

By: Representative Compretta

To: Judiciary A

HOUSE BILL NO. 1558

1 AN ACT TO REGULATE VESSEL DEALER AGREEMENTS; TO DEFINE
2 CERTAIN TERMS; TO PROVIDE FOR THE REPURCHASE OF VESSELS AND PARTS;
3 TO PROVIDE FOR THE TERMINATION OR RENEWAL OF AGREEMENTS; TO
4 PROVIDE FOR VESSEL PREPARATION, WARRANTY AND WARRANTY
5 REIMBURSEMENT; TO AUTHORIZE ARBITRATION; TO PROVIDE PENALTIES FOR
6 VIOLATIONS; TO PROHIBIT WAIVING PROVISIONS OF THIS ACT AS A
7 CONDITION; OF AN AGREEMENT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** The following words and phrases shall have the
10 meanings ascribed herein unless the context clearly indicated
11 otherwise:

12 (a) "Dealer" means any person who:

13 (i) Engages, in whole or in part, in the business
14 of buying, selling, leasing, exchanging and/or repairing new and
15 unused vessels and/or used vessels, or new and unused and/or
16 inboard engines, inboard/outdrives or outboard motors for vessels;
17 and

18 (ii) Has an established place of business for the
19 sale, lease, trade, repair and/or display of vessels, inboard
20 engines, inboard/outdrives or outboard motors.

21 (b) "Distributor" means any person who offers for sale,
22 sells or distributes one or more brands of new vessels to any new
23 vessel dealer, and who maintains a factory representative or who
24 controls a person who offers for sale, sells or distributes one or
25 more brands of new vessels to any new vessel dealer.

26 (c) "Established Place of Business" means a permanent
27 commercial building at which the business of a new vessel dealer
28 is conducted, including the display and repair of vessels.

29 (d) "Factory Representative" means an agent or employee
30 of a manufacturer or distributor who is retained or employed for
31 the purpose selling or promoting the sale of new vessels to new
32 vessel dealers or prospective new vessel dealers.

33 (e) "Manufacturer" means any person engaged in the
34 business of manufacturing or importing new and unused vessels, new
35 and unused inboard engines, inboard/outdrives, outboard motors, or
36 component parts and accessories therefor.

37 (f) "Vessel" means every description of watercraft,
38 including an iceboat, used or capable of being used as a means of
39 transportation on water or ice, and shall include the hull,
40 motor/engine, component parts, spars, sails and accessories of
41 such watercraft; provided, however, that personal watercraft and
42 dealers of personal watercraft shall not be subject to the
43 provisions of this Article when such dealers are subject to the
44 provisions of the vehicle and traffic laws.

45 **SECTION 2.** Upon the termination, cancellation or nonrenewal
46 of any dealer agreement, except as otherwise provided in
47 Subsection (1) of Section 3 of this act, by a manufacturer or
48 distributor pursuant to this act the new vessel dealer shall be
49 paid the dealer invoice price plus any shipping costs paid by such
50 dealer for:

51 (a) New current and previous model year vessels and
52 motors in the dealer's inventory which were purchased from the
53 manufacturer or distributor, within twelve (12) months of the
54 delivery date for each vessel and motor, and which are unused, and
55 not materially damaged or altered while in the dealer's
56 possession, and to which the dealer has clear title and is in
57 position to convey such title to the manufacturer or distributor;

58 (b) Unused parts which were required from the
59 manufacturer or distributor and which are listed on the current
60 parts price sheet available to the dealer;

61 (c) Equipment and furnishings required from the
62 manufacturer, distributor, or one (1) of the manufacturer's or
63 distributor's approved services; and

64 (d) Special tools that are only usable on the specific
65 brand of vessel or engine offered by the manufacturer or
66 distributor terminating, canceling or nonrenewing a dealer
67 agreement.

68 **SECTION 3.** (1) A manufacturer or distributor may terminate
69 an agreement with a dealer for cause upon not less than fifteen
70 (15) days written notice sent by certified mail or statutory
71 overnight delivery, return receipt requested, to the dealer
72 stating the specific grounds for such termination, only upon the
73 occurrence of the following:

74 (a) The conviction of the dealer, or one (1) of its
75 principal owners, of a felony or a crime punishable by a term of
76 imprisonment which substantially adversely affects the business of
77 the manufacturer or distributor;

78 (b) The failure of the dealer to conduct its customary
79 sales and service operations during the regularly open business
80 period, as defined by such dealer, for a continuous period of
81 seven (7) days, except when any such failure is the result of an
82 act of God or circumstances beyond the direct control of the
83 dealer;

84 (c) Upon the suspension or revocation of the vessel
85 dealer's registration for more than thirty (30)days;

86 (d) The insolvency of the dealer, or filing of any
87 petition by or against the dealer under any bankruptcy or
88 receivership law;

89 (e) Unauthorized sales of products defined in the
90 dealer agreement;

91 (f) Failure by the dealer to pay to the manufacturer or
92 dealer for products purchased pursuant to the dealer agreement;

93 (g) The dealer has made a material misrepresentation in
94 applying for or acting under the contractual agreement; or

95 (h) The dealer has engaged in fraud or unfair business
96 practices.

