

Regular Session, 2010

# ACT No. 1043

HOUSE BILL NO. 1464 (Substitute for House Bill No. 1089 by Representative Ellington)

BY REPRESENTATIVE ELLINGTON

1 AN ACT

2 To enact R.S. 32:1268.3 and to repeal R.S. 32:1268.1(B), relative to repurchase of marine  
3 products; to provide for the repurchase of marine products by a manufacturer,  
4 distributor, or wholesaler; to provide for termination agreements; to provide for  
5 exemptions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 32:1268.3 is hereby enacted to read as follows:

8 §1268.3. Manufacturer, distributor, or wholesaler repurchase; marine dealer;  
9 products

10 A. If any marine dealer enters into a franchise with a manufacturer,  
11 distributor, or wholesaler wherein the marine dealer agrees to maintain an inventory  
12 of marine products or repair parts, the manufacturer, distributor, or wholesaler shall  
13 not terminate or fail to renew such franchise unless there is a breach of the franchise  
14 by the marine dealer and until ninety days after notice of such intention to terminate,  
15 including the breach of the franchise, has been sent by certified mail, return receipt  
16 requested, or commercial delivery service with verification of receipt, to the marine  
17 dealer and the marine dealer has failed to correct the breach within such period.

18 B. If the franchise is terminated as a result of any action by the marine dealer  
19 and the manufacturer, distributor, or wholesaler has not given due cause, as provided  
20 in this Section, for termination of such franchise, the manufacturer, distributor, or  
21 wholesaler shall not be required to repurchase the inventory as provided in this  
22 Section; however, if the franchise is terminated as a result of any action by the  
23 marine dealer and the manufacturer, distributor, or wholesaler has given the marine  
24 dealer due cause, as provided in this Section, to terminate the franchise, the

1           manufacturer, distributor, or wholesaler shall be required to repurchase that  
 2           inventory previously purchased from them, including any new and unused marines  
 3           products of the current and immediate prior model or program year and new and  
 4           unused parts inventory as provided in this Section.

5           C. It shall be unlawful for the manufacturer, wholesaler, or distributor,  
 6           without due cause and pursuant to its own initiating action, to terminate or fail to  
 7           renew a franchise, unless the manufacturer, wholesaler, distributor repurchases the  
 8           new and unused inventory as provided for in this Section.

9           D. It shall not be unlawful for the marine dealer with due cause and pursuant  
 10          to the marine dealer's own initiating action to terminate or fail to renew a franchise  
 11          with a manufacturer, wholesaler, or distributor, and the manufacturer, wholesaler,  
 12          or distributor shall repurchase inventory as provided by this Section. To determine  
 13          what constitutes due cause for a marine dealer to terminate or fail to renew a  
 14          franchise, the following factors regarding the manufacturer, wholesaler, distributor  
 15          or representative of one of the so named shall include whether the manufacturer,  
 16          wholesaler, distributor, or one of the so named:

17                 (1) Has made a material misrepresentation in accepting or acting under the  
 18                 franchise.

19                 (2) Has engaged in an unfair business practice.

20                 (3) Has engaged in conduct which is injurious or detrimental to public  
 21                 welfare.

22                 (4) Has failed to comply with any applicable Section of this Chapter.

23                 (5) Has been convicted of a crime, the effect of which would be detrimental  
 24                 to the marine dealership or dealer.

25                 (6) Has violated the Louisiana marine dealers area of responsibility.

26                 (7) Has failed to operate in the normal course of business for thirty  
 27                 consecutive days.

28                 (8) Has failed to comply with the terms of the franchise with the marine  
 29                 dealer.

1                   (9) Has materially misrepresented the performance or fitness for sale or use  
2                   of a product line or products covered by the franchise.

3                   E. If a manufacturer, distributor, or wholesaler does not intend to renew a  
4                   franchise, the manufacturer, distributor, or wholesaler shall give the marine dealer  
5                   ninety days written notice prior to the effective date by certified mail, return receipt  
6                   requested, or commercial delivery service with verification of receipt.

7                   F. As required by this Section, the manufacturer, distributor, or wholesaler  
8                   shall repurchase that inventory which can be verified as previously purchased from  
9                   them, including all new and unused marine products of the current and immediate  
10                  prior model or program year and new and unused parts on hand and held by the  
11                  marine dealer on the date of termination of the contract. The manufacturer,  
12                  distributor, or wholesaler shall pay an amount equivalent to the cost actually paid by  
13                  the marine dealer, including discounts given and rebates paid per unit for any new,  
14                  unused, undamaged, and unaltered from original invoice and delivery, and complete  
15                  marine product. The manufacturer, distributor, or wholesaler shall also pay an  
16                  amount equal to the price paid by the marine dealer for any new, unused, and  
17                  undamaged repair parts and accessories which are listed in the manufacturer's,  
18                  distributor's, or wholesaler's prevailing parts list or were delivered in the past forty-  
19                  eight months and are in their original packaging.

