

By Senator Flores

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1 A bill to be entitled
2 An act relating to commercial relationships; creating
3 s. 686.80, F.S.; designating the act as the "Marine
4 Product Manufacturers and Dealers Act"; creating s.
5 686.801, F.S.; providing legislative findings and
6 intent; providing for liberal construction of the act;
7 creating s. 686.802, F.S.; providing definitions;
8 creating s. 686.803, F.S.; providing for the
9 application of the act to agreements between a dealer
10 and a manufacturer, distributor, or wholesaler of
11 marine products; creating s. 686.804, F.S.; providing
12 requirements for warranty agreements and the
13 processing of warranty claims relating to marine
14 products; specifying the minimum compensation to a
15 dealer for warranty work and for parts; limiting the
16 time period for auditing warranty claims and sales
17 incentives submitted by a dealer; creating s. 686.805,
18 F.S.; requiring that a dealer in marine products
19 provide predelivery and preparation obligations;
20 requiring that a manufacturer of marine products
21 provide for the availability of repair parts;
22 requiring that a manufacturer or distributor accept
23 returned parts from a dealer under certain
24 circumstances; specifying the minimum credit to be
25 provided to a dealer that returns a part; requiring
26 that a manufacturer or distributor issue applicable
27 credit within a specified time; requiring that the
28 packing and return freight expenses of surplus parts
29 be borne by the dealer; creating s. 686.806, F.S.;

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30 requiring that a manufacturer, distributor, or
31 wholesaler repurchase a dealer's inventory of marine
32 products under certain circumstances; specifying the
33 minimum price to be paid for repurchased marine
34 products; requiring that the title and right of
35 possession to the repurchased items be transferred to
36 the manufacturer, distributor, or wholesaler within a
37 reasonable time after payment of the repurchase
38 amount; providing exceptions to the repurchase
39 requirement; authorizing the imposition of treble
40 damages for failing to repurchase the inventory of a
41 dealer within a certain time period; requiring that a
42 manufacturer, distributor, or wholesaler intending to
43 establish a new dealership or to relocate a current
44 dealership give written notice to an existing
45 dealership in the relevant market area; requiring that
46 a manufacturer, distributor, or wholesaler compensate
47 a dealer of marine products for direct sales within
48 the dealer's market area; creating s. 686.807, F.S.;
49 requiring that a manufacturer, distributor, or
50 wholesaler indemnify a dealer of marine products for
51 losses relating to legal actions; creating s. 686.808,
52 F.S.; prohibiting unfair or deceptive acts relating to
53 the sale of marine products; specifying acts and
54 practices that constitute misconduct; creating s.
55 686.809, F.S.; providing that any part of a contract
56 or franchise agreement which violates the act is void;
57 creating s. 686.81, F.S.; specifying the legal
58 remedies available for violations of the act;

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59 authorizing a class action under certain
60 circumstances; authorizing the award of punitive
61 damages under certain circumstances; authorizing the
62 Department of Legal Affairs or a state attorney to
63 enforce the act under certain circumstances; creating
64 s. 686.811, F.S.; providing that the act does not
65 preempt local ordinances unless the ordinances are
66 inconsistent with the act; providing for application
67 of the act to contracts entered into, renewed, or
68 amended after a specified date; providing an effective
69 date.

70
71 Be It Enacted by the Legislature of the State of Florida:

72
73 Section 1. Section 686.80, Florida Statutes, is created to
74 read:

75 686.80 Marine Product Manufacturers and Dealers Act.-
76 Sections 686.80-686.811 may be cited as the "Marine Product
77 Manufacturers and Dealers Act."

78 Section 2. Section 686.801, Florida Statutes, is created to
79 read:

80 686.801 Legislative findings and intent; construction.-
81 (1) The Legislature finds and declares that the
82 distribution and sale of marine products in this state affects
83 vital interests of the state, including the general economy of
84 the state, the public interest, and the public welfare. The
85 Legislature further finds that it must regulate the conduct of
86 manufacturers, distributors, and dealers of marine products, and
87 their representatives who do business in this state, in order to

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88 prevent fraud, unfair business practices, unfair methods of
89 competition, impositions, and other abuses upon the residents of
90 this state.

91 (2) In order to promote the intent described in this
92 section, ss. 686.80-686.811 shall be liberally construed.

