

# HOUSE BILL No. 4117

February 9, 1989, Introduced by Rep. Porreca and referred to the Committee on Marine Affairs and Port Development.

A bill to regulate watercraft and outboard motor manufacturers, distributors, dealers, and their representatives; to regulate dealings between those manufacturers and distributors and their dealers; to regulate dealings between those manufacturers, distributors, and dealers and consumers; to prohibit unfair practices; and to provide remedies and penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        Sec. 1. For the purposes of this act, the words and phrases  
2 defined in sections 2 to 6 have the meanings ascribed to them in  
3 those sections, except where the context clearly indicates a dif-  
4 ferent meaning.

5        Sec. 2. (1) "Dealer agreement" means the agreement or con-  
6 tract in writing between a manufacturer or distributor and a new  
7 watercraft dealer which purports to establish the legal rights  
8 and obligations of the parties to the agreement or contract with

1 regard to the purchase and sale of new watercraft or new outboard  
2 motors.

3 (2) "Designated successor" means 1 or more persons nominated  
4 by the new watercraft dealer, in a written document filed by the  
5 dealer with the manufacturer or distributor at the time the  
6 dealer agreement is executed, to succeed the dealer in the event  
7 of his or her death or incapacity. If a designated successor is  
8 not able to succeed the new watercraft dealer because of the des-  
9 ignated successor's death or legal incapacity the dealer shall  
10 execute a new document nominating a designated successor within  
11 60 days after the date of the death or incapacity.

12 Sec. 3. (1) "Distributor" means a person, resident or non-  
13 resident, who in whole or in part offers for sale, sells, or dis-  
14 tributes a new watercraft or new outboard motor to a new water-  
15 craft dealer or who maintains a factory representative, resident  
16 or nonresident, or who controls a person, resident or nonresi-  
17 dent, who in whole or in part offers for sale, sells, or distrib-  
18 utes a new watercraft or new outboard motor to a new watercraft  
19 dealer.

20 (2) "Established place of business" means a permanent  
21 enclosed commercial building located within this state which is  
22 easily accessible and open to the public at all reasonable times  
23 and at which the business of a new watercraft dealer, including  
24 the display and repair of watercraft or outboard motors, may be  
25 lawfully conducted in accordance with the terms of all applicable  
26 building codes, zoning, and other land-use regulatory  
27 ordinances.

1 (3) "Factory branch" means an office maintained by a  
2 manufacturer or distributor for the purpose of selling or offer-  
3 ing for sale watercraft or outboard motors to a distributor or  
4 new watercraft dealer, or for directing or supervising in whole  
5 or in part factory or distributor representatives. Factory  
6 branch includes a sales promotion organization maintained by a  
7 manufacturer or distributor which is engaged in promoting the  
8 sale of a particular make of new watercraft or new outboard motor  
9 in this state to new watercraft dealers.

10 (4) "Factory representative" means an agent or employee of a  
11 manufacturer, distributor, or factory branch retained or employed  
12 for the purpose of making or promoting the sale of new watercraft  
13 or new outboard motors to new watercraft dealers or proposed new  
14 watercraft dealers.

15 Sec. 4. (1) "Good faith" means honesty in fact and the  
16 observation of reasonable commercial standards of fair dealing in  
17 the trade, as defined and interpreted under section 2103 of the  
18 uniform commercial code, Act No. 174 of the Public Acts of 1962,  
19 being section 440.2103 of the Michigan Compiled Laws.

20 (2) "Manufacturer" means a person who manufactures or assem-  
21 bles new watercraft or new outboard motors, or a distributor,  
22 factory branch, or factory representative.

23 (3) "Watercraft" means watercraft as defined in section 1 of  
24 Act No. 160 of the Public Acts of 1976, being section 281.1201 of  
25 the Michigan Compiled Laws.

26 Sec. 5. (1) "New watercraft or new outboard motor" means a  
27 watercraft or outboard motor which is in the possession of the

1 manufacturer or distributor, or has been sold only to a new  
2 watercraft dealer and on which the original title has not been  
3 issued from the new watercraft dealer.