20                  G. The provisions of this Section shall not require the repurchase from a  
21                  marine dealer of:

22                  (1) Any repair part which has a limited storage life or is otherwise subject  
23                  to deterioration.

24                  (2) Any single repair part which is priced and packaged as a set of two or  
25                  more items.

26                  (3) Any repair part which, because of its condition, is not resalable as a new  
27                  part without repackaging or reconditioning.

28                  (4) Any inventory for which the marine dealer cannot provide good title, free  
29                  and clear of all claims, liens, and encumbrances.

1                   (5) Any inventory which the marine dealer desires to keep, provided that the  
2                   marine dealer has a contractual right to do so.

3                   (6) Any marine product which is not in new, unused, undamaged, and  
4                   complete condition.

5                   (7) Any repair parts which are not in new, unused, and undamaged condition.

6                   (8) Any inventory which was ordered by the marine dealer on or after the  
7                   date of receipt of the notification of termination of the franchise.

8                   (9) Any inventory which was acquired by the marine dealer from any source  
9                   other than the manufacturer, distributor, or wholesaler, or its immediate predecessor.

10                  (10) Any marine product that has been altered substantially from original  
11                  delivery.

12                  H. Upon termination of the franchise, the marine dealer shall submit a final  
13                  inventory of marine products and parts on hand to the manufacturer, distributor, or  
14                  wholesaler by certified mail, return receipt requested, or commercial delivery service  
15                  with verification of receipt. If a manufacturer, distributor, or wholesaler fails or  
16                  refuses to repurchase as required by this Section within thirty days of the receipt of  
17                  the inventory, without just cause, the manufacturer, distributor, or wholesaler shall  
18                  be subjected to a penalty of the marine dealer's reasonable attorney fees, court costs,  
19                  and interest on the inventory value of returnable marine products and parts required  
20                  to be purchased computed at the rate of one and one-half percent per month from the  
21                  thirty-first day, as long as such repurchase is not made.

22                  I. Notwithstanding any other provision of law to the contrary, it shall be  
23                  unlawful for a manufacturer, distributor, or wholesaler, either by contract or practice,  
24                  to assess repurchase or restocking charges, freight charges except for return charges,  
25                  reimbursement of interest charges paid, and any similar charges to the marine dealer.

26                  J. If a marine dealer completes a bona fide, orderly, and permanent closure  
27                  of the marine dealership, which does not involve a sale of the dealership, and  
28                  provides at least ninety days notice to the manufacturer, wholesaler, or distributor,  
29                  the marine products and parts inventory shall be repurchased by the manufacturer,  
30                  wholesaler, or distributor in the manner provided for in this Section, when a

1 franchise is terminated as result of action by the manufacturer, wholesaler, or  
2 distributor.

3 K. In the event of the death or incapacity of the marine dealer or the majority  
4 owner of a person operating as a marine dealer, the manufacturer, distributor, or  
5 wholesaler shall, at the option of the heirs if the marine dealer died intestate or the  
6 legatees or transferees under the terms of the deceased marine dealer's last will and  
7 testament if the marine dealer died testate, repurchase the inventory from the heirs,  
8 legatees, or transferees as if the manufacturer, distributor, or wholesaler had  
9 terminated the contract, and the inventory repurchase provisions of this Section shall  
10 apply. The heirs or legatees shall have until the end of the contract term or one year  
11 from the date of the death of the marine dealer or majority owner of a person,  
12 whichever comes first, to exercise their option pursuant to this Section; provided,  
13 however, that nothing in this Section shall require the repurchase of inventory if the  
14 heirs, legatees, or transferees and the manufacturer, distributor, or wholesaler enter  
15 into a new franchise to operate the marine dealership.

16 Section 2. R.S. 32:1268.1(B) is hereby repealed in its entirety.

17 Section 3. If House Bill No. 1222 of the 2010 Regular Session is enacted into law,  
18 the Louisiana State Law Institute is directed to redesignate R.S. 32:1268.3 to R.S. 32:1268.1.

19 Section 4. This Act shall become effective on January 1, 2011.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_