93 Section 3. Section 686.802, Florida Statutes, is created to
94 read:

95 686.802 Definitions.—As used in ss. 686.80-686.811, the
96 term:

97 (1) "Dealer" means a person who sells, solicits, or
98 advertises the sale of marine products to the consuming public.

99 The term does not include:

100 (a) A public officer while performing her or his duties as
101 an officer.

102 (b) A person making a casual or isolated sale of her or his
103 own marine products.

104 (c) A person engaged in the auction sale of marine
105 products.

106 (d) A person engaged in the sale, solicitation, or
107 advertisement of used marine products only.

108 (e) A receiver, trustee, administrator, executor, or
109 guardian or other persons appointed by, or acting under the
110 judgment or order of, a court.

111 (f) A bank, a finance company, or other loan agency that
112 acquires marine products incident to its regular business.

113 (2) "Dealership" means the business of selling or
114 attempting to sell by a dealer of new marine products, or the
115 right conferred by written or oral agreement with the
116 manufacturer, distributor, or wholesaler, for a definite or

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117 indefinite period of time, to sell or attempt to sell new marine
118 products.

119 (3) "Distributor" or "wholesaler" means a person, firm,
120 association, corporation, or company that sells or distributes
121 new marine products to dealers.

122 (4) "Franchise" means a contract or agreement that is
123 expressed or implied, is oral or written, and lasts for a
124 definite or indefinite time, during which a manufacturer,
125 distributor, or wholesaler grants to a dealer permission to use
126 a trade name, service mark, trademark, or related characteristic
127 and during which there is a common interest or community of
128 interest in the marketing of marine products or related services
129 at wholesale or retail, whether by leasing or sale or otherwise.

130 (5) "Franchisee" means a dealer to whom a franchise is
131 offered or granted.

132 (6) "Franchisor" means a manufacturer, distributor, or
133 wholesaler that grants a franchise to a dealer.

134 (7) "Fraud" means actual fraud or constructive fraud as
135 normally defined, in addition to the following:

136 (a) A misrepresentation in any manner, whether
137 intentionally false or arising from gross negligence, of a
138 material fact.

139 (b) A promise or representation not made honestly and in
140 good faith.

141 (c) An intentional failure to disclose a material fact.

142 (d) An artifice employed to deceive another.

143 (8) "Manufacturer" means a person engaged in the business
144 of manufacturing or assembling new and unused marine products.

145 (9) "Marine product" means a new watercraft, boat, or motor

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146 designed for recreational or commercial use on water. The term
147 includes an outboard motor or boat that has an attached motor.
148 The term does not include a watercraft designed or adapted to be
149 powered only by an occupant's energy.

150 (10) "Used marine product" means a marine product that was
151 previously sold to and put into regular use or service by a
152 person, except a distributor, wholesaler, or dealer for resale.

153 (11) "Person" means a natural person, corporation,
154 association, partnership, trust, or other business entity and,
155 in the case of a business entity, includes any other entity in
156 which the business entity has a majority interest or which it
157 effectively controls, as well as the individual officers,
158 directors, and other persons in active control of the activities
159 of each such entity.

160 (12) "Relevant market area" means the geographic area for
161 which a dealer is assigned responsibility for selling or
162 soliciting or advertising the sale of marine products under the
163 terms of a franchise. The relevant market area of a dealer must
164 include at least all of the area within 30 miles from a
165 dealership location.

166 (13) "Sale" means the issuance, transfer, agreement for
167 transfer, exchange, pledge, hypothecation, or mortgage in any
168 manner or form, by transfer in trust or otherwise, of any marine
169 product or interest in marine products, or of any franchise
170 related to marine products, for a consideration and any option,
171 subscription or other contract, or solicitation, looking to a
172 sale, or offer or attempt to sell in any form, whether in oral
173 or written form for a consideration.

174 (14) "Terminate" or "termination," with respect to a

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175 franchise, includes the termination, discontinuation,
176 cancellation, or nonrenewal of a franchise.

177 Section 4. Section 686.803, Florida Statutes, is created to
178 read:

179 686.803 Application of the Marine Product Manufacturers and
180 Dealers Act.—

181 (1) A person who engages directly or indirectly in
182 purposeful agreements or contracts within this state in
183 connection with the sale or advertising for sale of new marine
184 products is subject to ss. 686.80-686.11.