4 (2) "New watercraft dealer" means a person who holds a  
5 dealer agreement granted by a manufacturer or distributor for the  
6 sale of the manufacturer's or distributor's watercraft or out-  
7 board motors, who is engaged in the business of purchasing, sell-  
8 ing, exchanging, or dealing in new watercraft or new outboard  
9 motors, and who has an established place of business.

10 (3) "Person" means a natural person, partnership, corpora-  
11 tion, association, trust, estate, or other legal entity.

12 (4) "Proposed new watercraft dealer" means a person who has  
13 an application pending for a new dealer agreement with a manufac-  
14 turer or distributor. Proposed new watercraft dealer does not  
15 include a person whose dealer agreement is being renewed or  
16 continued.

17 Sec. 6. "Relevant market area" means the market area  
18 described in a dealer agreement.

19 Sec. 7. (1) A manufacturer or distributor shall not offer  
20 for sale in this state a new watercraft or a new outboard motor  
21 to a new watercraft dealer or a proposed new watercraft dealer  
22 without first entering into a dealer agreement and complying with  
23 all other applicable provisions of this act.

24 (2) After the effective date of this act, a manufacturer or  
25 distributor shall not locate or relocate a watercraft dealer into  
26 a relevant market area that has an existing watercraft dealer  
27 that carries that manufacturer's or distributor's product lines

1 unless all of the manufacturer's or distributor's watercraft  
2 dealers in that relevant market area consent in writing to the  
3 location or relocation.

4 (3) Except as provided in section 8, subject to subsection  
5 (4), and notwithstanding any agreement, good cause exists for the  
6 purposes of a termination, cancellation, nonrenewal, or discon-  
7 tinuance of a dealer agreement if there is a failure by a party  
8 to the dealer agreement to comply with a provision of the dealer  
9 agreement.

10 (4) If the failure by a party to the dealer agreement to  
11 comply with a provision of the dealer agreement relates to the  
12 performance of supplies, sales, or service, good cause exists for  
13 the purposes of a termination, cancellation, nonrenewal, or dis-  
14 continuance of a dealer agreement if the noncomplying party fails  
15 to carry out the performance provisions of the dealer agreement  
16 and if all of the following have occurred:

17 (a) The noncomplying party was given written notice of the  
18 failure of performance.

19 (b) The noncomplying party was afforded a reasonable oppor-  
20 tunity, not to exceed 60 days, to exert good faith efforts to  
21 carry out the dealer agreement.

22 (c) The failure continued for more than 60 days after the  
23 date notification was given pursuant to subdivision (a).

24 Sec. 8. Unless otherwise provided in the dealer agreement,  
25 the existence of 1 or more of the following does not constitute  
26 good cause for the termination, cancellation, nonrenewal, or  
27 discontinuance of a dealer agreement:

1 (a) A change in ownership of the new watercraft dealer's  
2 dealership.

3 (b) The refusal of the new watercraft dealer to purchase or  
4 accept delivery of any new watercraft or new outboard motor  
5 parts, accessories, or any other commodity or services not  
6 ordered by the new dealer.

7 (c) The fact that the new watercraft dealer owns, has an  
8 investment in, participates in the management of, or holds a  
9 dealer agreement for the sale of another make or line in new  
10 watercraft or new outboard motors, or that the new watercraft  
11 dealer has established another make or line of new watercraft or  
12 new outboard motors in the same dealership facilities as those of  
13 the manufacturer or distributor, provided that the new watercraft  
14 dealer remains in compliance with the terms and conditions of the  
15 dealer\_agreement and with the reasonable facilities' requirements  
16 of the manufacturer or distributor.

17 (d) The fact that the new watercraft dealer sells or trans-  
18 fers ownership of the dealership with the manufacturer's or  
19 distributor's prior written consent.

20 Sec. 9. (1) Prior to the termination, cancellation, nonre-  
21 newal, or discontinuance of a dealer agreement, a manufacturer or  
22 distributor shall not enter into a new dealer agreement with a  
23 different new watercraft dealer in the relevant market area serv-  
24 iced by that existing dealer agreement when the effective date of  
25 the agreement would be prior to the termination, cancellation,  
26 nonrenewal, or discontinuance of a dealer agreement.

