

Act No. 33
Public Acts of 2009
Approved by the Governor
June 4, 2009
Filed with the Secretary of State
June 4, 2009
EFFECTIVE DATE: December 1, 2009

STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009

Introduced by Senators Allen, Barcia and Pappageorge

ENROLLED SENATE BILL No. 363

AN ACT to regulate recreational vehicle dealers, manufacturers, wholesalers, warrantors, and their representatives; to regulate dealings between recreational vehicle manufacturers, wholesalers, warrantors, and dealers; to regulate dealings between consumers and recreational vehicle manufacturers, wholesalers, warrantors, and dealers; to prohibit certain trade practices; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide remedies.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “recreational vehicle franchise act”.

Sec. 3. As used in this act:

(a) “Area of sales responsibility” means a geographical area agreed to by a dealer and the manufacturer in a dealer agreement in which the dealer has the exclusive right to display or sell the manufacturer’s new recreational vehicles of a particular line-make to the public.

(b) “Dealer” means a person that is a dealer, as that term is defined in section 11 of the Michigan vehicle code, 1949 PA 300, MCL 257.11, and is licensed as a dealer of recreational vehicles under that act.

(c) “Dealer agreement” means a written agreement or contract entered into between a manufacturer and a dealer that establishes the legal rights and obligations of the parties to that agreement or contract and pursuant to which the dealer is authorized to sell new recreational vehicles manufactured or distributed by the manufacturer.

(d) “Department” means the department of state.

(e) “Factory campaign” means an effort by a warrantor to contact recreational vehicle owners or dealers in order to address an issue concerning a problem or defective part or equipment.

(f) “Family member” means any of the following:

(i) A spouse of an individual.

(ii) A child, grandchild, parent, sibling, niece, or nephew of an individual.

(iii) The spouse of a child, grandchild, parent, sibling, niece, or nephew of an individual.

(g) “Line-make” means a specific series of recreational vehicle products that meet all of the following:

(i) Are identified by a common series trade name or trademark.

(ii) Are targeted to a particular market segment based on their decor, features, equipment, size, weight, and price range.

(iii) Have dimensions and interior floor plans that distinguish the recreational vehicles from recreational vehicles that have substantially the same decor, features, equipment, weight, and price.

(iv) Belong to a single, distinct classification of recreational vehicle product type that has a substantial degree of commonality in the construction of the chassis, frame, and body.

(v) Are authorized for sale by the dealer in the dealer agreement.

(h) "Manufacturer" means a person that manufactures or wholesales recreational vehicles or that distributes or wholesales recreational vehicles to dealers.

(i) "Park model trailer" means that term as defined in section 38a of the Michigan vehicle code, 1949 PA 300, MCL 257.38a.

(j) "Person" means an individual, partnership, corporation, limited liability company, association, trust, estate, or other legal entity.

(k) "Proprietary part" means a recreational vehicle part manufactured by or for and sold exclusively by a manufacturer.

(l) "Public vehicle show" means a recreational vehicle show that meets the requirements of section 248(10) of the Michigan vehicle code, 1949 PA 300, MCL 257.248.

(m) "Recreational vehicle" means that term as defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a, except a park model trailer.

(n) "Transient customer" means a person who owns a recreational vehicle, is temporarily traveling through a dealer's area of sales responsibility, and engages the dealer to perform service work on that recreational vehicle.

(o) "Warrantor" means a manufacturer or any other person that provides a warranty to the consumer in connection with a new recreational vehicle or parts, accessories, or components of a new recreational vehicle. The term does not include a person that provides a service contract, mechanical or other insurance, or an extended warranty sold for separate consideration by a dealer or other person not controlled by a manufacturer.

Sec. 5. (1) A manufacturer shall not sell a recreational vehicle in the state to or through a dealer unless the manufacturer has a dealer agreement with the dealer that meets the requirements of this act and is signed by both parties.

(2) Except as provided in subsection (4), a dealer shall not sell a new recreational vehicle in this state unless the dealer has a dealer agreement with a manufacturer of that recreational vehicle that meets the requirements of this act and is signed by both parties.