185 (2) Sections 686.80-686.11 apply to all written or oral
186 agreements between a manufacturer, distributor, or wholesaler
187 with a dealer, including, but not limited to, the franchise
188 offering; the franchise agreement; sales of goods, services, and
189 advertising; leases or mortgages of real or personal property;
190 promises to pay; security interests; pledges; insurance
191 contracts; advertising contracts; construction or installation
192 contracts; servicing contracts; and all other such agreements in
193 which the manufacturer, distributor, or wholesaler has any
194 direct or indirect interest.

195 Section 5. Section 686.804, Florida Statutes, is created to
196 read:

197 686.804 Warranty agreements; claims; compensation of
198 dealers.—

199 (1) Each manufacturer, distributor, or wholesaler shall
200 provide a fair and reasonable warranty agreement on any new
201 marine products that it sells and shall fairly compensate its
202 dealers for labor and parts used in fulfilling the warranty
203 agreements.

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204 (2) (a) Each claim for payment by a dealer under a warranty
205 agreement for labor or parts must be paid within 30 days
206 following its approval. Each claim must be approved or
207 disapproved within 30 days after its receipt. When a claim is
208 disapproved, the dealer who submitted it must be notified in
209 writing of the disapproval within the 30-day period, and the
210 notice must state the specific grounds upon which the
211 disapproval is based.

212 (b) Any special handling of claims required of the dealer
213 by the manufacturer, distributor, or wholesaler, which handling
214 is not uniformly required of all dealers, may be enforced only
215 after 30 days' notice in writing to the dealer and upon good and
216 sufficient reason.

217 (3) (a) The minimum compensation to a dealer for warranty
218 work shall be calculated for labor in accordance with the
219 reasonable and customary amount of time required to complete
220 such work, expressed in hours and tenths of hours multiplied by
221 the dealer's established hourly retail labor rate. Before filing
222 a claim for reimbursement for warranty work, the dealer must
223 notify the applicable manufacturer, distributor, or wholesaler
224 of the dealer's hourly retail labor rate.

225 (b) The minimum compensation to the dealer for parts used
226 in fulfilling warranty work shall be the dealer's costs for the
227 parts, including all freight and handling charges applicable to
228 the parts, plus 25 percent of the sum of these costs and charges
229 to reimburse the dealer's reasonable cost of doing business and
230 providing warranty service on behalf of the manufacturer.

231 (4) A manufacturer, distributor, or wholesaler may not
232 deny, delay payment for, or restrict a claim by a dealer for

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233 warranty service or parts, incentives, holdbacks, or other
234 amounts owed to a dealer unless the denial, delay, or
235 restriction is the direct result of a material defect in the
236 claim which affects the validity of the claim.

237 (5) A manufacturer, distributor, or wholesaler may audit a
238 warranty claim submitted by a dealer for up to 12 months after
239 payment of the claim. A manufacturer, distributor, or wholesaler
240 may charge back to a dealer only those amounts based upon paid
241 claims shown by the audit to be invalid. This subsection does
242 not apply to a fraudulent claim.

243 (6) An audit of a dealer by a manufacturer, distributor, or
244 wholesaler for sales incentives, service incentives, rebates, or
245 other forms of incentive compensation must be completed within
246 12 months after the date of termination of the incentive
247 compensation program. This subsection does not apply to a
248 fraudulent claim.

249 Section 6. Section 686.805, Florida Statutes, is created to
250 read:

251 686.805 Parts; availability; return.-

252 (1) Each manufacturer shall specify, and each dealer shall
253 provide and fulfill, reasonable predelivery and preparation
254 obligations for its marine products before the delivery of
255 marine products to retail purchasers.

256 (2) Each manufacturer shall provide for the availability of
257 repair parts throughout the reasonable useful life of any marine
258 product sold.

259 (3) Each manufacturer or distributor shall annually provide
260 to its dealers an opportunity to return a portion of their
261 surplus parts inventories for credit. The surplus procedure

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262 shall be administered as follows:

263 (a) The manufacturer or distributor may specify, and notify
264 each of its dealers of, a time period of at least 60 days'
265 duration during which each of its dealers may submit its surplus
266 parts list and return the surplus parts to the manufacturer or
267 distributor.

268 (b) If a manufacturer or distributor has not notified a
269 dealer of a specific time period for returning surplus parts
270 within the preceding 12 months, the manufacturer or distributor
271 must authorize and allow the dealer's surplus parts return
272 request within 30 days after receipt of such request from the
273 dealer.