1       (2) For each termination, cancellation, nonrenewal, or  
2 discontinuance of a dealer agreement, the party terminating the  
3 dealer agreement shall have the burden of proof for showing that  
4 it has acted in good faith, that the notice requirement provided  
5 in section 10 has been complied with, and that there was good  
6 cause for the termination, cancellation, nonrenewal, or  
7 discontinuance.

8       Sec. 10. Notwithstanding any agreement, prior to the termi-  
9 nation, cancellation, nonrenewal, or discontinuance of a dealer  
10 agreement, the party terminating the dealer agreement shall fur-  
11 nish notice of the termination, cancellation, nonrenewal, or dis-  
12 continuance to the new watercraft dealer as follows:

13       (a) Except as provided in subdivision (c), notice shall be  
14 made not less than 90 days prior to the effective date of the  
15 termination, cancellation, nonrenewal, or discontinuance.

16       (b) Notice shall be by certified mail and shall contain all  
17 of the following:

18       (i) A statement of intention to terminate, cancel, not  
19 renew, or discontinue the dealer agreement.

20       (ii) A statement of the reasons for the termination, cancel-  
21 lation, nonrenewal, or discontinuance.

22       (iii) The date on which the termination, cancellation, non-  
23 renewal, or discontinuance takes effect.

24       (c) Notwithstanding subdivision (a), notice of the termina-  
25 tion, cancellation, nonrenewal, or discontinuance may be given  
26 without prior notice for any of the following reasons:

1 (i) Insolvency of the new watercraft dealer or the filing of  
2 any petition by or against the new watercraft dealer under any  
3 bankruptcy or receivership law.

4 (ii) Except in the event of catastrophic fire, natural  
5 causes, or seasonal closings agreed to in the dealer agreement,  
6 failure of the new watercraft dealer to conduct his or her cus-  
7 tomary sales and service operations during his or her customary  
8 business hours for 7 consecutive business days.

9 (iii) Conviction of the new watercraft dealer or its princi-  
10 pal owners of a felony.

11 (iv) Revocation of any license which the new watercraft  
12 dealer is required to have to operate a dealership.

13 (v) A misrepresentation by the new watercraft dealer to the  
14 manufacturer or distributor.

15 (vi) Failure to pay amounts due and owing a manufacturer or  
16 distributor within the time period described in the dealer  
17 agreement.

18 Sec. 11. Upon the termination, cancellation, nonrenewal, or  
19 discontinuance of a dealer agreement, without cause, the new  
20 watercraft dealer shall be allowed fair and reasonable compensa-  
21 tion, not to exceed the original invoiced price, from the manu-  
22 facturer or distributor for the following:

23 (a) New current model year watercraft and outboard motor  
24 inventory purchased from the manufacturer or distributor, which  
25 has not been altered, damaged, or operated as a demonstration  
26 unit. This subdivision does not exclude watercraft equipped by  
27 the watercraft dealer with minor accessory equipment installed to



1 promote safety or the watercraft marketability of the  
2 watercraft.

3 (b) Supplies and parts inventory in original packages or new  
4 condition if not normally packaged and purchased from the manu-  
5 facturer or distributor within 2 years of the date of termina-  
6 tion, cancellation, nonrenewal, or discontinuance and listed in  
7 the manufacturer's or distributor's current catalogs.

8 (c) Equipment, furnishings, and signs purchased from and  
9 required by the manufacturer or distributor within 2 years of the  
10 date of termination, cancellation, nonrenewal, or discontinuance  
11 less depreciation.

12 (d) Special tools purchased from and required by the manu-  
13 facturer or distributor within 2 years of the date of termina-  
14 tion, cancellation, nonrenewal, or discontinuance less  
15 depreciation.

16 Sec. 12. (1) Compensation for new current model year water-  
17 craft inventory under section 11(a) shall be paid within 30 days  
18 after the effective date of the termination, cancellation, nonre-  
19 newal, or discontinuance of the dealer agreement provided that  
20 the new watercraft dealer has met all reasonable requirements of  
21 the dealer agreement with respect to the return of the repur-  
22 chased property, including providing clear title. Compensation  
23 for items of personal property required by section 11(b), (c),  
24 and (d) shall be paid within 90 days after the effective date of  
25 the termination, cancellation, nonrenewal, or discontinuance,  
26 provided that the new watercraft dealer has met all reasonable  
27 requirements of the dealer agreement with respect to the return

1 of the repurchased personal property, including providing clear  
2 title.