(3) All of the following apply to a dealer's area of sales responsibility included in a dealer agreement between a manufacturer and a dealer:

(a) The manufacturer shall designate in the dealer agreement the area of sales responsibility exclusively assigned to the dealer.

(b) The manufacturer shall not change the dealer's area of sales responsibility or establish another dealer for the same line-make in that area during the term of the dealer agreement.

(c) If the dealer enters into an agreement to sell any recreational vehicles that compete with the recreational vehicles included in the dealer agreement, or enters into an agreement to increase a preexisting commitment to sell any recreational vehicles that compete with the recreational vehicles included in the dealer agreement, while the dealer agreement is in place, the manufacturer may revise the dealer's area of sales responsibility if both of the following are met:

(i) The dealer agreement does not authorize or permit the dealer to enter into that subsequent agreement.

(ii) If, in the reasonable opinion of the manufacturer, the market penetration of the manufacturer's products is jeopardized by that subsequent agreement.

(d) The area of sales responsibility is not subject to review or change in the 1-year period after the date of the first delivery of new recreational vehicles to the dealer under the initial dealer agreement.

(4) A dealer may sell recreational vehicles outside of its designated area of sales responsibility if all of the following are met:

(a) If required under section 248(10) of the Michigan vehicle code, 1949 PA 300, MCL 257.248, the dealer has obtained a separate or supplemental license to sell those recreational vehicles.

(b) The sales meet 1 of the following:

(i) If the sales are off-premises sales that take place at a location in another dealer's designated area of sales responsibility, the dealer obtains in advance of the off-premises sales a written agreement that meets all of the following:

(A) Is signed by the dealer, the manufacturer of the recreational vehicles the dealer intends to sell at that location, and the other dealer.

(B) Designates the recreational vehicles to be offered for sale.

(C) Includes the time period for the off-premises sales.

(D) Affirmatively authorizes the sale of the designated recreational vehicles.

(ii) The sales are off-premises sales that take place at a location that is not in another dealer's same line-make designated area of sales responsibility.

(iii) The sales are off-premises sales that take place in conjunction with a public vehicle show in which more than 3 dealers are participating and that is predominantly funded by manufacturers or sponsored by a recreational vehicle trade association.

(5) A dealer agreement must include a designated principal of the dealer.

(6) For purposes of section 15, a dealer agreement may identify a family member as the successor of the principal designated under subsection (5) or include that principal's succession plan. A dealer may at any time change a designation or succession plan made in the dealer agreement by providing written notice to the manufacturer.

Sec. 7. (1) A manufacturer shall from time to time publish its prices, charges, and terms of sale for recreational vehicles and may only sell a recreational vehicle to a dealer in accordance with the published prices, charges, and terms of sale in effect at the time of sale.

(2) If a manufacturer offers a dealer a rebate, discount, or program on any recreational vehicles, the manufacturer must offer the same rebate, discount, or program to every similarly situated dealer.

(3) In a renewal of a dealer agreement, the manufacturer may not impose on the dealer additional inventory stocking requirements or retail sales targets in excess of market growth in the dealer's area of sales responsibility.

Sec. 9. (1) A manufacturer, directly or through any officer, agent, or employee, may not terminate or not renew a dealer agreement without good cause.

(2) A manufacturer has the burden of showing good cause for terminating or not renewing a dealer agreement. All of the following factors must be considered in determining whether there is good cause for a proposed termination or nonrenewal of a dealer agreement by a manufacturer:

(a) The extent of the dealer's penetration in the relevant market area.

(b) The nature and extent of the dealer's investment in its business.

(c) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.

(d) The effect of the proposed action on the community.

(e) The extent and quality of the dealer's service under recreational vehicle warranties.

(f) Whether the dealer fails to follow agreed-upon procedures or standards related to the overall operation of the dealership.

(g) The dealer's performance under the terms of dealer agreement.

(3) Except as otherwise provided in this section, a manufacturer shall provide a dealer with written notice of a termination or nonrenewal of a dealer agreement. All of the following apply to a notice described in this subsection:

(a) Except as provided in subdivision (d) or (e), the manufacturer shall provide the notice at least 90 days before the effective date of the termination or nonrenewal.

(b) The notice shall state all of the reasons for the termination or nonrenewal.

