and the dealer may mutually agree to a relocation of the business.

196 (b) Upon receiving written notice of a pending sale, merger, or transfer of ownership, the
197 grantor, within ten business days, shall provide a comprehensive and complete list of any
198 and all required documents and information from or about the parties concerned.

199 (c) Upon receiving all documents and information, the grantor shall not exceed 45 days
200 for approval.

201 10-1-725.8.

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

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

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

220 10-1-725.9.

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

229 (b) Time allowances for the diagnosis and performance of warranty work and service shall
230 be reasonable and adequate for the work to be performed. In the determination of what

231 constitutes reasonable compensation under this Code section, the principal factors to be
 232 given consideration shall be the prevailing wage rates being paid by the dealer and the
 233 prevailing labor rate being charged by the dealer in the community in which the dealer is
 234 doing business. In no event shall such compensation of a dealer for warranty service be
 235 less than the rates charged by the dealer for like service to retail customers for nonwarranty
 236 service and repairs so long as such rates are reasonable, unless the grantor conditions
 237 payment of such compensation upon the dealer's completion of factory training and the
 238 dealer has failed to complete such training.

239 (c) A grantor shall reimburse the dealer for warranty parts at actual wholesale costs plus
 240 a minimum 25 percent handling charge and the cost, if any, of freight to return warranty
 241 parts to the manufacturer. Warranty audits of dealer records may be conducted by the
 242 grantor on a reasonable basis. A grantor must disapprove warranty claims in writing within
 243 30 days of the date of submission by the dealer in the manner and form prescribed by the
 244 grantor. Claims not specifically disapproved in writing within this 30 days shall be
 245 construed to be approved and shall be paid or credited within 45 days.

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

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

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

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

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

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

263 (5) Fail to compensate its motorcycle, all-terrain vehicle, or utility vehicle dealers
 264 licensed in this state for warranty parts, work, and service in accordance with the
 265 schedule of compensation provided the dealer pursuant to subsection (a) of this Code
 266 section or for legal costs and expenses incurred by such dealers in connection with

267 warranty obligations for which the grantor is legally responsible or which the grantor
268 imposes upon the dealer;

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

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

274 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for
275 any grantor to fail to indemnify and hold harmless its motorcycle, all-terrain vehicle, or
276 utility vehicle dealers against any losses or damages arising out of claims, costs, judgments,
277 expenses, including reasonable attorney's fees, or suits relating to the manufacture,
278 assembly, or design of motorcycles, all-terrain vehicles, or utility vehicles, parts, or
279 accessories, or other functions by the grantor beyond the control of the dealer, including,
280 without limitation, the selection by the grantor of parts or components for the motorcycle,
281 all-terrain vehicle, or utility vehicle or any damages to merchandise occurring in transit to
282 the dealer where the carrier is designated by the grantor. The dealer shall give notice to the
283 grantor of pending suits in which allegations are made which fall under this subsection
284 whenever reasonably practicable to do so. Any motorcycle, all-terrain vehicle, or utility
285 vehicle dealer franchise agreement issued to, amended, or renewed for motorcycles,
286 all-terrain vehicles, or utility vehicles in Georgia on or after July 1, 2011, shall be deemed
287 to incorporate provisions consistent with the requirements of this subsection.

288 (g) Whenever a new motorcycle, all-terrain vehicle, or utility vehicle is damaged in transit
289 when the carrier or means of transportation is determined by the grantor or distributor or
290 whenever a motorcycle, all-terrain vehicle, or utility vehicle is otherwise damaged prior to
291 delivery to the motorcycle, all-terrain vehicle, or utility vehicle dealer or if a new
292 motorcycle, all-terrain vehicle, or utility vehicle is found to have substantial box or chassis
293 defects upon arrival at the motorcycle, all-terrain vehicle, or utility vehicle dealership, the
294 dealer shall notify the grantor or distributor of such damage or such defects within ten
295 business days from the date of delivery or within a reasonable amount of additional time
296 or, if longer, such time as specified in the motorcycle, all-terrain vehicle, or utility vehicle
297 dealership franchise agreement and either:

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

300 (2) Reject the vehicle.

301 If the dealer exercises the option to refuse delivery of the vehicle, the motorcycle,
302 all-terrain vehicle, or utility vehicle manufacturer shall immediately repurchase such
303 vehicle.

304 (h) If the grantor or distributor refuses or fails to authorize repair of such damage within
305 ten days after receipt of notification or if the dealer rejects a motorcycle, all-terrain vehicle,
306 or utility vehicle because of damage, ownership of the new motorcycle, all-terrain vehicle,
307 or utility vehicle shall revert to the grantor or distributor, and the motorcycle, all-terrain
308 vehicle, or utility vehicle dealer shall have no obligations, financial or otherwise, with
309 respect to such motorcycle, all-terrain vehicle, or utility vehicle.

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

312 10-1-725.10.

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

320 10-1-725.11.

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

325 10-1-725.12.

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

329 10-1-725.13.

330 It shall be unlawful for any dealer to sell or distribute any new motorcycle, all-terrain
331 vehicle, or utility vehicle in Georgia unless the dealer has a franchise dealership agreement
332 with a grantor with the express right to sell or distribute motorcycles, all-terrain vehicles,
333 or utility vehicles in Georgia; operates a motorcycle, all-terrain vehicle, or utility vehicle
334 dealership; and meets all of the requirements and definitions provided in this article. Any
335 dealer who does not meet the requirements of this article may participate in events where
336 motorcycles, all-terrain vehicles, or utility vehicles are exhibited or demonstrated and

337 seminars are provided but shall be prohibited from contracting to sell or distribute
338 motorcycles, all-terrain vehicles, or utility vehicles to the public."

339 **SECTION 3.**

340 This Act shall become effective on July 1, 2011, and shall apply to any agreement entered
341 into on or after July 1, 2011, and to any renewal, modification, or amendment made on or
342 after July 1, 2011, to any such agreement.

343 **SECTION 4.**

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