

By: Deshotel, Ritter, et al.

H.B. No. 1960

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of boat manufacturers, distributors, and dealers; providing a civil penalty.

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

SECTION 1. Section 2352.001, Occupations Code, is amended by amending Subdivisions (1), (3), (4), and (5) and adding Subdivisions (2-a), (5-a), (8-a), and (8-b) to read as follows:

(1) "Agreement" means a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new boats or new boat ~~[outboard]~~ motors.

(2-a) "Boat motor" means a mechanical form of propulsion for a vessel, including an inboard or outboard motor.

(3) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or boat motors during a calendar year ~~[has the meaning assigned by Section 31.003, Parks and Wildlife Code].~~

(4) "Distributor" means a person who:

(A) offers for sale, sells, or distributes new boats or new boat ~~[outboard]~~ motors to dealers; or

(B) controls a person described by Paragraph ~~[Subdivision]~~ (A).

(5) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels or boat motors for

1 the purpose of sale or trade [~~has the meaning assigned by Section~~
2 ~~31.003, Parks and Wildlife Code~~].

3 (5-a) "Marketing standards" means mutually agreed
4 standards in a manufacturer's marketing or promotional activities.

5 (8-a) "Performance standards" means reasonable
6 standards that are mutually developed and agreed to by a
7 manufacturer and a dealer relating to:

8 (A) achievement of market share by a dealer for
9 manufacturer products sold in a territory;

10 (B) achievement of a level of performance in a
11 manufacturer's certified dealer program, if any; and

12 (C) participation in a plan that addresses
13 improvement, if needed, in dealer performance.

14 (8-b) "Territory" means:

15 (A) for the sale of a manufacturer's boats, a
16 defined geographical area within which a dealer is appointed by the
17 manufacturer as the sole authorized dealer; or

18 (B) for the sale of all other manufacturer
19 products, a market area within which a dealer is appointed by the
20 manufacturer as an authorized dealer.

21 SECTION 2. Section 2352.051, Occupations Code, is amended
22 to read as follows:

23 Sec. 2352.051. AGREEMENT REQUIRED. A manufacturer or
24 distributor contracting with a dealer may not sell or offer for
25 sale, and a dealer may not purchase or offer to purchase, a new boat
26 or a new boat [~~outboard~~] motor unless the manufacturer or
27 distributor and the dealer enter into an agreement that complies

1 with this chapter.

2 SECTION 3. Section 2352.052, Occupations Code, is amended
3 to read as follows:

4 Sec. 2352.052. TERMS OF AGREEMENT. (a) An agreement under
5 this chapter must include:

6 (1) the dealer's [~~location,~~] territory and dealership
7 locations [~~, or market area~~];

8 (2) the length of the agreement, which must be not less
9 than three years;

10 (3) [~~any~~] performance standards or marketing
11 standards, if any;

12 (4) [~~any~~] working capital, inventory, facility,
13 equipment, or tool standards, including mutually agreed minimum
14 product stocking requirements, if any;

15 (5) provisions for termination or nonrenewal of the
16 agreement and the designation of a successor dealer in the event of
17 the dealer's death or disability;

18 (6) the obligations of the manufacturer, distributor,
19 and dealer in the preparation and delivery of and warranty service
20 on new boats and new boat [~~outboard~~] motors;

21 (7) the obligations of the manufacturer, distributor,
22 and dealer on termination of the agreement, including inventory of
23 new boats and new boat [~~outboard~~] motors, parts inventory,
24 equipment, furnishings, special tools, and required signs; [~~and~~]

25 (8) mutually agreed standards for maintenance of:

26 (A) a dedicated or self-funded line of credit, if
27 any; and

1 (B) a trade-in line of credit or self-funded
2 trade-in line of credit, if any; and

3 (9) dispute resolution procedures.

4 (b) At the end of the first year of an agreement, a dealer
5 and manufacturer shall evaluate the dealer's progress in meeting
6 the agreement's performance standards, marketing standards, and
7 line of credit standards, to determine whether to enter into a new
8 three-year agreement.