(c) The notice shall state that if the dealer provides to the manufacturer a written notification of intent to cure all claimed deficiencies within 30 days after the dealer receives the notice, the dealer has 30 days after the date of the notice to correct the deficiencies. If all of the deficiencies are corrected within that 30-day period, the notice is void and the manufacturer may not terminate or not renew the dealer agreement because of the deficiencies stated in the notice. If the dealer does not provide a notification of intent to cure deficiencies in that 30-day period, the termination or nonrenewal takes effect 90 days after the dealer received the notice.

(d) A manufacturer may reduce the notice period described in subdivision (a) to 10 days, and is not required to allow the dealer an opportunity to correct the deficiencies, if the manufacturer's grounds for termination or nonrenewal are any of the specific categories of good cause described in subsection (6)(a) to (e).

(e) A manufacturer is not required to provide notice or an opportunity to correct deficiencies under this subsection if the manufacturer's grounds for termination or nonrenewal is that the dealer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.

(4) If a manufacturer terminates or does not renew a dealer agreement for good cause under this section, the manufacturer at its option may repurchase any of the following from the dealer:

(a) All new, untitled recreational vehicles that were acquired from the manufacturer within 12 months before the effective date of the notice of termination that have not been used, except for demonstration purposes, and that have not been altered or damaged, at 100% of the net invoice cost of the recreational vehicles, including transportation, less applicable rebates and discounts to the dealer.

(b) All current and undamaged accessories and proprietary parts sold to the dealer for resale within the 12 months before the effective date of the termination that are accompanied by the original invoice, at 105% of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the accessories and parts.

(c) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, purchased by the dealer within the 5 years before the effective date of the termination at the manufacturer's request, if it cannot be used in the normal course of the dealer's ongoing business, at 100% of the dealer's net cost, plus freight, destination, delivery, and distribution charges and sales taxes.

(5) The dealer shall promptly return or arrange for the return of all of the items the manufacturer elects to repurchase under subsection (4) at the manufacturer's expense and the manufacturer shall pay all of the amounts owed to the dealer under subsection (4) to the dealer within 30 days after it receives the returned items.

(6) As used in this section, "good cause" includes, but is not limited to, any of the following:

(a) Conviction of, or plea of *nolo contendere* by, a dealer or an owner of a dealer to a felony.

(b) Abandonment or closing the business operations of a dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control.

(c) A material misrepresentation to a manufacturer by a dealer that affects the business relationship between the dealer and the manufacturer.

(d) Suspension or revocation of a dealer's license, or refusal to renew a dealer's license, by the department.

(e) A material violation of this act by a dealer that is not cured within 30 days after written notice of the violation by a manufacturer.

(f) The dealer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.

Sec. 11. (1) A dealer may not terminate a dealer agreement without good cause. A dealer that terminates a dealer agreement shall provide the manufacturer with written notice at least 90 days before the effective date of the termination.

(2) All of the following apply to a termination of a dealer agreement under this section for good cause:

(a) The notice described in subsection (1) shall state all reasons for the proposed termination.

(b) The notice described in subsection (1) shall state that if the manufacturer provides to the dealer a written notification of intent to cure all claimed deficiencies within 30 days after the manufacturer receives the notice, the manufacturer has 30 days after the date of the notice to correct the deficiencies. If all of the deficiencies are corrected within that 30-day period, the notice is void and the dealer may not terminate the dealer agreement because of the deficiencies stated in the notice. If the manufacturer does not provide a notification of intent to cure deficiencies in that 30-day period, the termination takes effect 90 days after the manufacturer received the notice.

(c) A dealer may reduce the notice period described in subsection (1) to 10 days, and is not required to allow the manufacturer an opportunity to correct the deficiencies, if the dealer's grounds for termination or nonrenewal are any of the specific categories of good cause described in subdivision (e)(i) to (v).

(d) A dealer is not required to provide notice or an opportunity to correct deficiencies under this subsection if the dealer's grounds for termination or nonrenewal is that the manufacturer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.

(e) The dealer has the burden of showing good cause. Each of the following is considered good cause for a proposed termination of a dealer agreement by a dealer:

(i) Conviction of, or plea of *nolo contendere* by, the manufacturer to a felony.