97 If a dealer is terminated for cause pursuant to this
98 subsection, such dealer shall pay reasonable freight costs and the
99 cost of an independent marine surveyor, for the purpose of
100 valuation of inventory, if the manufacturer elects to repurchase
101 such dealer's inventory.

102 (2) Whenever a dealer enters into a dealer agreement with a
103 manufacturer or distributor wherein the dealer agrees to maintain
104 an inventory of vessels or parts therefor, the manufacturer or
105 distributor shall not, except as provided in subsection (1) of
106 this section, terminate, cancel or nonrenew such dealer agreement
107 until ninety (90) days after written notice stating the specific
108 grounds of such intention to terminate has been sent by certified
109 mail or statutory overnight delivery, return receipt requested, to
110 the dealer.

111 (3) If a manufacturer or distributor terminates a dealer
112 agreement as a result of any action, except as otherwise provided
113 in subsection (1) of this section, the manufacturer or distributor
114 shall repurchase the inventory as provided in Section 2 of this
115 act. The dealer may keep the inventory if it desires, and the
116 manufacturer agrees in writing. If the dealer has any outstanding
117 debts to the manufacturer or distributor, then the repurchase
118 amount may be adjusted by the manufacturer to take into account
119 such unpaid debts.

120 (4) After written notice by the dealer to the manufacturer
121 by registered or certified mail or statutory overnight delivery,
122 return receipt requested, within thirty (30) days of the
123 termination of the dealer agreement, the manufacturer or
124 distributor shall repurchase that inventory previously purchased
125 from the manufacturer or distributor as provided in Section 2 of

126 this act, except as otherwise provided in subsection (1) of this
127 section.

128 (5) Upon payment within a reasonable time of the repurchase
129 amount to the dealer, the title, if any, and the right of
130 possession to the repurchased inventory shall transfer to the
131 manufacturer or distributor.

132 (6) A dealer agreement shall not be assigned or transferred
133 by the dealer without prior written consent of the manufacturer or
134 distributor. Any assignment of such an agreement without such
135 consent, any change in the majority ownership of capital stock of
136 the dealer or any other change in the majority ownership of a
137 partnership shall immediately terminate the agreement except as
138 follows:

139 (a) The manufacturer shall not refuse to transfer a
140 dealer agreement to any immediate family member succeeding to the
141 agreement of a deceased or incapacitated dealer if each of the
142 following applies:

143 (i) The immediate family member successor provides
144 the manufacturer with written notice within sixty (60) days after
145 the dealer's death or incapacity of the intent to succeed to the
146 agreement;

147 (ii) The immediate family member successor agrees
148 to be bound by all terms and conditions of existing agreements;

149 (iii) The immediate family member successor is
150 entitled to inherit the deceased or incapacitated dealer's
151 agreement pursuant to an agreement or a written request filed by
152 the dealer with the manufacturer prior to the death or incapacity
153 of the dealer; and

154 (iv) The immediate family member successor has
155 demonstrated experience in the marine industry.

156 (b) Manufacturers and distributors shall not refuse a
157 transfer, sale or exchange of a dealer agreement between a dealer
158 and another person if the person meets all the requirements in the

159 existing dealer agreement, as well as all reasonable requirements
160 and prerequisites the manufacturer or distributor utilizes when
161 selecting new dealers for its products at the time of the
162 transfer, including financial and business requirements, and
163 agrees to be bound by all terms and conditions of the agreement
164 and the dealer applies in writing to the manufacturer or
165 distributor for such transfer not less than sixty (60) days prior
166 to the sale or transfer of the dealership. the failure to comply
167 with the requirements of the manufacturer or distributor within
168 sixty (60) days after the manufacturer or distributor receives an
169 application for sale or transfer of a dealership shall be grounds
170 for denial of such application.

171 (7) A dealer shall not terminate, cancel or nonrenew a
172 dealer agreement with a manufacturer, until it has provided such
173 manufacturer with written notice thereof not less than ninety (90)
174 days prior to such termination, cancellation or nonrenewal.

175 **Section 4.** (1) If a manufacturer or distributor requires or
176 permits a dealer to provide parts or to perform labor to satisfy a
177 warranty created by the manufacturer or distributor, the
178 manufacturer or distributor shall:

179 (a) Properly and promptly fulfill its warranty
180 obligations;

181 (b) Adequately and fairly compensate the dealer for any
182 parts provided, the shipping costs for parts provided and labor
183 performed by the dealer to satisfy the warranty on a vessel,
184 including the hull, motor/engine, component parts, spars, sails
185 and accessories; and

186 (c) Have the right to audit the dealer's warranty
187 claims for a period of eighteen (18) months following the
188 submission thereof, and to charge back to the dealer any amounts
189 paid on false, fraudulent, incorrect or unsubstantiated claims.

