

1-1 By: Deshotel, et al. (Senate Sponsor - Jackson) H.B. No. 1960
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 13, 2011, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 19, 2011, reported
1-5 favorably by the following vote: Yeas 5, Nays 4; May 19, 2011,
1-6 sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the regulation of boat manufacturers, distributors, and
1-10 dealers; providing a civil penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 2352.001, Occupations Code, is amended
1-13 by amending Subdivisions (1), (3), (4), and (5) and adding
1-14 Subdivisions (2-a), (5-a), (8-a), and (8-b) to read as follows:

1-15 (1) "Agreement" means a written agreement between a
1-16 manufacturer or distributor and a dealer for the purchase and sale
1-17 of new boats or new boat ~~[outboard]~~ motors.

1-18 (2-a) "Boat motor" means a mechanical form of
1-19 propulsion for a vessel, including an inboard or outboard motor.

1-20 (3) "Dealer" means a person engaged in the business of
1-21 buying, selling, selling on consignment, displaying for sale, or
1-22 exchanging at least five vessels, motorboats, or boat motors during
1-23 a calendar year [has the meaning assigned by Section 31.003, Parks
1-24 and Wildlife Code].

1-25 (4) "Distributor" means a person who:

1-26 (A) offers for sale, sells, or distributes new
1-27 boats or new boat ~~[outboard]~~ motors to dealers; or

1-28 (B) controls a person described by Paragraph
1-29 [Subdivision] (A).

1-30 (5) "Manufacturer" means a person engaged in the
1-31 business of manufacturing new and unused vessels or boat motors for
1-32 the purpose of sale or trade [has the meaning assigned by Section
1-33 31.003, Parks and Wildlife Code].

1-34 (5-a) "Marketing standards" means mutually agreed
1-35 standards in a manufacturer's marketing or promotional activities.

1-36 (8-a) "Performance standards" means reasonable
1-37 standards that are mutually developed and agreed to by a
1-38 manufacturer and a dealer relating to:

1-39 (A) achievement of market share by a dealer for
1-40 manufacturer products sold in a territory;

1-41 (B) achievement of a level of performance in a
1-42 manufacturer's certified dealer program, if any; and

1-43 (C) participation in a plan that addresses
1-44 improvement, if needed, in dealer performance.

1-45 (8-b) "Territory" means:

1-46 (A) for the sale of a manufacturer's boats, a
1-47 defined geographical area within which a dealer is appointed by the
1-48 manufacturer as the sole authorized dealer; or

1-49 (B) for the sale of all other manufacturer
1-50 products, a market area within which a dealer is appointed by the
1-51 manufacturer as an authorized dealer.

1-52 SECTION 2. Section 2352.051, Occupations Code, is amended
1-53 to read as follows:

1-54 Sec. 2352.051. AGREEMENT REQUIRED. A manufacturer or
1-55 distributor contracting with a dealer may not sell or offer for
1-56 sale, and a dealer may not purchase or offer to purchase, a new boat
1-57 or a new boat ~~[outboard]~~ motor unless the manufacturer or
1-58 distributor and the dealer enter into an agreement that complies
1-59 with this chapter.

1-60 SECTION 3. Section 2352.052, Occupations Code, is amended
1-61 to read as follows:

1-62 Sec. 2352.052. TERMS OF AGREEMENT. (a) An agreement under
1-63 this chapter must include:

1-64 (1) the dealer's ~~[location]~~ territory and dealership

2-1 locations [~~or market area~~];
2-2 (2) the length of the agreement, which must be not less
2-3 than three years;
2-4 (3) [~~any~~] performance standards or marketing
2-5 standards, if any;
2-6 (4) [~~any~~] working capital, inventory, facility,
2-7 equipment, or tool standards, including mutually agreed minimum
2-8 product stocking requirements, if any;
2-9 (5) provisions for termination or nonrenewal of the
2-10 agreement and the designation of a successor dealer in the event of
2-11 the dealer's death or disability;
2-12 (6) the obligations of the manufacturer, distributor,
2-13 and dealer in the preparation and delivery of and warranty service
2-14 on new boats and new boat [~~outboard~~] motors;
2-15 (7) the obligations of the manufacturer, distributor,
2-16 and dealer on termination of the agreement, including inventory of
2-17 new boats and new boat [~~outboard~~] motors, parts inventory,
2-18 equipment, furnishings, special tools, and required signs; [~~and~~]
2-19 (8) mutually agreed standards for maintenance of:
2-20 (A) a dedicated or self-funded line of credit, if
2-21 any; and
2-22 (B) a trade-in line of credit or self-funded
2-23 trade-in line of credit, if any; and
2-24 (9) dispute resolution procedures.
2-25 (b) At the end of the first year of an agreement, a dealer
2-26 and manufacturer shall evaluate the dealer's progress in meeting
2-27 the agreement's performance standards, marketing standards, and
2-28 line of credit standards, to determine whether to enter into a new
2-29 three-year agreement.
2-30 (c) If the dealer and manufacturer enter into a new
2-31 agreement, the initial agreement is void. If the dealer and
2-32 manufacturer do not enter into a new agreement, the dealer and
2-33 manufacturer are bound by the terms and conditions of the initial
2-34 agreement.
2-35 (d) Notwithstanding the terms of a dealer agreement, a
2-36 dealer agreement and any transaction subject to this chapter must
2-37 comply with the requirements of this chapter [~~section~~].
2-38 (e) Notwithstanding Subsection (a)(2), an initial agreement
2-39 between a dealer and a manufacturer may have a term of less than
2-40 three years. An extension or renewal of the initial agreement or a
2-41 subsequent agreement under this chapter between the same dealer and
2-42 manufacturer must be for a term of not less than three years.
2-43 SECTION 4. Subchapter B, Chapter 2352, Occupations Code, is
2-44 amended by adding Sections 2352.0521, 2352.0522, 2352.0523, and
2-45 2352.0524 to read as follows:
2-46 Sec. 2352.0521. PERFORMANCE STANDARDS. (a) A manufacturer
2-47 shall make reasonable efforts to provide a dealer with information
2-48 regarding the dealer's compliance with performance standards.
2-49 (b) Performance standards must be evaluated on an annual
2-50 basis and, if a dealer and manufacturer agree, may be adjusted to
2-51 promote the sale of the manufacturer's products.
2-52 (c) If revised performance standards are not agreeable, the
2-53 initial performance standards remain in place until the expiration
2-54 of the agreement.
2-55 Sec. 2352.0522. DEALER TERRITORY. (a) During the term of
2-56 an agreement, a manufacturer may not appoint another authorized
2-57 dealer for the sale of the manufacturer's boats in a dealer's
2-58 territory.
2-59 (b) Except for purposes of advertising without an
2-60 advertised price or with a manufacturer's suggested retail price, a
2-61 dealer may not advertise or promote the sale of the manufacturer's
2-62 boats outside the dealer's territory, including through the
2-63 Internet.
2-64 (c) A dealer may not use a broker in another dealer's
2-65 territory to sell a manufacturer's boat.
2-66 (d) This chapter does not prohibit a dealer from selling a
2-67 boat to a customer residing outside of the dealer's territory who
2-68 independently visits the dealership and seeks to purchase a boat
2-69 from the dealer.

3-1 Sec. 2352.0523. DEFAULT. (a) A default under an agreement
3-2 under this chapter by a manufacturer, distributor, or dealer is:
3-3 (1) a material failure to meet minimum product
3-4 stocking requirements as specified by the agreement;
3-5 (2) a material failure to make timely payment of any
3-6 material obligation as specified by the agreement;
3-7 (3) a material failure to substantially comply with a
3-8 federal, state, or local law, rule, regulation, ordinance, or order
3-9 applicable to the agreement; or
3-10 (4) an act of material fraud relating to the
3-11 performance of a right or obligation under the agreement.
3-12 (b) A default by a dealer under an agreement under this
3-13 chapter is:
3-14 (1) a material failure to meet applicable performance
3-15 standards as specified by the agreement for a defined one model year
3-16 marketing cycle;
3-17 (2) a material failure to meet applicable marketing
3-18 standards as specified by the agreement;
3-19 (3) a material failure to meet applicable standards
3-20 for a dedicated or self-funded line of credit or a trade-in or
3-21 self-funded trade-in line of credit as specified by the agreement;
3-22 or
3-23 (4) the marketing of the manufacturer's boats by the
3-24 dealer outside of the dealer's territory in violation of this
3-25 chapter.
3-26 Sec. 2352.0524. CURE OF DEFAULT. (a) Except as provided by
3-27 Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor
3-28 must give a dealer written notice of a default under Section
3-29 2352.0523 and allow the dealer to cure the default within a cure
3-30 period as provided by Subsection (b).
3-31 (b) A dealer must cure a default not later than the:
3-32 (1) 30th day after the date of receipt of notice of a
3-33 default under Section 2352.0523(a)(2) or (b)(4);
3-34 (2) 60th day after the date of receipt of notice of a
3-35 default under Section 2352.0523(b)(2) or (3);
3-36 (3) 90th day after the date of receipt of notice of a
3-37 default under Section 2352.0523(a)(1); or
3-38 (4) 180th day after the date of receipt of notice of a
3-39 default under Section 2352.0523(b)(1).
3-40 SECTION 5. Section 2352.053, Occupations Code, is amended
3-41 to read as follows:
3-42 Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT;
3-43 NOTICE. (a) Except as provided by Subsection (d), a [A]
3-44 manufacturer or distributor may not terminate an agreement unless
3-45 the dealer defaults under Section 2352.0523 [~~there is good cause~~
3-46 ~~for the termination~~] and:
3-47 (1) the manufacturer or distributor gives the dealer
3-48 written notice of the default and possible termination in clear and
3-49 concise terms;
3-50 (2) the notice states the default [~~reasons for~~
3-51 ~~termination~~]; [~~and~~]
3-52 (3) the dealer has been given the applicable cure
3-53 period [~~30 days~~] to make a good faith effort to cure the default
3-54 [~~reasons for termination~~] stated in the notice; and
3-55 (4) the dealer fails to cure the default.
3-56 (b) Good cause is not required for the nonrenewal of an
3-57 agreement [~~other than an agreement having an original term of less~~
3-58 ~~than one year~~].
3-59 (c) The fact that a dealer holds an agreement involving
3-60 another line, make, or brand of new boat or new boat [~~outboard~~]
3-61 motor does not constitute a default or grounds for termination of an
3-62 agreement [~~good cause~~].
3-63 (d) A manufacturer or distributor may terminate an
3-64 agreement on written notice, without a cure period, if the dealer:
3-65 (1) financially defaults to the manufacturer, the
3-66 distributor, or a financing source;
3-67 (2) becomes subject to an order for relief, as that
3-68 term is used in Title 11, United States Code;
3-69 (3) engages in an act of material fraud relating to the