(ii) Abandonment or closing the business operations of the manufacturer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(iii) A material misrepresentation to the dealer by the manufacturer that affects the business relationship between the dealer and manufacturer.

(iv) A material violation of this act by the manufacturer that is not cured within 30 days after written notice of the violation by the dealer.

(v) A material breach of the dealer agreement by the manufacturer.

(vi) The manufacturer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.

(f) If the manufacturer fails to cure any claimed deficiencies under subdivision (b), the dealer may require that the manufacturer repurchase any of the following from the dealer:

(i) All new, untitled recreational vehicles that were acquired from the manufacturer within 12 months before the effective date of the notice of termination that have not been used, except for demonstration purposes, and that have not been altered or damaged, at 100% of the net invoice cost of the recreational vehicles, including transportation, less applicable rebates and discounts to the dealer.

(ii) All current and undamaged accessories and proprietary parts sold to the dealer for resale within the 12 months before the effective date of the termination that are accompanied by the original invoice, at 105% of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the accessories and parts.

(iii) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, purchased by the dealer within the 5 years before the effective date of the termination at the manufacturer's request, if it cannot be used in the normal course of the dealer's ongoing business, at 100% of the dealer's net cost, plus freight, destination, delivery, and distribution charges and sales taxes.

(g) The dealer shall promptly return or arrange for the return of all of the items the manufacturer is required to repurchase under subdivision (f) at the manufacturer's expense and the manufacturer shall pay all of the amounts owed to the dealer under subdivision (f) to the dealer within 30 days after it receives the returned items.

Sec. 13. The department may not prohibit a dealer from selling a particular line-make after a dealer agreement has been terminated or not renewed under section 9 or 11. If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer, the dealer may continue to sell all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer inventory.

Sec. 15. (1) All of the following apply to a proposed sale of the business assets, transfer of the stock, or other transaction that will result in a change of ownership of a dealer, except a transaction described in subsection (2):

(a) The dealer must provide written notice to the manufacturer at least 90 days before the proposed closing of the transaction. The notice shall include complete copies of all documentation of the proposed transaction and any other documentation reasonably requested by the manufacturer in order to determine if it will make an objection to the transaction.

(b) If the dealer is not in breach of the dealer agreement or in violation of this act at the time it provides the notice described in subdivision (a), the manufacturer shall not object to the proposed transaction unless the prospective transferee meets 1 or more of the following:

(i) It previously was a party to a dealer agreement with the manufacturer that the manufacturer terminated.

(ii) Was previously convicted of a felony or any crime of fraud, deceit, or moral turpitude.

(iii) Does not have any license required by law to conduct business as a dealer in this state.

(iv) Does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement.

(v) In the preceding 10 years, was bankrupt or insolvent, made a general assignment for the benefit of creditors, or a receiver, trustee, or conservator was appointed to take possession of the transferee's business or property.

(c) If the manufacturer objects to the proposed transaction, the manufacturer shall give written notice of its objection, including its reasons for objecting, to the dealer within 30 days after receiving the notice described in subdivision (a). If the manufacturer does not give notice of its objection within that 30-day period, the proposed transaction is considered approved by the manufacturer.

(d) For purposes of subdivision (c), the manufacturer has the burden of demonstrating its objection to the proposed transaction.

(2) All of the following apply concerning the death, incapacity, or retirement of the designated principal of a dealer:

(a) The manufacturer must provide the dealer an opportunity to designate, in writing, a family member as a successor to the dealer in the event of the death, incapacity, or retirement of the designated principal.

(b) The manufacturer shall not prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal of that dealer unless the manufacturer had provided written notice to the dealer of any objections to the dealer's succession plan within 30 days after receiving the dealer's succession plan or any modification of the dealer's succession plan.

(c) Except as provided in subdivision (e), unless the dealer is in breach of the dealer agreement, a manufacturer shall not object to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal unless the successor meets 1 or more of the following:

(i) Was previously convicted of a felony or any crime of fraud, deceit, or moral turpitude.

(ii) In the preceding 10 years, was bankrupt, insolvent, or made an assignment for the benefit of creditors.

