

By Senator Flores

38-00392-12

2012768

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.;

38-00392-12

2012768

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;

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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.

38-00392-12

2012768

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



38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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.

38-00392-12

2012768

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,

38-00392-12

2012768

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

38-00392-12

2012768

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.

38-00392-12

2012768

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

38-00392-12

2012768

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



38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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:

38-00392-12

2012768

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

38-00392-12

2012768

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

38-00392-12

2012768

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



38-00392-12

2012768

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.