3 (2) Reasonable compensation pursuant to section 11(a) shall  
4 be not more than the new watercraft dealer's net acquisition  
5 cost. Reasonable compensation pursuant to section 11(c) and (d)  
6 shall be the fair market value of the personal property taking  
7 into consideration use, wear, tear, and obsolescence.

8 (3) Unless just cause can be shown, for nonpayment, if pay-  
9 ment is not made within 90 days as provided in subsection (1),  
10 interest shall accrue thereafter on all amounts due the new  
11 watercraft dealer at a rate of the current published prime rate  
12 in the area where the new watercraft dealer is located, plus  
13 1-1/2%, per annum.

14 (4) All amounts due and owing a manufacturer or distributor  
15 by a new watercraft dealer shall accrue interest at a rate of the  
16 current published prime rate in the area where the new watercraft  
17 dealer is located, plus 1-1/2%, per annum.

18 Sec. 13. A manufacturer or distributor shall not require a  
19 new watercraft dealer to do any of the following:

20 (a) Order or accept delivery of a new watercraft or new out-  
21 board motor, a part or accessory of a new watercraft or new out-  
22 board motor, equipment, or any other commodity not required by  
23 law which was not voluntarily ordered by the new watercraft  
24 dealer. This section shall not be construed to prevent the manu-  
25 facturer or distributor from requiring a new watercraft dealer to  
26 carry a reasonable inventory of models offered for sale by the  
27 manufacturer or distributor. A manufacturer or distributor may

1 require a new watercraft dealer to carry specific quantities of a  
2 product, place advance orders for a product, and accept delivery  
3 of a product to facilitate factory production or volume dis-  
4 counts, if agreed upon in the dealer agreement.

5 (b) Order or accept delivery of a new watercraft with spe-  
6 cial features, accessories, or equipment not included in the list  
7 price of the new watercraft as publicly advertised by the manu-  
8 facturer or distributor.

9 (c) Enter into an agreement with the manufacturer or dis-  
10 tributor or do any other act prejudicial to the new watercraft  
11 dealer by threatening to terminate a dealer agreement or any con-  
12 tractual agreement or understanding existing between the new  
13 watercraft dealer and the manufacturer or distributor. Notice in  
14 good faith to a new watercraft dealer of the dealer's violation  
15 of any terms or provisions of the dealer agreement shall not con-  
16 stitute a violation of this act.

17 (d) Change the capital structure of the new watercraft deal-  
18 ership or the means by or through which the dealer finances the  
19 operation of the dealership, if the dealership at all times meets  
20 any reasonable capital standards determined by the manufacturer  
21 or distributor in accordance with uniformly applied criteria.

22 (e) Refrain from participation in the management of, invest-  
23 ment in, or the acquisition of any other line of new watercraft  
24 or new outboard motors, or related products, provided that the  
25 dealer remains in compliance with a reasonable facilities  
26 requirement and makes no change in the principal management of  
27 the dealer.

1 (f) Change the location of the new watercraft dealership or  
2 make any substantial alterations to the dealership premises, if  
3 to do so would be unreasonable.

4 (g) Establish a dealership of the same product line or make  
5 operating under a dealer agreement with the manufacturer or dis-  
6 tributor in the relevant market area of the existing dealer.

7 Sec. 14. (1) A manufacturer or distributor shall not do any  
8 of the following:

9 (a) Withhold consent to the sale, transfer, or exchange of  
10 the dealership to a qualified buyer capable of being licensed as  
11 a new watercraft dealer.

12 (b) Fail to respond in writing to a request for consent to a  
13 sale, transfer, or exchange of a dealership within 60 days after  
14 receiving a written application from the new watercraft dealer on  
15 the forms generally utilized by the manufacturer or distributor  
16 for that purpose and containing the information required in those  
17 forms. Failure to respond to the request within 60 days shall be  
18 considered consent to the request.

19 (2) A manufacturer or distributor, either directly or  
20 through any subsidiary, shall not terminate, cancel, fail to  
21 renew, or discontinue any lease of the new watercraft dealer's  
22 established place of business except for a material breach of the  
23 lease.

