

By: Deshotel

H.B. No. 4395

A BILL TO BE ENTITLED

AN ACT

relating to dealer agreements and other business requirements for boat dealers, distributors, and manufacturers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2352.001(8), Occupations Code, is Amended to read as follows:

Sec. 2352.001. DEFINITIONS. In this chapter:

(8) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code, and includes stern drives, direct drives, v-drives, and other mechanical forms of marine propulsion.

SECTION 2. Section 2352.052(c), Occupations Code, is Amended to read as follows:

Sec. 2352.052. TERMS OF AGREEMENT.

(c) The dealer's territory must provide for an exclusive a sales area of at least a 50 mile radius from the dealer location.

SECTION 3. Section 2352.053(b), Occupations Code, is amended to read as follows:

Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT; NOTICE.

(b) Good cause is ~~[not]~~ required for the nonrenewal of an agreement ~~[other than an agreement having an original term of less than one year]~~.

SECTION 4. Section 2352.105(b), (c), and (d), Occupations

1 Code, are amended to read as follows:

2 Sec. 2352.105. COMPENSATION FOR WARRANTY SERVICE.

3 (b) A [~~Except as provided by Subsection (c), a~~] manufacturer  
4 or distributor may not pay a dealer a labor rate for warranty work  
5 that is less than the rate the dealer charges retail customers for  
6 nonwarranty work of the same kind by similar technicians.

7 (~~c~~) [~~A manufacturer or distributor who has a warranty~~  
8 ~~program that reimburses a dealer at 100 percent of the dealer's~~  
9 ~~retail labor rate if the dealer complies with reasonable and~~  
10 ~~objective criteria shall pay the dealer the labor rate provided by~~  
11 ~~the terms of the program or a rate equal to 80 percent of the~~  
12 ~~dealer's retail labor rate, whichever rate is higher.~~

13 (~~d~~) A manufacturer or distributor shall approve or  
14 disapprove a dealer's claim for warranty work within a reasonable  
15 time. If the claim is approved, the manufacturer or distributor  
16 shall pay the claim within a reasonable time. If the claim is  
17 disapproved, the manufacturer or distributor shall notify the  
18 dealer of the grounds for disapproval.

19 SECTION 5. Section 2352.107(a) and (b), Occupations Code,  
20 are amended to read as follows:

21 Sec. 2352.107. REPURCHASE BY MANUFACTURER OR DISTRIBUTOR.

22 (a) A manufacturer or distributor who terminates an  
23 agreement shall repurchase on demand from the dealer any of the  
24 following items, purchased by the dealer from the manufacturer or  
25 distributor, that are free and clear of a lien or encumbrance:

26 (1) a new, unsold, retailable, undamaged, and complete  
27 boat, with accessories and packaged trailers sold with the boat,

1 and any outboard motor that:

2 (A) is in the dealer's inventory; and

3 (B) was purchased within two years [~~one year~~]  
4 preceding the date of the termination; and any new, current,  
5 unsold, undamaged, and unused parts or accessories for boats or  
6 outboard motors in the original resalable merchandising package.

7 (b) A demand for repurchase must be made in writing not  
8 later than the 90th [~~30th~~] day after the date the manufacturer or  
9 distributor terminates the agreement. The dealer must provide the  
10 manufacturer or distributor with a complete list of the items to be  
11 repurchased. The manufacturer or distributor shall complete the  
12 repurchase within a reasonable time.

13 SECTION 6. Chapter 2352, Occupations Code, is amended by  
14 adding Sections 2352.108 and 2352.2011 to read as follows:

15 Sec. 2352.108. DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S  
16 LICENSE. A person may not engage in business in this state as a  
17 dealer, distributor, or manufacturer unless the person holds a  
18 license and enters into a license agreement as required by Section  
19 31.041, Parks and Wildlife Code.

20 Sec. 2352.2011. STATE PENALTY. A person who violates  
21 Section 2352.108 or otherwise is not in compliance with this  
22 chapter is liable to the State in the amount of \$500 per new boat or  
23 new outboard motor numbered or attempted to be numbered pursuant to  
24 Chapter 37, Parks and Wildlife Code.

25 SECTION 7. This Act takes effect September 1, 2009.