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By: **Senator Colburn**

Introduced and read first time: February 5, 1999

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Personal Sportsmobile Equipment Dealers**

3 FOR the purpose of altering a certain definition of "dealer" to include dealers of  
4 personal sportsmobiles in the provisions of law that relate to equipment dealer  
5 contracts; providing that certain provisions of law related to personal  
6 sportsmobiles do not supersede certain other provisions of law; defining a  
7 certain term; and generally relating to personal sportsmobile equipment  
8 dealers.

9 BY repealing and reenacting, with amendments,  
10 Article - Commercial Law  
11 Section 19-101  
12 Annotated Code of Maryland  
13 (1990 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - Commercial Law  
16 Section 19-102 through 19-505  
17 Annotated Code of Maryland  
18 (1990 Replacement Volume and 1998 Supplement)

19 BY adding to  
20 Article - Commercial Law  
21 Section 19-506  
22 Annotated Code of Maryland  
23 (1990 Replacement Volume and 1998 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Commercial Law**

2 19-101.

3 (a) In this title, unless the context requires otherwise, the following words  
4 have the meanings indicated.5 (b) "Construction", "farm", "industrial", and "outdoor power", when used to  
6 refer to tractors, implements, attachments, or repair parts, have the meanings  
7 commonly used and understood among dealers and suppliers of those trades.8 (c) "Contract" means a written or oral contract or agreement between a dealer  
9 and a supplier by which:

10 (1) The dealer is granted the right to sell the supplier's equipment; and

11 (2) The dealer is required to order and maintain an inventory in excess of  
12 \$25,000 at current net price from the supplier.13 (d) "Current net price" means the price listed in the supplier's price list in  
14 effect at the time the contract agreement is terminated, less any applicable discount  
15 allowed.

16 (e) "Dealer" means a person:

17 (1) Engaged in the business of selling, at retail, construction, farm,  
18 industrial, [or] outdoor power, OR PERSONAL SPORTSMOBILE equipment;19 (2) Maintaining a total inventory, valued at over \$50,000, of new  
20 equipment and repair parts; and

21 (3) Providing repair service for the equipment sold.

22 (f) "Inventory" means the tractors, implements, attachments, equipment, or  
23 repair parts that a dealer purchased from a supplier.24 (g) "Net cost" means the price the dealer paid the supplier for the inventory,  
25 less all applicable discounts allowed, plus the amount the dealer paid for freight costs  
26 from the supplier's location to the dealer's location, plus the reasonable cost of  
27 assembly performed by the dealer.

28 (h) "PERSONAL SPORTSMOBILE" MEANS:

29 (1) AN ALL-TERRAIN VEHICLE;

30 (2) A MOTORCYCLE;

31 (3) A SNOWMOBILE; AND

32 (4) A PERSONAL WATERCRAFT.

1 (I) "Supplier" means a wholesaler, manufacturer, or distributor who enters  
2 into a contract agreement with a dealer.

3 [(i)] (J) "Termination" means the termination, cancellation, nonrenewal, or  
4 noncontinuation of a contract.

5 19-102.

6 (a) This title does not require a supplier to repurchase from a dealer:

7 (1) A repair part with a limited storage life or otherwise subject to  
8 deterioration, such as a gasket or battery;

9 (2) Multiple packaged repair parts if the package has been broken;

10 (3) A repair part that, because of its condition, is not resalable as a new  
11 part without repackaging or reconditioning;

12 (4) Any inventory that the dealer chooses to retain;

13 (5) Any inventory that was acquired by the dealer from a source other  
14 than the supplier; or

15 (6) Any tractor, implement, attachment, or equipment that the dealer  
16 purchased from the supplier more than 36 months before the date of the notice of  
17 termination.

18 (b) This title does not affect a security interest of the supplier in the inventory  
19 of the dealer.

20 (c) Repurchase of inventory under this title is not subject to the bulk transfers  
21 provisions of Title 6 of this article.

22 (d) This title does not apply to a written or oral contract or agreement between  
23 a dealer and a supplier if, under the contract or agreement, the supplier does not  
24 require the dealer to order and maintain an inventory in excess of \$25,000 at current  
25 net price from the supplier.

26 19-201.

27 (a) Subject to § 19-102 of this title, whenever a contract between a dealer and  
28 a supplier is terminated by either party, the supplier shall repurchase the dealer's  
29 inventory on the terms specified in § 19-202 of this title.

30 (b) (1) In the event that a dealer, who is an individual and a party to a  
31 contract, dies or is adjudicated incompetent, the decedent's heirs or legatees, or the  
32 individual's guardian or other fiduciary, may require the supplier to repurchase the  
33 inventory as if the contract had been terminated.

1           (2)     An heir or legatee or a guardian or other fiduciary has 1 year from  
2 the date of the death or adjudication of incompetency to exercise the option provided  
3 under this subsection.