274 (c) Each manufacturer or distributor must allow surplus
275 parts return authority on a dollar value of parts equal to 6
276 percent of the total dollar value of parts purchased from the
277 manufacturer or distributor by the dealer during the 12-month
278 period immediately preceding the notification to the dealer of
279 the surplus parts return program, or the month in which the
280 dealer's return request is made, whichever is applicable.
281 However, the dealer may elect to return a dollar value of her or
282 his surplus parts equal to less than 6 percent of the total
283 dollar value of parts purchased by the dealer from the
284 manufacturer or distributor during the preceding 12-month
285 period.

286 (d) An obsolete or superseded part may not be returned, but
287 any part listed in the manufacturer's, distributor's, or
288 wholesaler's current list of returnable parts on the date of
289 notification of the surplus parts return program to the dealer,
290 or on the date of the dealer's parts return request, whichever

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291 is applicable, is eligible for return and for specified credit.
292 However, a returned part must be in new and unused condition and
293 must have been purchased from the manufacturer, distributor, or
294 wholesaler to whom it is returned.

295 (e) The minimum credit to be allowed for a returned part is
296 85 percent of the wholesale cost of the part as listed in the
297 manufacturer's, distributor's, or wholesaler's current list of
298 returnable parts on the date of the notification of the surplus
299 parts return program to the dealer, or on the date of the
300 dealer's parts return request, whichever is applicable.

301 (f) Applicable credit must be issued or furnished by the
302 manufacturer or distributor to the dealer within 60 days after
303 receipt of her or his returned parts.

304 (g) The packing and return freight expense incurred in any
305 return of surplus parts pursuant to the terms of this section
306 shall be borne by the dealer.

307 Section 7. Section 686.806, Florida Statutes, is created to
308 read:

309 686.806 Repurchase of inventory upon termination of
310 franchise agreement; establishment or relocation of dealership;
311 sale or lease of new marine products.-

312 (1) A manufacturer, distributor, or wholesaler that enters
313 into a franchise agreement with a dealer which requires the
314 dealer to maintain an inventory of marine products or repair
315 parts must repurchase the inventory upon termination of the
316 franchise as provided in this section. However, the dealer may
317 choose to keep the inventory. If the dealer has an outstanding
318 debt to the manufacturer, distributor, or wholesaler, the
319 repurchase amount may be credited to the dealer's account.

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320 (2) If the dealer decides not to keep the inventory, the
321 manufacturer, distributor, or wholesaler must repurchase the
322 inventory held by the dealer on the date of termination of the
323 contract. The manufacturer, distributor, or wholesaler shall
324 pay:

325 (a) The actual dealer cost, including freight, of all new,
326 unsold, undamaged, and complete marine products.

327 (b) The current wholesale price of all new, unused, and
328 undamaged parts and accessories that were purchased from the
329 manufacturer, distributor, or wholesaler or purchased from an
330 outgoing dealer as a part of the dealer's initial inventory and
331 that have been listed in the manufacturer's, distributor's, or
332 wholesaler's parts price book in the previous 2 years. The
333 manufacturer, distributor, or wholesaler must also pay the
334 dealer 6 percent of the current wholesale price on all new,
335 unused, and undamaged repair parts returned to cover the cost of
336 handling, packing, and loading. However, the manufacturer,
337 distributor, or wholesaler may perform the handling, packing,
338 and loading in lieu of paying the 6 percent sum imposed in this
339 paragraph for these services. If the manufacturer, distributor,
340 or wholesaler elects to perform the handling, packing, and
341 loading, the dealer shall make the marine products available to
342 the manufacturer, distributor, or wholesaler after receipt by
343 the dealer of the full repurchase amount as provided in this
344 section.

345 (c) The fair market value of each undamaged sign owned by
346 the dealer which bears a trademark or trade name used or claimed
347 by the manufacturer, distributor, or wholesaler and which was
348 purchased from or at the request of the manufacturer,

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349 distributor, or wholesaler.

350 (d) The fair market value of all special tools, data
351 processing equipment, and marine product service equipment owned
352 by the dealer which:

353 1. Were recommended in writing by the manufacturer,
354 distributor, or wholesaler as special tools and equipment;

355 2. Were purchased from or at the request of the
356 manufacturer, distributor, or wholesaler; and

357 3. Are in usable and good condition except for reasonable
358 wear and tear.

359 (3) Upon payment of the repurchase amount to the dealer,
360 the title and right of possession to the repurchased items shall
361 transfer or be transferred within a reasonable time to the
362 manufacturer, distributor, or wholesaler.