9 (c) If the dealer and manufacturer enter into a new
10 agreement, the initial agreement is void. If the dealer and
11 manufacturer do not enter into a new agreement, the dealer and
12 manufacturer are bound by the terms and conditions of the initial
13 agreement.

14 (d) Notwithstanding the terms of a dealer agreement, a
15 dealer agreement and any transaction subject to this chapter must
16 comply with the requirements of this chapter [section].

17 (e) Notwithstanding Subsection (a)(2), an initial agreement
18 between a dealer and a manufacturer may have a term of less than
19 three years. An extension or renewal of the initial agreement or a
20 subsequent agreement under this chapter between the same dealer and
21 manufacturer must be for a term of not less than three years.

22 SECTION 4. Subchapter B, Chapter 2352, Occupations Code, is
23 amended by adding Sections 2352.0521, 2352.0522, 2352.0523, and
24 2352.0524 to read as follows:

25 Sec. 2352.0521. PERFORMANCE STANDARDS. (a) A manufacturer
26 shall make reasonable efforts to provide a dealer with information
27 regarding the dealer's compliance with performance standards.

1 (b) Performance standards must be evaluated on an annual
2 basis and, if a dealer and manufacturer agree, may be adjusted to
3 promote the sale of the manufacturer's products.

4 (c) If revised performance standards are not agreeable, the
5 initial performance standards remain in place until the expiration
6 of the agreement.

7 Sec. 2352.0522. DEALER TERRITORY. (a) During the term of
8 an agreement, a manufacturer may not appoint another authorized
9 dealer for the sale of the manufacturer's boats in a dealer's
10 territory.

11 (b) Except for purposes of advertising without an
12 advertised price or with a manufacturer's suggested retail price, a
13 dealer may not advertise or promote the sale of the manufacturer's
14 boats outside the dealer's territory, including through the
15 Internet.

16 (c) A dealer may not use a broker in another dealer's
17 territory to sell a manufacturer's boat.

18 (d) This chapter does not prohibit a dealer from selling a
19 boat to a customer residing outside of the dealer's territory who
20 independently visits the dealership and seeks to purchase a boat
21 from the dealer.

22 Sec. 2352.0523. DEFAULT. (a) A default under an agreement
23 under this chapter by a manufacturer, distributor, or dealer is:

24 (1) a material failure to meet minimum product
25 stocking requirements as specified by the agreement;

26 (2) a material failure to make timely payment of any
27 material obligation as specified by the agreement;

1 (3) a material failure to substantially comply with a
2 federal, state, or local law, rule, regulation, ordinance, or order
3 applicable to the agreement; or

4 (4) an act of material fraud relating to the
5 performance of a right or obligation under the agreement.

6 (b) A default by a dealer under an agreement under this
7 chapter is:

8 (1) a material failure to meet applicable performance
9 standards as specified by the agreement for a defined one model year
10 marketing cycle;

11 (2) a material failure to meet applicable marketing
12 standards as specified by the agreement;

13 (3) a material failure to meet applicable standards
14 for a dedicated or self-funded line of credit or a trade-in or
15 self-funded trade-in line of credit as specified by the agreement;
16 or

17 (4) the marketing of the manufacturer's boats by the
18 dealer outside of the dealer's territory in violation of this
19 chapter.

20 Sec. 2352.0524. CURE OF DEFAULT. (a) Except as provided by
21 Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor
22 must give a dealer written notice of a default under Section
23 2352.0523 and allow the dealer to cure the default within a cure
24 period as provided by Subsection (b).

25 (b) A dealer must cure a default not later than the:

26 (1) 30th day after the date of receipt of notice of a
27 default under Section 2352.0523(a)(2) or (b)(4);

1 (2) 60th day after the date of receipt of notice of a
2 default under Section 2352.0523(b)(2) or (3);

3 (3) 90th day after the date of receipt of notice of a
4 default under Section 2352.0523(a)(1); or

5 (4) 180th day after the date of receipt of notice of a
6 default under Section 2352.0523(b)(1).