190 (2) Compensation by the manufacturer or distributor for
191 parts provided, the shipping costs for parts provided and labor
192 performed by the dealer shall be deemed adequate and fair if:

193 (a) The dealer is reimbursed for any parts provided and
194 already in inventory and the shipping costs for such parts in an
195 amount equal to the wholesale price, plus forty percent (40%)
196 thereof, provided that in no case shall such reimbursement exceed
197 the retail price, and shipping costs of the parts provided to the
198 dealer; and

199 (b) The dealer is reimbursed for any labor performed at
200 the following rates:

201 (i) With respect to the first year of new dealer
202 agreements entered into on or after the effective date of this
203 act, and with respect to the first year of the first renewals of a
204 dealer agreement in effect prior to the effective date of this
205 act, when such renewal is entered into on or after the effective
206 date of this act, at a rate of not less than seventy-five percent
207 (75%) of the retail labor rate customarily charged and posted
208 therefor;

209 (ii) With respect to the second year of new dealer
210 agreements entered into on or after the effective date of this
211 act, and with respect to the second year of a renewal of a dealer
212 agreement in effect prior to the effective date of this act, when
213 the first year of such renewal commenced on or after the effective
214 date of this act, at a rate not less than ninety percent (90%) of
215 the retail labor rate customarily charged and posted therefor; and

216 (iii) With respect to the third and any subsequent
217 year of new dealer agreements entered into on or after the
218 effective date of this act, and with respect to the third and any
219 subsequent year of a renewal of a dealer agreement in effect prior
220 to the effective date of this act, when the first year of such
221 renewal commenced on or after the effective date of this act, at a

222 rate not less than one hundred percent (100%) of the retail labor
223 rate customarily charged and posted therefor.

224 Nothing in this paragraph shall be deemed to require or
225 provide for the payment of a lower rate than is provided in a
226 dealer agreement entered into prior to the effective date of this
227 act or of a renewal of a dealer agreement, when such renewal is
228 entered into prior to the effective date of this act.

229 (3) To be entitled to compensation for labor at the dealer's
230 retail rate, the dealer shall have posted, in a place conspicuous
231 to service customers, the rate for labor for nonwarranty work.

232 (4) Except as provided in this section, no manufacturer or
233 distributor may by agreement make restrictions on reimbursement or
234 otherwise restrict the nature or extent of parts provided or labor
235 performed by a dealer if such restriction impairs the dealer's
236 ability to satisfy the warranty of the manufacturer or distributor
237 in accordance with the generally accepted standards. However, the
238 manufacturer or distributor may provide printed repair manuals
239 detailing standard labor time and parts required for a specific
240 repair to establish set requirements if such manual is provided to
241 the dealer upon entry into a new contract or renewal of a
242 contract. Such standards shall reflect the labor time and parts`
243 standards used by the manufacturer on a national level. Any
244 repair or parts required by the manufacturer or distributor that
245 are not in repair manuals will be paid in actual billable hours by
246 the manufacturer or distributor.

247 (5) A claim by a dealer for compensation for parts provided,
248 the shipping costs for parts provided and labor performed to
249 satisfy a warranty, provided that the claim includes all the
250 information reasonably necessary by the manufacturer to make a
251 determination upon the validity of the claim, shall be approved or
252 disapproved by the manufacturer or distributor in writing within
253 thirty (30) days of receipt of the claim by the manufacturer or

254 distributor in writing, and if approved, shall be paid within
255 thirty (30) days of the approval thereof.

256 **SECTION 5.** A cause of action to enforce the provisions of
257 this act may be commenced in any court having jurisdiction over
258 such
259 action or may be resolved through arbitration pursuant to
260 arbitration standards recognized by the American Arbitration
261 Association. Every arbitration conducted pursuant to this act
262 shall be conducted in this state.

263 **SECTION 6.** (1) Any manufacturer or distributor found to
264 have violated any provision of Section 4 of this act shall be
265 liable to the dealer for all reimbursement required by such
266 section and interest thereon at a rate of prime plus three percent
267 (3%) per annum that such amount was due and owing pursuant to such
268 section.

269 (2) Every manufacturer or distributor found to have violated
270 any provision of this act shall be liable to the dealer for any
271 financial injury or other damage suffered by such dealer as a
272 result of such violation, and court costs and reasonable
273 attorney's fees.

274 (3) Any dealer found to have violated any provision of this
275 act shall be liable to the manufacturer or distributor for any
276 financial injury or other damage suffered by such manufacturer or
277 distributor as a result of the violation, and court costs and
278 reasonable attorneys' fees.

279 (4) The provisions of this act shall be in addition to any
280 legal or equitable right that any party has pursuant to any other
281 provision of law or pursuant to any agreement between the parties.

282 **SECTION 7.** No manufacturer or distributor shall, as a
283 condition of entering into any agreement or contract with a dealer
284 or in any dealer agreement, require any dealer to waive any
285 provision or right granted pursuant to this act.

286 **SECTION 8.** This act shall take effect and be in force from
287 and after July 1, 2005.