363 (4) This section does not require the repurchase from a
364 dealer of:

365 (a) A single repair part that is priced as a set of two or
366 more items.

367 (b) A repair part that, because of its condition, is not
368 resalable as a new part without repackaging or reconditioning.

369 (c) Inventory that the dealer desires to keep, if the
370 dealer has a contractual right to keep it.

371 (d) A marine product that is not in new, unused, undamaged,
372 and complete condition.

373 (e) A marine product that has been used by the dealer or
374 has deteriorated because of weather conditions at the dealer's
375 location, unless the manufacturer, distributor, or wholesaler
376 receives a reasonable allowance for such usage or deterioration.

377 (f) A part that is not in new, unused, and undamaged

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378 condition.

379 (5) If a manufacturer, distributor, or wholesaler fails or
380 refuses to repurchase any inventory described in this section
381 within 60 days after termination of a dealer's franchise, he or
382 she is civilly liable for three times the current wholesale
383 price of the inventory plus any freight charges paid by the
384 dealer, the dealer's reasonable attorney fees, court costs, and
385 interest on the current wholesale price computed at the legal
386 interest rate provided under s. 687.01 beginning from the 61st
387 day after termination.

388 (6) A manufacturer, distributor, or wholesaler that intends
389 to establish a new dealership or to relocate a current
390 dealership for a particular product line or make of marine
391 products within the relevant market area of an existing
392 dealership of the same product line or make of marine products
393 must give written notice of such intent by certified mail or
394 overnight delivery, return receipt requested, to the existing
395 dealership. The notice must be delivered at least 180 days
396 before the establishment of the new dealership or relocation of
397 a current dealership. The notice must include:

398 (a) The specific location of the additional or relocated
399 dealership.

400 (b) The date on or after which the additional or relocated
401 dealership will commence operation at the new location.

402 (c) The identity of all existing dealerships in the
403 relevant market area where the new or relocated dealership is to
404 be located.

405 (d) The names of the dealer and principals in the new or
406 relocated dealership.

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407 (7) A manufacturer, distributor, or wholesaler may sell or
408 lease new marine products for use within the state. If the
409 manufacturer, distributor, or wholesaler makes a direct sale or
410 lease of marine products, it must pay to the dealer located
411 within the relevant market area a commission of at least 10
412 percent of the sale or lease price of the marine products sold
413 or leased. This payment covers any compensation to the dealer
414 for the cost of customary preparation and delivery as well as
415 any commission on the sale or lease. This compensation must be
416 paid or credited in the same manner as provided in this section.
417 The manufacturer, distributor, or wholesaler, if practicable,
418 must use the dealer in the relevant market area for preparation
419 and delivery. For purposes of this subsection, marine products
420 are considered to be used primarily within a dealer's relevant
421 market area if the new marine product is located or housed at a
422 user's facility located within the relevant market area. This
423 subsection does not apply to a liquidation or sale of marine
424 products which has been ordered by a court.

425 Section 8. Section 686.807, Florida Statutes, is created to
426 read:

427 686.807 Indemnification of dealer with respect to legal
428 actions.—A manufacturer, distributor, or wholesaler shall fully
429 indemnify and hold harmless its dealers against any losses,
430 including, but not limited to, court costs and reasonable
431 attorney fees or damages arising out of a complaint, claim, or
432 lawsuit involving, but not limited to, strict liability,
433 negligence, misrepresentation, express or implied warranty, or
434 rescission of a sale if the complaint, claim, or lawsuit relates
435 to the manufacture, assembly, or design of new items, parts, or

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436 accessories governed by ss. 686.80-686.811 or other functions by
437 the manufacturer, distributor, or wholesaler which are beyond
438 the control of the dealer.

439 Section 9. Section 686.808, Florida Statutes, is created to
440 read:

441 686.808 Unlawful acts and practices.—Unfair methods of
442 competition and unfair or deceptive acts or practices in the
443 conduct of the manufacturing, distribution, wholesaling,
444 franchising, sale, and advertising of marine products are
445 declared to be unlawful.

446 (1) A manufacturer, distributor, wholesaler, or dealer may
447 not engage in an action that is arbitrary, capricious, in bad
448 faith, or unconscionable and that causes damage in terms of law
449 or equity to any of the parties or to the public.