(iii) Was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated for a breach of a dealer agreement.

(iv) Does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement.

(v) Does not have any license required by law to conduct business as a dealer in this state.

(d) The manufacturer has the burden of proof regarding any objection to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal.

(e) The manufacturer's consent is required for the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

Sec. 17. (1) A warrantor has all of the following obligations to each dealer engaged in the sale or lease of products that are covered by a warranty from that warrantor:

(a) To specify in writing to the dealer the dealer's obligations, if any, for preparation, delivery, and warranty service on its products.

(b) To compensate the dealer for warranty service required of the dealer by the warrantor.

(c) To provide the dealer with a schedule of compensation the warrantor will pay for warranty work and the warrantor's time allowances for the performance of that work. All of the following apply to the schedule of compensation required under this subdivision:

(i) It must include reasonable compensation for diagnostic work and warranty labor.

(ii) Time allowances in the schedule for the diagnosis and performance of warranty labor must be reasonable for the work to be performed.

(iii) The compensation of a dealer for warranty labor shall equal or exceed the lowest retail labor rates actually charged by the dealer for similar nonwarranty labor if those rates are consistent with the actual wage rates paid by the dealer and the actual retail labor rates charged by the dealer in the community in which the dealer is doing business.

(d) To reimburse the dealer for warranty parts at actual wholesale cost, plus a minimum 30% handling charge and any freight costs to return warranty parts to the warrantor.

(e) To deny dealer claims for warranty compensation only for cause, including, but not limited to, performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation of claims, fraud, or misrepresentation.

(2) A warrantor may conduct audits of the records of a dealer that sells or leases its warranted products on a reasonable basis.

(3) A dealer shall submit warranty claims to a warrantor within 45 days after completing warranty work on a warranted product.

(4) A dealer shall immediately notify the warrantor orally or in writing if the dealer is unable to perform warranty repairs on a warranted product as soon as is reasonably possible, but not later than 12 days after the delivery of the recreational vehicle to the dealer for warranty repair. A warrantor that receives a notification from a dealer under this subsection shall make arrangements for another dealer or repair facility to perform the warranty repairs identified by the dealer in the notification within 12 days after receiving the notification.

(5) A warrantor shall approve or disapprove a warranty claim on a warranted product in writing within 30 days after the date the dealer submits the claim, if the claim is submitted in the manner and in the form prescribed by the warrantor. If a claim that is properly submitted is not specifically disapproved in writing by a warrantor within that 30-day period, the claim is considered approved by the warrantor and the warrantor shall pay the amount of the claim to the dealer within 45 days after the dealer submitted the claim.

Sec. 19. (1) A warrantor shall not do any of the following:

(a) Fail to perform all of its warranty obligations with respect to a warranted product.

(b) In any written notice of a factory campaign to recreational vehicle owners and dealers, fail to include the expected date by which necessary parts and equipment, including tires and chassis or chassis parts if required, will be available to dealers to perform the campaign work. The warrantor shall provide sufficient parts to the dealer to perform the campaign work. If the number of parts provided to the dealer under this subdivision exceed the dealer's requirements to perform the campaign work, the dealer may return unused parts to the warrantor for credit after completion of the campaign.

(c) Subject to section 23, fail to compensate a dealer for authorized repairs of warranted products damaged during the manufacturing process, or damaged while in transit to the dealer if the warrantor selected the carrier.

(d) Fail to compensate a dealer for authorized warranty service under this section in accordance with the applicable schedule of compensation provided to the dealer under section 17 if the warranty service is performed in a timely and competent manner.

(e) Intentionally misrepresent in any way to a purchaser of a warranted product that any warranty concerning the manufacture, performance, or design of the warranted product is made by the dealer either as a warrantor or co-warrantor.

(f) Require a dealer to make warranties to customers in any manner related to the manufacture of a warranted product.

(2) A warrantor shall indemnify the dealer for any money paid or costs incurred by a dealer in connection with a claim or cause of action asserted against the dealer, to the extent that payment or those costs are based on the

negligence or intentional conduct of the warrantor. A warrantor may not limit the obligation to indemnify described in this subsection by agreement with the dealer. The dealer shall provide a warrantor with a copy of any claim or complaint in which an allegation described in this subsection is made within 10 days after receiving that claim or complaint.