7 SECTION 5. Section 2352.053, Occupations Code, is amended
8 to read as follows:

9 Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT;
10 NOTICE. (a) Except as provided by Subsection (d), a [A]
11 manufacturer or distributor may not terminate an agreement unless
12 the dealer defaults under Section 2352.0523 [~~there is good cause~~
13 ~~for the termination~~] and:

14 (1) the manufacturer or distributor gives the dealer
15 written notice of the default and possible termination in clear and
16 concise terms;

17 (2) the notice states the default [~~reasons for~~
18 ~~termination~~]; [~~and~~]

19 (3) the dealer has been given the applicable cure
20 period [~~30 days~~] to make a good faith effort to cure the default
21 [~~reasons for termination~~] stated in the notice; and

22 (4) the dealer fails to cure the default.

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

26 (c) The fact that a dealer holds an agreement involving
27 another line, make, or brand of new boat or new boat [~~outboard~~]

1 motor does not constitute a default or grounds for termination of an
2 agreement [~~good cause~~].

3 (d) A manufacturer or distributor may terminate an
4 agreement on written notice, without a cure period, if the dealer:

5 (1) financially defaults to the manufacturer, the
6 distributor, or a financing source;

7 (2) becomes subject to an order for relief, as that
8 term is used in Title 11, United States Code;

9 (3) engages in an act of material fraud relating to the
10 performance of a right or obligation under the agreement
11 [~~fraudulent conduct in:~~

12 [~~(A) conducting the dealer's business; or~~

13 [~~(B) performing the agreement~~];

14 (4) is a corporation that ceases to exist;

15 (5) becomes insolvent or takes or fails to take any
16 action that constitutes an admission of inability to pay debts as
17 the debts mature;

18 (6) makes a general assignment for the benefit of
19 creditors to an agent authorized to liquidate any substantial
20 amount of assets; [~~or~~]

21 (7) applies to a court for the appointment of a
22 receiver for any assets or properties;

23 (8) fails to substantially comply with a federal,
24 state, or local law, rule, regulation, ordinance, or order
25 applicable to the agreement; or

26 (9) receives three valid notices of a default under
27 Section 2352.0523 for the same default, whether cured or not,

1 within a 12-month period.

2 SECTION 6. Section 2352.101(a), Occupations Code, is
3 amended to read as follows:

4 (a) A manufacturer or distributor who publicly advertises a
5 new boat, new boat [~~outboard~~] motor, or part as available for
6 immediate delivery shall deliver the boat, boat [~~outboard~~] motor,
7 or part in reasonable quantities and within a reasonable time after
8 receipt of an order from a dealer who has an agreement with the
9 manufacturer or distributor applicable to the advertised boat, boat
10 [~~outboard~~] motor, or part.

11 SECTION 7. Section 2352.103, Occupations Code, is amended
12 to read as follows:

13 Sec. 2352.103. FINANCING. (a) A manufacturer or
14 distributor may not require a dealer to finance through a
15 particular financing source a new boat or new boat [~~outboard~~] motor
16 sold by the dealer.

17 (b) A manufacturer or distributor may not require a dealer
18 to act as the manufacturer's or distributor's agent in securing:

19 (1) a promissory note and security agreement in
20 connection with the sale or purchase of a new boat or new boat
21 [~~outboard~~] motor; or

22 (2) an insurance policy on the operation of a new boat
23 or new boat [~~outboard~~] motor.

24 SECTION 8. Section 2352.104, Occupations Code, is amended
25 to read as follows:

26 Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE
27 AFTER TERMINATION OR NONRENEWAL OF AGREEMENT. (a) After a

1 manufacturer or distributor terminates or does not renew an
2 agreement, the former dealer may continue to purchase parts and
3 accessories to service the products covered by the agreement until
4 the first anniversary of the date of termination or nonrenewal. The
5 manufacturer or distributor shall sell parts and accessories under
6 this subsection at the same price offered to a current dealer.