450 (2) A manufacturer, distributor, or wholesaler may not:

451 (a) Coerce or compel, or attempt to coerce or compel, a
452 dealer to order or accept delivery of any marine products, parts
453 or accessories for those items, or other commodity or
454 commodities that the dealer has not voluntarily ordered.

455 (b) Refuse to deliver to a dealer having a franchise for
456 the retail sale of new marine products sold or distributed by
457 the manufacturer, distributor, or wholesaler in reasonable
458 quantities and within a reasonable time after receipt of the
459 dealer's order, any marine products covered by the franchise
460 specifically advertised or represented by the manufacturer,
461 distributor, or wholesaler to be available for immediate
462 delivery, or fail to deliver marine products to a dealer in
463 quantities that are fair and equitable when compared with other
464 dealers to whom the manufacturer, distributor, or wholesaler

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465 delivers marine products pursuant to a franchise agreement.
466 However, the failure to deliver marine products is not
467 considered a violation of this section if the failure is due to
468 a prudent and reasonable restriction on the extension of credit
469 by the franchisor to the dealer, an act of God, a work stoppage
470 or delay due to a strike or labor difficulty, a bona fide
471 shortage of materials, a freight embargo, or another cause over
472 which the manufacturer, distributor, or wholesaler has no
473 control.

474 (c) Coerce or compel, or attempt to coerce or compel, a
475 dealer to enter into an agreement, written or oral, which is
476 supplementary to an existing franchise with the manufacturer,
477 distributor, or wholesaler, or commit any other act prejudicial
478 to the dealer by threatening to terminate an existing franchise.
479 However, notice in good faith to a dealer of the dealer's
480 violation or breach of any term or provision of the franchise
481 does not constitute a violation of this section if the notice is
482 in writing and is mailed by registered or certified mail to the
483 dealer at the dealer's current business address and the notice
484 contains the specific facts as to the dealer's violation or
485 breach of the franchise.

486 (d)1. Terminate a franchise with a dealer without due
487 cause, as defined in subparagraph 2. Termination of a franchise
488 without due cause constitutes an unfair termination, regardless
489 of the specified time period of the franchise. Except if the
490 grounds for the termination fall within sub-subparagraph 2.c.,
491 the manufacturer, distributor, or wholesaler must notify a
492 dealer in writing of the termination of the franchise at least
493 180 days before the effective date of the termination. The

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494 notice must state the specific grounds for the termination.
495 After delivery of the written notice, the contractual term of
496 the franchise may not expire without the written consent of the
497 dealer during the 180-day period. Before the 180-day period
498 expires, a dealer may file an action in a court of competent
499 jurisdiction seeking a determination that due cause does not
500 exist for the proposed termination. If the dealer files an
501 action seeking a determination that due cause does not exist,
502 the franchise agreement remains in effect and may not be
503 terminated until a final judgment that finds the existence of
504 due cause is entered. The court may grant temporary,
505 preliminary, or final injunctive relief. If a dealer cures the
506 claimed deficiency within the 180-day period, the franchise may
507 not be terminated.

508 2. As used in this subparagraph, tests for determining what
509 constitutes due cause to terminate a franchise include whether
510 the dealer:

511 a. Has transferred an ownership interest in the dealership
512 without the consent of the manufacturer or distributor.

513 b. Has made a material misrepresentation in applying for or
514 in acting under the franchise.

515 c. Has filed a voluntary petition in bankruptcy or has had
516 an involuntary petition in bankruptcy filed against her or him
517 which has not been discharged within 60 days after the filing,
518 is in default under the provisions of a security agreement in
519 effect with the manufacturer or distributor, or is in
520 receivership.

521 d. Has engaged in unfair business or trade practices.

522 e. Has inadequately represented the manufacturer's or

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523 distributor's products with respect to sales, service, or
524 warranty work.

525 f. Has failed to comply with an applicable federal, state,
526 or local licensing law.

527 g. Has been convicted of a felony, the effect of which
528 would be detrimental to the manufacturer, distributor, or
529 dealership.

530 h. Has failed to operate in the normal course of business
531 for 10 consecutive business days or has terminated her or his
532 business, except if the failure is due to an act of God, a work
533 stoppage, or a delay due to a strike or labor difficulty, a
534 freight embargo, or another cause over which the dealer has no
535 control.

536 i. Has relocated her or his place of business without the
537 manufacturer's or distributor's consent.

538 j. Has failed to substantially comply with the material
539 terms of the franchise.

