

By: Deshotel

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 SECTION 4. Subchapter B, Chapter 2352, Occupations Code, is
18 amended by adding Sections 2352.0521, 2352.0522, 2352.0523, and
19 2352.0524 to read as follows:

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

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

26 (c) If revised performance standards are not agreeable, the
27 initial performance standards remain in place until the expiration

1 of the agreement.

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

5 (b) Except for purposes of advertising without an
6 advertised price or with a manufacturer's suggested retail price, a
7 dealer may not advertise or promote the sale of the manufacturer's
8 boats outside the dealer's territory, including through the
9 Internet.

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

12 (d) This chapter does not prohibit a dealer from selling a
13 boat to a customer residing outside of the dealer's territory who
14 independently visits the dealership and seeks to purchase a boat
15 from the dealer.

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

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

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

22 (3) a material failure to substantially comply with
23 federal, state, or local laws, rules, regulations, ordinances, or
24 orders applicable to the agreement; or

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

27 (b) A default by a dealer under an agreement under this

1 chapter is:

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

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

7 (3) a material failure to meet applicable standards
8 for a dedicated or self-funded line of credit or a trade-in or
9 self-funded trade-in line of credit as specified by the agreement;

10 or

11 (4) the marketing of the manufacturer's boats by the
12 dealer outside of the dealer's territory in violation of this
13 chapter.

14 Sec. 2352.0524. CURE OF DEFAULT. (a) Except as provided by
15 Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor
16 must give a dealer written notice of a default under Section
17 2352.0523 and allow the dealer to cure the default within a cure
18 period as provided by Subsection (b).

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

20 (1) 30th day after the date of receipt of notice of a
21 default under Section 2352.0523(a)(2) or (b)(4);

22 (2) 60th day after the date of receipt of notice of a
23 default under Section 2352.0523(b)(2) or (3);

24 (3) 90th day after the date of receipt of notice of a
25 default under Section 2352.0523(a)(1); or

26 (4) 180th day after the date of receipt of notice of a
27 default under Section 2352.0523(b)(1).

1 SECTION 5. Section 2352.053, Occupations Code, is amended
2 to read as follows:

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

8 (1) the manufacturer or distributor gives the dealer
9 written notice of the default and possible termination in clear and
10 concise terms;

11 (2) the notice states the default [~~reasons for~~
12 ~~termination~~]; [~~and~~]

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

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

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

20 (c) The fact that a dealer holds an agreement involving
21 another line, make, or brand of new boat or new boat [~~outboard~~]
22 motor does not constitute a default or grounds for termination of an
23 agreement [~~good cause~~].

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

26 (1) financially defaults to the manufacturer, the
27 distributor, or a financing source;

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

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

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

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

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

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

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

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

17 (8) fails to substantially comply with a law, rule,
18 regulation, ordinance, or order applicable to the agreement; or

19 (9) receives three notices of a default under Section
20 2352.0523 for the same default, whether cured or not, within a
21 12-month period.

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

24 (a) A manufacturer or distributor who publicly advertises a
25 new boat, new boat ~~[outboard]~~ motor, or part as available for
26 immediate delivery shall deliver the boat, boat ~~[outboard]~~ motor,
27 or part in reasonable quantities and within a reasonable time after

1 receipt of an order from a dealer who has an agreement with the
2 manufacturer or distributor applicable to the advertised boat, boat
3 [~~outboard~~] motor, or part.

4 SECTION 7. Section 2352.103, Occupations Code, is amended
5 to read as follows:

6 Sec. 2352.103. FINANCING. (a) A manufacturer or
7 distributor may not require a dealer to finance through a
8 particular financing source a new boat or new boat [~~outboard~~] motor
9 sold by the dealer.

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

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

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

17 SECTION 8. Section 2352.104, Occupations Code, is amended
18 to read as follows:

19 Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE
20 AFTER TERMINATION OR NONRENEWAL OF AGREEMENT. (a) After a
21 manufacturer or distributor terminates or does not renew an
22 agreement, the former dealer may continue to purchase parts and
23 accessories to service the products covered by the agreement until
24 the first anniversary of the date of termination or nonrenewal. The
25 manufacturer or distributor shall sell parts and accessories under
26 this subsection at the same price offered to a current dealer.

27 (b) Until the first anniversary of the date of termination

1 or nonrenewal of an agreement, a dealer shall continue to perform
2 warranty work for the manufacturer's products, unless otherwise
3 specified by the manufacturer in the termination notice [~~Subsection~~
4 ~~(a) does not apply if the manufacturer or distributor terminates~~
5 ~~the agreement.~~

6 ~~[(1) based on quality of service, or~~
7 ~~[(2) for a reason justifying immediate termination~~
8 ~~under Section 2352.053(d)].~~

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

12 (d) A manufacturer or distributor shall approve or
13 disapprove a dealer's written claim for warranty work not later
14 than the second business day after the date of receipt of the claim
15 [~~within a reasonable time~~]. If the claim is approved, the
16 manufacturer or distributor shall pay the claim not later than the
17 30th day after the date of receipt of the dealer's written invoice
18 or written proof of completion of the warranty work [~~within a~~
19 ~~reasonable time~~]. If the claim is disapproved, the manufacturer or
20 distributor shall notify the dealer of the grounds for disapproval.

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

24 (f) A manufacturer must be the only contact for the dealer
25 for the manufacturer's component product warranty, other than an
26 engine-related product warranty.

27 SECTION 10. Subchapter C, Chapter 2352, Occupations Code,

1 is amended by adding Section 2352.1051 to read as follows:

2 Sec. 2352.1051. DELIVERY OF PARTS. After signing an
3 agreement, a manufacturer shall provide the dealer with a written
4 statement of the approximate amount of time the manufacturer takes
5 to deliver a part to the dealer.

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

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

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

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

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

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

21 (b) A demand for repurchase must be made in writing not
22 later than the 90th [~~30th~~] day after the date the manufacturer or
23 distributor terminates the agreement. The dealer must provide the
24 manufacturer or distributor with a complete list of the items to be
25 repurchased. The manufacturer or distributor shall complete the
26 repurchase not later than the 30th day after the date the dealer
27 demands the repurchase [~~within a reasonable time~~].

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

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

7 (b) Each sale of a new boat or boat motor by a manufacturer
8 or distributor in violation of Section 2352.051 is a separate
9 violation.

10 (c) The attorney general may sue to collect a civil penalty
11 under this section. The attorney general may recover, on behalf of
12 the state, the reasonable expenses incurred in obtaining the
13 penalty, including investigation and court costs, reasonable
14 attorney's fees, witness fees, and other expenses.

15 SECTION 13. The change in law made by this Act applies only
16 to an agreement entered into or renewed under Chapter 2352,
17 Occupations Code, on or after the effective date of this Act. An
18 agreement entered into or renewed before the effective date of this
19 Act is governed by the law in effect on the date the agreement was
20 entered into or renewed, and the former law is continued in effect
21 for that purpose.

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