24 Sec. 15. (1) A designated successor of a deceased or inca-  
25 pacitated new watercraft dealer may succeed the dealer in the  
26 ownership or operation of the dealership under the existing  
27 dealer agreement if the designated successor gives the

1 manufacturer or distributor written notice of his or her  
2 intention to succeed to the dealership within 60 days after the  
3 dealer's death or incapacity and agrees to be bound by all of the  
4 terms and conditions of the dealer agreement. A manufacturer or  
5 distributor may refuse to honor the existing dealer agreement  
6 with the designated successor for good cause or criteria agreed  
7 to in the existing dealer agreement.

8 (2) The manufacturer or distributor may request from a des-  
9 ignated successor the personal and financial data necessary to  
10 determine whether the existing dealer agreement should be  
11 honored. Upon request, the designated successor shall supply the  
12 personal and financial data.

13 (3) Within 60 days after receiving the notice of the desig-  
14 nated successor's intent to succeed the dealer in the ownership  
15 and operation of the dealership or within 60 days after receiving  
16 the requested personal and financial data, if a manufacturer or  
17 distributor believes that good cause or other criteria exist for  
18 refusing to honor the succession, the manufacturer or distributor  
19 may serve upon the designated successor notice of its refusal to  
20 approve the succession.

21 (4) The notice of the manufacturer or distributor provided  
22 in subsection (3) shall state the specific grounds for the  
23 refusal to approve the succession and that discontinuance of the  
24 agreement shall take effect not less than 90 days after the date  
25 the notice is served.

26 (5) If notice of refusal is not served within the 60 days  
27 provided for in subsection (3), the dealer agreement shall

1 continue in effect and shall be subject to termination only as  
2 otherwise permitted by this act.

3       Sec. 16. (1) Each manufacturer or distributor shall specify  
4 in writing to each of its new watercraft dealers licensed in this  
5 state the dealer's obligations for preparation, delivery, and  
6 warranty service on its products. The manufacturer or distribu-  
7 tor shall compensate the new watercraft dealer for warranty serv-  
8 ice and parts required of the dealer by the manufacturer or  
9 distributor. The compensation for warranty service shall include  
10 reasonable compensation for diagnostic work, as well as repair  
11 service and labor. Time allowance for the diagnosis and per-  
12 formance of warranty work and service shall be reasonable and  
13 adequate for the work to be performed. In determining what con-  
14 stitutes reasonable compensation under this section, the princi-  
15 pal factor to be considered shall be the shop labor rate being  
16 paid by new watercraft dealers in the community in which the new  
17 watercraft dealer is doing business.

18       (2) Within 30 days after execution of a dealer agreement, a  
19 new watercraft dealer shall submit to the manufacturer or dis-  
20 tributor notification of shop labor rates.

21       (3) A manufacturer or distributor shall not do any of the  
22 following:

23       (a) Fail to perform any warranty obligation.

24       (b) Fail to include in written notices of federally required  
25 factory recalls to new watercraft owners and dealers the expected  
26 date by which necessary parts and equipment will be available to  
27 dealers for the correction of the defects.

1 (c) Fail to compensate a new watercraft dealer for repairs  
2 affected by a recall.

3 (4) A new watercraft dealer shall not do any of the  
4 following:

5 (a) Fail to perform any warranty obligation.

6 (b) Fail to forward written reports to the manufacturer or  
7 distributor of all repair work done on parts made by the  
8 manufacturer.

9 (c) Refuse to promote any product provided for in the dealer  
10 agreement.

11 (d) Failure to pay for inventory within the time period  
12 described in the dealer agreement.

13 (5) All claims made by a new watercraft dealer pursuant to  
14 this section for labor and parts shall be paid within 60 days  
15 after their approval. All claims shall be either approved or  
16 disapproved by the manufacturer or distributor within 60 days  
17 after their receipt on a proper form generally used by the manu-  
18 facturer or distributor and containing the information usually  
19 required in the form. A claim not specifically disapproved in  
20 writing within 30 days after the receipt of the form shall be  
21 considered to be approved, and payment shall be made within 30  
22 days. The manufacturer has the right to audit the claims for 5  
23 years after payment and to charge back to the new watercraft  
24 dealer the amount of any false, fraudulent, or unsubstantiated  
25 claim.