540 3. Before termination of the franchise because of the
541 dealer's failure to meet marketing criteria or market
542 penetration, the manufacturer, distributor, or wholesaler must
543 provide written notice of such intention at least 180 days in
544 advance. After the notice, the manufacturer or other entity
545 issuing the notice must make good faith efforts to work with the
546 dealer to gain the desired market share, including, without
547 limitation, reasonably making available to the dealer an
548 adequate inventory of new marine products and parts and
549 competitive marketing programs. The manufacturer or other
550 entity, at the end of the 180-day notice period, may terminate
551 the franchise only upon further written notice specifying the

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552 reasons for determining that the dealer failed to meet
553 reasonable marketing criteria or reasonable market penetration.
554 The written notice must specify that termination is effective 90
555 days after delivery of the notice. Either party may petition the
556 court pursuant to subparagraph 1. for relief. If the dealer
557 cures the claimed deficiency within the 90-day period, the
558 franchise may not be terminated.

559 4. A manufacturer, distributor, or wholesaler must provide
560 a dealer with 90 days' advance notice of an intent to modify a
561 franchise or to replace the franchise with a succeeding
562 franchise if the modification or replacement:

563 a. Will adversely alter the rights or obligations of a
564 dealer under an existing franchise; or

565 b. Will substantially impair the sales, service
566 obligations, or investment of the dealer.

567
568 The notice must include the specific grounds for the
569 modification or replacement. A dealer receiving a notice of
570 intent to modify or to replace may file an action seeking a
571 determination that due cause does not exist for such proposed
572 modification or replacement. If a dealer files an action seeking
573 a determination that due cause does not exist, the existing
574 franchise remains in effect and may not be modified or replaced
575 until a final judgment that finds that due cause exists is
576 entered. The court may grant temporary, preliminary, or final
577 injunctive relief.

578 5. In a proceeding under this section, the manufacturer,
579 distributor, or wholesaler has the burden of proof in
580 establishing that due cause exists to terminate, modify, or

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581 replace a franchise with a dealer.

582 (e) Resort to or use false or misleading advertisement in
583 connection with its business as such manufacturer, distributor,
584 or wholesaler.

585 (f) Offer to sell or sell any new marine product, or parts
586 or accessories for the marine product, to a dealer at a lower
587 actual price than the actual price offered to another dealer for
588 the same and identically equipped model marine product, or parts
589 or accessories for the product, or use any device, including,
590 but not limited to, sales promotion plans or programs, which
591 results in a lesser actual price or a fixed price that is
592 predetermined solely by the manufacturer or distributor. This
593 paragraph does not apply to sales to a dealer for resale to any
594 unit or agency of the United States, the state or any of its
595 political subdivisions, or any municipality located within this
596 state. Further, this paragraph does not apply if a manufacturer,
597 distributor, or wholesaler sells or offers to sell new marine
598 products, parts, or accessories to all of its franchised dealers
599 at the same price.

600 (g) Willfully discriminate, directly or indirectly, in
601 price, programs, or terms of sale offered to a franchisee if the
602 effect of the discrimination may be to substantially lessen
603 competition or to give to one holder of a franchise an economic,
604 business, or competitive advantage not offered to all holders of
605 the same or similar franchise.

606 (h) Prevent or attempt to prevent, by contract or
607 otherwise, a dealer from changing the capital structure of his
608 or her dealership or the means by or through which the dealer
609 finances the operation of his or her dealership if:

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610 1. The dealer at all times meets any reasonable capital
611 standard agreed to between the dealer and the manufacturer,
612 distributor, or wholesaler; and

613 2. The change by the dealer does not result in a change in
614 the executive management of the dealership.

615 (i) Prevent or attempt to prevent, by contract or
616 otherwise, a dealer from selling, transferring, or assigning
617 substantially all of the assets of the dealership, including the
618 franchise, or an officer, member partner, or stockholder of the
619 dealership from selling, transferring, or assigning any part of
620 the equity interest of the officer, partner, or stockholder in
621 the dealership to any other person or party. However, a dealer,
622 officer, partner, or stockholder may not sell, transfer, or
623 assign the franchise, ownership interest, or power of management
624 or control of the dealership without the written consent of the
625 manufacturer, distributor, or wholesaler, except that consent
626 may not be unreasonably withheld. A manufacturer, distributor,
627 or wholesaler must provide a written notice approving or
628 rejecting a proposed sale, transfer, or assignment within 60
629 days after receipt of a notice of:

630 1. A dealer's intent to sell, transfer, or assign
631 substantially all of the assets of the dealership, including the
632 franchise, or power of management or control; or

633 2. The intent of an officer, member partner, or stockholder
634 to sell, transfer, or assign an equity or ownership interest in
635 the dealership.