4-1 performance of a right or obligation under the agreement
4-2 ~~[fraudulent conduct in:~~
4-3 ~~[(A) conducting the dealer's business; or~~
4-4 ~~[(B) performing the agreement];~~
4-5 (4) is a corporation that ceases to exist;
4-6 (5) becomes insolvent or takes or fails to take any
4-7 action that constitutes an admission of inability to pay debts as
4-8 the debts mature;
4-9 (6) makes a general assignment for the benefit of
4-10 creditors to an agent authorized to liquidate any substantial
4-11 amount of assets; ~~[or]~~
4-12 (7) applies to a court for the appointment of a
4-13 receiver for any assets or properties;
4-14 (8) fails to substantially comply with a federal,
4-15 state, or local law, rule, regulation, ordinance, or order
4-16 applicable to the agreement; or
4-17 (9) receives three valid notices of a default under
4-18 Section 2352.0523 for the same default, whether cured or not,
4-19 within a 12-month period.

4-20 SECTION 6. Section 2352.101(a), Occupations Code, is
4-21 amended to read as follows:

4-22 (a) A manufacturer or distributor who publicly advertises a
4-23 new boat, new boat ~~[outboard]~~ motor, or part as available for
4-24 immediate delivery shall deliver the boat, boat ~~[outboard]~~ motor,
4-25 or part in reasonable quantities and within a reasonable time after
4-26 receipt of an order from a dealer who has an agreement with the
4-27 manufacturer or distributor applicable to the advertised boat, boat
4-28 ~~[outboard]~~ motor, or part.

4-29 SECTION 7. Section 2352.103, Occupations Code, is amended
4-30 to read as follows:

4-31 Sec. 2352.103. FINANCING. (a) A manufacturer or
4-32 distributor may not require a dealer to finance through a
4-33 particular financing source a new boat or new boat ~~[outboard]~~ motor
4-34 sold by the dealer.

4-35 (b) A manufacturer or distributor may not require a dealer
4-36 to act as the manufacturer's or distributor's agent in securing:

4-37 (1) a promissory note and security agreement in
4-38 connection with the sale or purchase of a new boat or new boat
4-39 ~~[outboard]~~ motor; or

4-40 (2) an insurance policy on the operation of a new boat
4-41 or new boat ~~[outboard]~~ motor.

4-42 SECTION 8. Section 2352.104, Occupations Code, is amended
4-43 to read as follows:

4-44 Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE
4-45 AFTER TERMINATION OR NONRENEWAL OF AGREEMENT. (a) After a
4-46 manufacturer or distributor terminates or does not renew an
4-47 agreement, the former dealer may continue to purchase parts and
4-48 accessories to service the products covered by the agreement until
4-49 the first anniversary of the date of termination or nonrenewal. The
4-50 manufacturer or distributor shall sell parts and accessories under
4-51 this subsection at the same price offered to a current dealer.