4 19-202.

5     (a)     Within 90 days after termination of the contract the supplier shall  
6 repurchase from the dealer all inventory, previously purchased from the supplier,  
7 that remains unsold on the date the contract terminates.

8     (b)     (1)     The supplier shall pay the dealer:

9           (i)     100 percent of the net cost of all new, unused, undamaged, and  
10 complete inventory except repair parts, less a reasonable allowance for deterioration  
11 attributable to weather conditions at the dealer's location; and

12           (ii)    85 percent of the current net price of all new, unused, and  
13 undamaged repair parts currently listed in the supplier's price book.

14     (2)     The supplier may perform the handling, packing, and loading of  
15 repair parts returned and withhold, as a charge for these services, 5 percent of the  
16 current net price of the returned repair parts.

17     (c)     (1)     The inventory shall be returned FOB the dealer.

18     (2)     The dealer and the supplier may each furnish a representative to  
19 inspect all inventory and certify the acceptability of any item before it is repurchased.

20     (d)     The supplier shall pay the full repurchase amount to the dealer not later  
21 than 60 days after receipt of the inventory.

22 19-301.

23     (a)     In this section, "good cause" shall exist on a failure to comply with  
24 requirements imposed by a contract between a supplier and a dealer that are not  
25 different from those imposed by the supplier's contracts with other similarly situated  
26 dealers in the State.

27     (b)     A supplier may not, directly or through an officer, agent, or employee,  
28 terminate, cancel, or fail to renew a contract without good cause.

29     (c)     Except as provided in § 19-302 of this subtitle, a supplier may not  
30 unilaterally terminate a contract unless the supplier:

31           (1)     Complies with the notice provisions contained in Part II of this  
32 subtitle; and

33           (2)     Has good cause.

1 19-302.

2 Notwithstanding any other provision in this subtitle, a supplier may terminate  
3 a contract with a dealer, without having to prove good cause and without providing  
4 the dealer with prior notice, at any time after:

5 (1) The filing of a pleading against the dealer to commence a:

6 (i) Proceeding for an assignment for the benefit of creditors or a  
7 similar disposition of the assets of the business of the dealer, other than the creation  
8 of a security interest in the assets of the business of the dealer for financing in the  
9 ordinary course of the business of the dealer;

10 (ii) Receivership proceeding; or

11 (iii) Bankruptcy proceeding;

12 (2) The dealer has made an intentional misrepresentation with the  
13 intent to defraud the supplier;

14 (3) The dealer defaults under a chattel mortgage or other security  
15 agreement between the dealer and the supplier;

16 (4) The closing or sale of a substantial part of the business of a dealer  
17 related to the handling of the product of the supplier;

18 (5) The commencement of procedures to dissolve or liquidate the dealer if  
19 the dealer is a partnership or corporation;

20 (6) A change or addition, without the prior written approval of the  
21 supplier, in the location of a place of business of the dealer;

22 (7) The withdrawal of an individual proprietor, partner, major  
23 shareholder, or manager of the dealership, or a substantial reduction in interest of a  
24 partner or major shareholder, without the prior written consent of the supplier;

25 (8) The revocation or discontinuance of any guarantee of the present or  
26 future obligations of the dealer to the supplier;

27 (9) The failure of the dealer to conduct its customary sales and service  
28 operations during its customary business hours for 7 consecutive business days,  
29 unless the failure was the direct result of:

30 (i) An act of God;

31 (ii) A casualty;

32 (iii) A strike; or

33 (iv) A circumstance beyond the reasonable control of the dealer;

1           (10)    The failure of the dealer to pay any undisputed amount due to the  
2 supplier beyond 30 days after the supplier provided the dealer with written notice of  
3 the amount due; or

4           (11)    The final conviction of a felony of a dealer or any person with an  
5 ownership interest in the dealer.

6 19-303.

7       Notwithstanding any provision in this subtitle, a supplier and a dealer may  
8 terminate their contract on any effective date with the mutual written consent of the  
9 supplier and the dealer.

10 19-304.

11       Notwithstanding any agreement to the contrary and subject to § 19-301 of this  
12 subtitle, a supplier that plans to terminate a contract with a dealer unilaterally shall  
13 notify the dealer, in accordance with § 19-306 of this subtitle, of the planned  
14 termination at least 180 days prior to the effective date of the termination.

15 19-305.

16       Notwithstanding any agreement to the contrary, a dealer that plans to  
17 terminate a contract with a supplier unilaterally shall notify the supplier, in  
18 accordance with § 19-306 of this subtitle, of the planned termination at least 180 days  
19 prior to the effective date of the termination.

20 19-306.

21       Each notification required under this subtitle shall:

22           (1)    Be in writing;

23           (2)    Contain:

24                   (i)    A statement of intention to terminate the contract;

25                   (ii)   A statement of the reasons for the termination; and

26                   (iii)  The date on which the termination takes effect; and

27           (3)    Be delivered to the supplier or dealer by:

28                   (i)    Certified or registered mail with postage prepaid; or

29                   (ii)   Personal delivery.