636
637 If the manufacturer, distributor, or wholesaler rejects the
638 proposed sale, transfer, or assignment, it must specify the

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639 basis for rejection, or the proposed sale, transfer, or
640 assignment is deemed approved.

641 (j) Impose, directly or indirectly, unreasonable
642 restrictions on the dealer relative to transfer, renewal,
643 termination, location, or site control of a franchise.

644 (k) Prevent a dealer from having an investment in or
645 holding a dealership contract for the sale of competing product
646 lines or makes of marine products, or require a dealer to
647 provide separate facilities for competing product lines or makes
648 of marine products.

649 (l) Obtain money, goods, services, anything of value, or
650 any other benefit from any other person with whom the dealer
651 does business or employs on account of or in relation to the
652 transactions between the dealer, the franchisor, and the other
653 person.

654 (m) Require a dealer to waive any of the protections or
655 rights provided under ss. 686.80-686.811.

656 (3) A dealer may not:

657 (a) Require a retail purchaser of new marine products, as a
658 condition of sale and delivery of the marine products, to
659 purchase special features, appliances, equipment, parts, or
660 accessories not desired or requested by the purchaser. This
661 prohibition does not apply to special features, appliances,
662 equipment, parts, or accessories that are already installed when
663 the marine product is received by the dealer from the
664 manufacturer, distributor, or wholesaler of the marine products.

665 (b) Represent and sell as new and unused a marine product
666 that has been used and operated for demonstration or other
667 purposes without stating to the purchaser before the sale the

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668 approximate amount of use the marine product has undergone.

669 (c) Resort to or use a false or misleading advertisement in
670 connection with her or his business as a dealer.

671 Section 10. Section 686.809, Florida Statutes, is created
672 to read:

673 686.809 Unenforceable agreements.—Any part of a franchise
674 agreement which violates ss. 686.80-686.811 is deemed against
675 public policy and is void.

676 Section 11. Section 686.81, Florida Statutes, is created to
677 read:

678 686.81 Remedies.—

679 (1) In addition to temporary, preliminary, or final
680 injunctive relief as provided in s. 686.808(3)(d), a person who
681 is aggrieved or injured in his or her business or property as a
682 result of a violation of ss. 686.80-686.811 may bring an action
683 in the circuit court against the manufacturer, distributor, or
684 wholesaler, and shall recover three times the actual damages
685 sustained and the costs of the action, including a reasonable
686 attorney fee.

687 (2) In addition to any other remedy or relief to which a
688 person is entitled, a person aggrieved by a violation of ss.
689 686.80-686.811 may bring an action to obtain a declaratory
690 judgment that an act, action, or practice violates such sections
691 and to enjoin a manufacturer, distributor, wholesaler, or dealer
692 who has violated, is violating, or is otherwise likely to
693 violate such sections.

694 (3) If the action is one of common or general interest to
695 many persons or if the parties are numerous and it is
696 impracticable to bring them all before the court, one or more

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697 may bring a class action for the benefit of the whole, including
698 an action for injunctive relief.

699 (4) In an action for money damages, if a judge or jury
700 finds that the defendant acted maliciously, the judge or jury
701 may award punitive damages as permitted by state law.

702 (5) The Department of Legal Affairs or the state attorney,
703 if a violation of ss. 686.80-686.811 occurs in the judicial
704 circuit of the state attorney, or a statewide association having
705 at least 30 dealer members, may bring an action for injunctive
706 or other appropriate civil relief for any violation of ss.
707 686.80-686.811.

708 (6) The remedies provided in this section are in addition
709 to any other remedies provided by law or in equity.

710 Section 12. Section 686.811, Florida Statutes, is created
711 to read:

712 686.811 Effect of act on other remedies.—Sections 686.80-
713 686.811 do not preempt local ordinances that regulate the
714 manufacturing, distribution, wholesaling, advertising, or sale
715 of marine products unless the ordinances are inconsistent with
716 such sections.

717 Section 13. This act shall take effect July 1, 2012, and
718 applies to contracts entered into, renewed, or amended on or
719 after that date.