7 (b) Until the first anniversary of the date of termination
8 or nonrenewal of an agreement, a dealer shall continue to perform
9 warranty work for the manufacturer's products, unless otherwise
10 specified by the manufacturer in the termination notice [~~Subsection~~
11 ~~(a) does not apply if the manufacturer or distributor terminates~~
12 ~~the agreement.~~

13 [~~(1) based on quality of service; or~~
14 [~~(2) for a reason justifying immediate termination~~
15 ~~under Section 2352.053(d)].~~

16 SECTION 9. Section 2352.105, Occupations Code, is amended
17 by amending Subsection (d) and adding Subsections (e) and (f) to
18 read as follows:

19 (d) A manufacturer or distributor shall approve or
20 disapprove a dealer's written claim for warranty work not later
21 than the second business day after the date of receipt of the claim
22 [~~within a reasonable time~~]. If the claim is approved, the
23 manufacturer or distributor shall pay the claim not later than the
24 30th day after the date of receipt of the dealer's written invoice
25 or written proof of completion of the warranty work [~~within a~~
26 ~~reasonable time~~]. If the claim is disapproved, the manufacturer or
27 distributor shall notify the dealer of the grounds for disapproval.

1 (e) A manufacturer or distributor may not audit a claim
2 filed for warranty work after the first anniversary of the date the
3 claim is submitted.

4 (f) A manufacturer must act as the single source of contact
5 for the dealer for the manufacturer's component part product
6 warranties, other than engine-related product warranties.

7 SECTION 10. Subchapter C, Chapter 2352, Occupations Code,
8 is amended by adding Section 2352.1051 to read as follows:

9 Sec. 2352.1051. DELIVERY OF PARTS. On signing an
10 agreement, a manufacturer shall provide the dealer with a written
11 statement of the approximate amount of time the manufacturer takes
12 to deliver a part to the dealer.

13 SECTION 11. Sections 2352.107(a) and (b), Occupations Code,
14 are amended to read as follows:

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

19 (1) a new, unsold, [~~retailable, undamaged,~~] and
20 complete boat, with accessories and packaged trailers sold with the
21 boat, and any boat [~~outboard~~] motor that:

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

23 (B) was purchased during the two years [~~within~~
24 ~~one year~~] preceding the date of the termination; and

25 (2) any new, current, unsold, undamaged, and unused
26 parts or accessories for boats or boat [~~outboard~~] motors in the
27 original resalable merchandising package.

1 (b) A demand for repurchase must be made in writing not
2 later than the 90th [~~30th~~] day after the date the manufacturer or
3 distributor terminates the agreement. The dealer must provide the
4 manufacturer or distributor with a complete list of the items to be
5 repurchased. The manufacturer or distributor shall complete the
6 repurchase not later than the 30th day after the date the dealer
7 demands the repurchase [~~within a reasonable time~~].

8 SECTION 12. Subchapter D, Chapter 2352, Occupations Code,
9 is amended by adding Section 2352.204 to read as follows:

10 Sec. 2352.204. CIVIL PENALTY. (a) A manufacturer or
11 distributor who violates this chapter is liable to this state for a
12 civil penalty. The amount of the penalty may not exceed \$500 for
13 each violation.

14 (b) Each sale of a new boat or boat motor by a manufacturer
15 or distributor in violation of Section 2352.051 is a separate
16 violation.

17 (c) The attorney general may sue to collect a civil penalty
18 under this section. The attorney general may recover, on behalf of
19 the state, the reasonable expenses incurred in obtaining the
20 penalty, including investigation and court costs, reasonable
21 attorney's fees, witness fees, and other expenses.

22 SECTION 13. The change in law made by this Act applies only
23 to an agreement entered into or renewed under Chapter 2352,
24 Occupations Code, on or after the effective date of this Act. An
25 agreement entered into or renewed before the effective date of this
26 Act is governed by the law in effect on the date the agreement was
27 entered into or renewed, and the former law is continued in effect

1 for that purpose.

2 SECTION 14. This Act takes effect September 1, 2011.