4-52 (b) Until the first anniversary of the date of termination
4-53 or nonrenewal of an agreement, a dealer shall continue to perform
4-54 warranty work for the manufacturer's products, unless otherwise
4-55 specified by the manufacturer in the termination notice ~~[Subsection~~
4-56 ~~(a) does not apply if the manufacturer or distributor terminates~~
4-57 ~~the agreement:~~

4-58 ~~[(1) based on quality of service; or~~

4-59 ~~[(2) for a reason justifying immediate termination~~
4-60 ~~under Section 2352.053(d)].~~

4-61 SECTION 9. Section 2352.105, Occupations Code, is amended
4-62 by amending Subsection (d) and adding Subsections (e) and (f) to
4-63 read as follows:

4-64 (d) A manufacturer or distributor shall approve or
4-65 disapprove a dealer's written claim for warranty work not later
4-66 than the second business day after the date of receipt of the claim
4-67 [within a reasonable time]. If the claim is approved, the
4-68 manufacturer or distributor shall pay the claim not later than the
4-69 30th day after the date of receipt of the dealer's written invoice

5-1 or written proof of completion of the warranty work [~~within a~~
5-2 ~~reasonable time~~]. If the claim is disapproved, the manufacturer or
5-3 distributor shall notify the dealer of the grounds for disapproval.

5-4 (e) A manufacturer or distributor may not audit a claim
5-5 filed for warranty work after the first anniversary of the date the
5-6 claim is submitted.

5-7 (f) A manufacturer must act as the single source of contact
5-8 for the dealer for the manufacturer's component part product
5-9 warranties, other than engine-related product warranties.

5-10 SECTION 10. Subchapter C, Chapter 2352, Occupations Code,
5-11 is amended by adding Section 2352.1051 to read as follows:

5-12 Sec. 2352.1051. DELIVERY OF PARTS. On signing an
5-13 agreement, a manufacturer shall provide the dealer with a written
5-14 statement of the approximate amount of time the manufacturer takes
5-15 to deliver a part to the dealer.

5-16 SECTION 11. Sections 2352.107(a) and (b), Occupations Code,
5-17 are amended to read as follows:

5-18 (a) A manufacturer or distributor who terminates an
5-19 agreement shall repurchase on demand from the dealer any of the
5-20 following items, purchased by the dealer from the manufacturer or
5-21 distributor, that are free and clear of a lien or encumbrance:

5-22 (1) a new, unsold, [~~retailable, undamaged,~~] and
5-23 complete boat, with accessories and packaged trailers sold with the
5-24 boat, and any boat [~~outboard~~] motor that:

5-25 (A) is in the dealer's inventory; and

5-26 (B) was purchased during the two years [~~within~~
5-27 ~~one year~~] preceding the date of the termination; and

5-28 (2) any new, current, unsold, undamaged, and unused
5-29 parts or accessories for boats or boat [~~outboard~~] motors in the
5-30 original resalable merchandising package.

5-31 (b) A demand for repurchase must be made in writing not
5-32 later than the 90th [~~30th~~] day after the date the manufacturer or
5-33 distributor terminates the agreement. The dealer must provide the
5-34 manufacturer or distributor with a complete list of the items to be
5-35 repurchased. The manufacturer or distributor shall complete the
5-36 repurchase not later than the 30th day after the date the dealer
5-37 demands the repurchase [~~within a reasonable time~~].

5-38 SECTION 12. Subchapter D, Chapter 2352, Occupations Code,
5-39 is amended by adding Section 2352.204 to read as follows:

5-40 Sec. 2352.204. CIVIL PENALTY. (a) A manufacturer or
5-41 distributor who violates this chapter is liable to this state for a
5-42 civil penalty. The amount of the penalty may not exceed \$500 for
5-43 each violation.

5-44 (b) Each sale of a new boat or boat motor by a manufacturer
5-45 or distributor in violation of Section 2352.051 is a separate
5-46 violation.

5-47 (c) The attorney general may sue to collect a civil penalty
5-48 under this section. The attorney general may recover, on behalf of
5-49 the state, the reasonable expenses incurred in obtaining the
5-50 penalty, including investigation and court costs, reasonable
5-51 attorney's fees, witness fees, and other expenses.

5-52 SECTION 13. The change in law made by this Act applies only
5-53 to an agreement entered into or renewed under Chapter 2352,
5-54 Occupations Code, on or after the effective date of this Act. An
5-55 agreement entered into or renewed before the effective date of this
5-56 Act is governed by the law in effect on the date the agreement was
5-57 entered into or renewed, and the former law is continued in effect
5-58 for that purpose.

5-59 SECTION 14. This Act takes effect September 1, 2011.

5-60

* * * * *