30 19-401.

31       (a)    (1)    If, after the termination of a contract, the dealer submits a warranty  
32 claim to the supplier for work performed prior to the effective date of the termination,

1 the supplier shall accept or reject the claim within a minimum of 45 days from the  
2 day that the supplier received the claim.

3 (2) A claim not rejected before the deadline shall be deemed accepted.

4 (b) The supplier shall pay an accepted claim not later than 60 days after the  
5 day that the supplier received the claim.

6 19-4A-01.

7 (a) In this subtitle, "family member" means a:

8 (1) Spouse;

9 (2) Child;

10 (3) Son-in-law;

11 (4) Daughter-in-law; or

12 (5) Lineal descendant of the dealer or principal owner of the dealership.

13 (b) (1) A dealer shall submit to a supplier a written request to sell or  
14 transfer the dealer's business, or any portion of the dealer's business, or to enter into  
15 an agreement to operate the dealership with another person before executing the sale,  
16 transfer, or agreement.

17 (2) A dealer's request shall include the following information regarding  
18 the potential transferee as reasonably required by the supplier to make a  
19 determination required under paragraph (1) of this subsection:

20 (i) Financial information;

21 (ii) Personal background;

22 (iii) Character references; and

23 (iv) Work history.

24 (c) (1) A supplier shall make a determination on a request submitted by a  
25 dealer under subsection (b)(1) of this section within 90 days of receipt.

26 (2) If the supplier determines that the request is not acceptable, the  
27 supplier shall provide the dealer with a written notice of its determination that  
28 includes a statement of the reasons for nonacceptance.

29 (3) Nothing in this subsection permits an heir, a personal representative,  
30 or a family member of a deceased dealer to operate a dealership without the express  
31 written consent of the supplier.

1 19-4A-02.

2 (a) The heirs of a deceased dealer have 180 days after the dealer's death to  
3 enter into a new contract with the supplier to operate the dealership.

4 (b) The heirs of a deceased dealer may not operate a dealership more than 180  
5 days after the dealer's death without the express written consent of the supplier.

6 (c) Nothing in this section precludes the enforceability of a valid contract  
7 between a seller and a dealer concerning succession rights made before the dealer's  
8 death, even if the contract designates a person other than a surviving spouse or an  
9 heir of the dealer as the successor to the dealer.

10 19-501.

11 If a supplier fails or refuses to repurchase, in accordance with § 19-202 of this  
12 title, any inventory covered under the provisions of this title within the time periods  
13 established, the supplier is civilly liable for:

14 (1) 100 percent of the current net price of the inventory;

15 (2) The amount the dealer paid for freight costs from the supplier's  
16 location to the dealer's location;

17 (3) The reasonable cost of assembly performed by the dealer;

18 (4) The dealer's reasonable attorney's fees and court costs; and

19 (5) Interest on the current net price of the inventory, computed from the  
20 91st day after termination of the contract at the legal rate of interest, but not  
21 exceeding an 18 percent annual percentage rate.

22 19-502.

23 Any person who suffers monetary loss due to a violation of this title or who  
24 refuses to accede to a proposal for an arrangement that, if consummated, would be in  
25 violation of this title may bring a civil action to enjoin further violation and to recover  
26 damages and the costs of the action, including reasonable attorney fees.

27 19-503.

28 In the event of failure to provide required notice of termination or otherwise  
29 comply with provisions of this title, the supplier is civilly liable for the dealer's loss of  
30 business for the time period the supplier is in violation of this title, plus reasonable  
31 attorney fees and court costs.

32 19-504.

33 The provisions of this subtitle are in addition to all legal or equitable remedies  
34 available at law, and any agreement between the supplier and dealer.



1 19-505.

2 A civil action commenced under the provisions of this title shall be brought  
3 within 4 years after the violation complained of is or reasonably should have been  
4 discovered.

5 19-506.

6 (A) THE PROTECTIONS AND RIGHTS PROVIDED TO PERSONAL SPORTSMOBILE  
7 DEALERS UNDER THIS TITLE ARE NOT INTENDED TO SUPERSEDE ANY PROTECTIONS  
8 OR RIGHTS PROVIDED TO PERSONAL SPORTSMOBILE DEALERS UNDER TITLE 15,  
9 SUBTITLE 2 OF THE TRANSPORTATION ARTICLE.

10 (B) IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS TITLE  
11 AND THE PROVISIONS OF TITLE 15, SUBTITLE 2 OF THE TRANSPORTATION ARTICLE,  
12 THE PROVISIONS OF TITLE 15, SUBTITLE 2 OF THE TRANSPORTATION ARTICLE SHALL  
13 PREVAIL.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 1999.