

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/11/99 S3/18/99

A Bill

SENATE BILL 847

5 By: Senator Bradford
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For An Act To Be Entitled

9 "AN ACT TO PROVIDE PROTECTION FOR MARINE DEALERS IN
10 THE SAME FASHION AS CURRENTLY PROVIDED FOR MOTOR
11 VEHICLE DEALERS; AND FOR OTHER PURPOSES. "

Subtitle

14 "TO PROVIDE PROTECTION FOR MARINE DEALERS
15 IN THE SAME FASHION AS CURRENTLY
16 PROVIDED FOR MOTOR VEHICLE DEALERS. "

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. (a) It shall be unlawful for a manufacturer, a distributor,
22 a distributor branch or division, a factory branch or division, or officer,
23 agent, or other representative thereof:

24 (1) To terminate or cancel the franchise or selling agreement of
25 any dealer without due cause. The non-renewal of a franchise or selling
26 agreement without due cause shall constitute an unfair termination or
27 cancellation regardless of the terms or provisions of the franchise or selling
28 agreement. The manufacturer, distributor, distributor branch or division, or
29 factory branch or division, or officer, agent, or other representative thereof
30 shall notify a marine vessel dealer in writing of the termination or
31 cancellation of the franchise or selling agreement of the dealer at least
32 sixty (60) days before the effective date thereof stating the specific grounds
33 for the termination or cancellation. The manufacturer, distributor,
34 distributor branch or division, or factory branch or division, or officer,
35 agent, or other representative thereof shall notify a marine vessel dealer in
36 writing at least sixty (60) days before the contractual term of his franchise

1 or selling agreement expires that the franchise or selling agreement will not
2 be renewed, stating the specific grounds for the non-renewal in those cases
3 where there is not intention to renew it. In no event shall the contractual
4 term of any franchise or selling agreement expire without the written consent
5 of the marine vessel dealer involved prior to the expiration of at least sixty
6 (60) days following the written notice;

7 (2) Notwithstanding the terms of any franchise agreement, to fail
8 to give effect or to attempt to prevent any sale or transfer of a dealer,
9 dealership, or franchise or interest therein, or management thereof, provided
10 the manufacturer or distributor has received sixty (60) days' written notice
11 prior to the transfer or sale, and unless the transferee does not meet the
12 criteria generally applied by the manufacturer in approving new marine vessel
13 dealers or agree to be bound by all the terms and conditions of the dealer
14 agreement and the manufacturer so advises its dealer within sixty (60) days of
15 receipt of the notice. If the franchisee of record requests consent from the
16 manufacturer or distributor in writing on the form, if any, generally utilized
17 or required by the manufacturer or distributor for such purposes and the
18 manufacturer or distributor fails to respond in writing, giving or withholding
19 consent, within sixty (60) days of receipt of the written request, consent is
20 deemed to be given;

21 (3) Notwithstanding the terms of any franchise agreement, to
22 prevent, attempt to prevent, or refuse to honor the succession to a dealership
23 by any legal heir or devisee under the will of a dealer or under the laws of
24 descent and distribution applicable to the decedent's estate, provided the
25 manufacturer or distributor has received sixty (60) days' written notice prior
26 to the transfer or sale, and unless the transferee does not meet the criteria
27 generally applied by the manufacturer in approving new marine vessel dealers
28 or agree to be bound by all the terms and conditions of the dealer agreement,
29 and the manufacturer so advises its dealer within thirty (30) days of receipt
30 of said notice. However, nothing herein shall prevent a dealer, during his
31 lifetime, from designating any person as his successor dealer by written
32 instrument filed with the manufacturer or distributor. If the dealer's
33 successor, heir or devisee requests consent from the manufacturer or
34 distributor in writing on the form, if any, generally utilized or required by
35 the manufacturer or distributor for such purposes and the manufacturer or
36 distributor fails to respond in writing, giving or withholding consent, within

1 thirty (30) days of receipt of the written request, consent is deemed to be
2 given;

3 (4) Notwithstanding the terms of any franchise agreement, to fail
4 to pay to a dealer or any lienholder in accordance with their respective
5 interests after the termination of franchise:

6 (A) The dealer cost plus any charge by the manufacturer,
7 distributor, or a representative for distribution, delivery, and taxes, less
8 all allowances paid to the dealer by the manufacturer, distributor, or
9 representative for new, unsold, undamaged, and complete marine vessels of
10 current model year and one (1) year prior model year in the dealer's
11 inventory;

12 (B) The dealer cost of each new, unused, undamaged, and
13 unsold part or accessory if the part or accessory is in the current parts
14 catalogue and is still in the original, resalable merchandising package and in
15 unbroken lots, and if the part or accessory was purchased by the dealer either
16 directly from the manufacturer or distributor or from an outgoing authorized
17 dealer as a part of the dealer's initial inventory;

18 (C) The fair market value of each undamaged sign owned by
19 the dealer which bears a trademark or trade name used or claimed by the
20 manufacturer, distributor, or representative if the sign was purchased from or
21 purchased at the request of the manufacturer, distributor, or representative;

22 (D) The fair market value of all special tools and marine
23 service equipment owned by the dealer which were recommended in writing and
24 designated as special tools and equipment and purchased from or purchased at
25 the request of the manufacturer, distributor, or representative, if the tools
26 and equipment are in usable and good condition except for reasonable wear and
27 tear;

28 (E) The cost of transportation, handling, packing and
29 loading of marine vessels, parts, signs, tools, and equipment subject to
30 repurchase;

31 (F) Any sums due as provided by subdivision (a)(4)(A) of
32 this section within sixty (60) days after termination of a franchise and any
33 sums due as provided by subdivisions (a)(4)(B) – (a)(4)(E) of this section
34 within ninety (90) days after termination of a franchise. As a condition of
35 payment, the dealer is to comply with reasonable requirements with respect to
36 the return of inventory as are set out in the terms of the franchise

1 agreement. A manufacturer, distributor, or representative who fails to pay
2 those sums within the prescribed time or at such time as the dealer and
3 lienholder, if any, proffer good title prior to the prescribed time for
4 payment is liable to the dealer for:

5 (i) The greatest of dealer cost, fair market value,
6 or current price of the inventory;

7 (ii) Interest on the amount due calculated at the
8 rate applicable to a judgment of a court; and

9 (iii) Reasonable attorney's fees and costs.

10 (b) Concerning any sale of a marine vessel or vehicles to the State of
11 Arkansas, or to the several counties or municipalities thereof, or to any
12 other political subdivision thereof, no manufacturer or distributor shall
13 offer any discounts, refunds, or any other similar type inducements to any
14 dealer without making the same offers to all other of its dealers within the
15 state. If the inducements are made, the manufacturer or distributor shall
16 give simultaneous notice thereof to all of its dealers within the state.

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18 SECTION 2. A willful violation of any provision of this act shall be a
19 Class B misdemeanor.

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21 SECTION 3. All provisions of this act of a general and permanent nature
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
23 Revision Commission shall incorporate the same in the Code.

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25 SECTION 4. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

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31 SECTION 5. All laws and parts of laws in conflict with this act are
32 hereby repealed.

33 /s/ Bradford