House Bill 1303 (AS PASSED HOUSE AND SENATE)
By: Representatives Houston of the 166th, Boggs of the 168th, Hudson of the 156th, Coleman of the 142nd, Westmoreland of the 104th and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 22A of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to marine manufacturers, so as to change certain provisions relating to termination of contractual relationship between dealer and manufacturer; to change certain provisions relating to application of said article; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 22A of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to marine manufacturers, is amended by striking Code Section 10-1-677, relating to termination of contractual relationship between dealer and manufacturer, and inserting in lieu thereof the following:

"10-1-677.

(a)(1) Whenever any marine dealer enters into a franchise, selling, or other contractual agreement with a manufacturer, distributor, or wholesaler wherein the dealer agrees to maintain an inventory of marine products or repair parts, the manufacturer, distributor, or wholesaler shall not terminate such agreement in case of breach by the dealer unless and until 90 days after notice of such intention to terminate has been sent by certified mail or statutory overnight delivery, return receipt requested, to the dealer and the dealer has failed to correct the breach within such period.

(2) If the franchise, selling, or other contractual agreement is terminated as a result of any action by the manufacturer ~~or dealer~~ and the dealer is not in breach of such agreement, the manufacturer, distributor, or wholesaler shall repurchase the inventory as provided in this article. The dealer may keep the inventory if he or she desires. If the dealer has any outstanding debts to the manufacturer, distributor, or wholesaler, then the repurchase amount may be credited to the dealer´s account.

(3) If the franchise, selling, or other contractual agreement is terminated as a result of any action by the dealer and the manufacturer is not in breach of such agreement, the manufacturer shall not be required to repurchase the inventory as provided in this article. Provided, however, if the franchise, selling, or other contractual agreement is terminated as a result of any action by the dealer and the manufacturer is in breach of such agreement, the manufacturer shall be required to repurchase the inventory as provided in this article.

(4) It shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due cause and pursuant to its own initiating action, to fail to renew a franchise, selling, or other contractual agreement on terms then equally available to all its marine dealers, unless the manufacturer repurchases the inventory as provided for in this Code section. The tests for determining what constitutes due cause for a manufacturer or distributor to fail to renew a franchise, selling, or other contractual agreement shall include whether the dealer:

(A) Has made a material misrepresentation in applying for or acting under the franchise agreement;

(B) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within 30 days after the filing, is in default under the provisions of a security agreement in effect with the receivership;

(C) Has engaged in an unfair business practice;

(D) Has engaged in conduct which is injurious or detrimental to the public welfare;

(E) Has failed to comply with an applicable licensing law;

(F) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(G) Has failed to operate in the normal course of business for seven consecutive business days; or

(H) Has failed to comply with the terms of the dealership or franchise agreement.

(5) In the event that the manufacturer, wholesaler, distributor, or franchisor does not intend to renew a franchise, selling, or other contractual agreement, such manufacturer, wholesaler, distributor, or franchisor shall give the dealer 90 days written notice prior to the effective date thereof by certified mail or statutory overnight delivery, return receipt requested;

(b) ~~After notice by the marine dealer to the manufacturer by registered or certified mail or statutory overnight delivery, return receipt requested, within~~ Within 30 days of the termination of the franchise, selling, or other contractual agreement, the manufacturer,

distributor, or wholesaler shall repurchase that inventory previously purchased from him or her, including all new and unused marine products of the current or immediate prior model year and parts on hand and held by the dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay an amount equivalent to the ~~wholesale value of a similar item in the National Automobile Dealers Association Marine Appraisal Guide, National Edition, plus reasonable actual freight cost,~~ cost actually paid by the dealer less discounts or rebates per unit for any new, unused, undamaged, unaltered from original invoice and delivery, and complete marine vessel ~~or other unit of marine products which is resalable and 100 percent of the~~. The manufacturer shall also pay an amount equal to the price paid by the dealer for any new, unused, and undamaged repair parts and accessories which are listed in the manufacturer´s current parts price list and are not more than two model years old. ~~The manufacturer, distributor, or wholesaler shall pay the dealer the reasonable actual cost of handling, packing, and loading returned repair parts. The manufacturer, distributor, or wholesaler shall have the option of performing the handling, packing, and loading in lieu of paying the sum imposed by this subsection for these services.~~

(c) Upon payment within a reasonable time of the repurchase amount to the dealer, the title, if any, and right of possession to the repurchased inventory shall transfer to the manufacturer, distributor, or wholesaler, as the case may be.

(d) The provisions of this article shall not require the repurchase from a dealer of:

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration;

(2) Any single repair part which is priced as a set of two or more items;

(3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;

(4) Any inventory for which the dealer is unable to furnish evidence that is reasonably satisfactory to the manufacturer, distributor, or wholesaler of good title, free and clear of all claims, liens, and encumbrances;

(5) Any inventory which the dealer desires to keep, provided that the dealer has a contractual right to do so;

(6) Any marine vessel or product which is not in new, unused, undamaged, and complete condition;

(7) Any repair parts which are not in new, unused, and undamaged condition;

(8) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise, selling, or other contractual agreement; ~~or~~

(9) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler; or

(10) Boats that have been altered substantially from original delivery.

(e) If any manufacturer, distributor, or wholesaler shall fail or refuse to repurchase any inventory as required by this article within 60 days after termination of a dealer´s contract and submission by the dealer to the manufacturer, by certified mail or statutory overnight delivery, return receipt requested, of a final inventory of marine products and parts on hand, he or she shall be civilly liable not only for the amounts provided in subsection (b) of this Code section but also the dealer´s reasonable attorney´s fees, court costs, and interest on the amount due for such inventory computed at the legal interest rate from the sixty-first day after termination.

(f) In the event of the death or incapacity of the dealer or the majority stockholder of a corporation operating as a dealer, the manufacturer, distributor, or wholesaler shall, at the option of the heirs at law if the dealer died intestate or the devisees or transferees under the terms of the deceased dealer´s last will and testament if said dealer died testate, repurchase the inventory from said heirs or devisees as if the manufacturer, distributor, or wholesaler had terminated the contract, and the inventory repurchase provisions of this Code section shall apply. The heirs or devisees shall have until the end of the contract term or one year from the date of the death of the retailer or majority stockholder, whichever comes first, to exercise their option under this article; provided, however, that nothing in this article shall require the repurchase of inventory if the heirs or devisees and the manufacturer, distributor, or wholesaler enter into a new franchise agreement to operate the retail dealership.″

SECTION 2.

Said article is further amended by striking Code Section 10-1-678, relating to application of said article, and inserting in lieu thereof the following:

″10-1-678.

The provisions of this article shall apply to any contract now in effect which has no expiration date and is a continuing contract and any other contract entered into or renewed on or after July 1, ~~2001~~ 2002. Any contract in force and effect prior to July 1, ~~2001~~ 2002, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to July 1, ~~2001~~ 2002.″

SECTION 3.

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