(3) As used in this section and section 21:

- (a) "Products" mean new recreational vehicles or parts, accessories, or components of new recreational vehicles.
- (b) "Warranted products" mean products subject to a warranty from a specific warrantor.

Sec. 21. (1) A dealer shall not do any of the following:

- (a) Fail to perform predelivery inspection of products, if required, in a competent and timely manner.
- (b) If a transient customer requests service work on a recreational vehicle of a line-make that the dealer is authorized to display and sell, fail to perform any warranty service work authorized by a warrantor in a reasonably competent and timely manner without good cause.
- (c) Make a fraudulent warranty claim to a warrantor.
- (d) Misrepresent the terms of any warranty.

(2) A dealer shall indemnify a warrantor for any money paid or costs incurred by a warrantor in connection with a claim or cause of action asserted against the warrantor, to the extent that payment or those costs are based on the negligence or intentional conduct of the dealer. A dealer may not limit the obligation to indemnify described in this subsection by agreement with the warrantor. The warrantor shall provide a dealer with a copy of any claim or complaint in which an allegation described in this subsection is made within 10 days after receiving that claim or complaint.

Sec. 23. (1) All of the following apply if a new recreational vehicle is damaged before it is shipped to a dealer, or is damaged in transit to the dealer and the manufacturer selected the carrier or means of transportation:

(a) The dealer shall notify the manufacturer of the damage within the time period specified in the dealer agreement and do 1 of the following:

- (i) In the notice, request authorization to replace the components, parts, and accessories damaged, or otherwise correct the damage, from the manufacturer.
- (ii) Reject the recreational vehicle within the time period specified in the dealer agreement.

(b) If the manufacturer refuses or fails to authorize repair of the damage within 10 days after receiving notice under subdivision (a), or if the dealer rejects the recreational vehicle because of the damage within the time period specified in the dealer agreement, ownership of the recreational vehicle reverts to the manufacturer.

(c) The dealer shall exercise due care in the custody of the damaged recreational vehicle, but the dealer has no financial or other obligation with respect to that recreational vehicle.

(2) A dealer agreement shall include a time period for inspection and rejection of damaged recreational vehicles under subsection (1) that is not less than 2 business days after the physical delivery of the recreational vehicle to the dealer.

(3) If a dealer determines that a new recreational vehicle has an unreasonable number of miles on its odometer at the time it is delivered to the dealer, the dealer may reject that recreational vehicle and ownership of the recreational vehicle reverts to the manufacturer. However, if the number of miles on the odometer is less than the sum of the distance between the dealer and the manufacturer's factory or point of distribution plus 100 miles, the dealer may not consider the number of miles on the odometer unreasonable for purposes of this subsection.

Sec. 25. (1) A manufacturer may not coerce or attempt to coerce a dealer to purchase a product or service that the dealer did not order.

(2) A manufacturer may not coerce or attempt to coerce a dealer to enter into any agreement with the manufacturer.

(3) A manufacturer may not coerce or attempt to coerce a dealer to enter into an agreement with the manufacturer or any other person that requires the dealer to submit its disputes to binding arbitration or otherwise waive its rights or responsibilities under this act.

(4) As used in this section, the term "coerce" includes, but is not limited to, threatening to terminate or not renew a dealer agreement without good cause; threatening to withhold line-makes or other product lines the dealer is entitled to display and sell under the dealer agreement; or delay delivery of recreational vehicles as an inducement to amend the dealer agreement.

Sec. 27. (1) A dealer, manufacturer, or warrantor injured by another party's violation of this act may bring a civil action in circuit court to recover its actual damages. The court shall award attorney's fees and costs to the prevailing party in a civil action under this section.

(2) The venue for a civil action under this section involving 1 dealer is the county in which the dealer's business is located. In an action involving more than 1 dealer, any county in which the business of any dealer that is party to the action is located is a proper venue for that action.

(3) Before bringing a civil action under this section, the party bringing suit for an alleged violation of this act shall serve a written demand for mediation on the offending party. The demand for mediation shall include a brief statement of the dispute and the relief sought by the party making the demand. The party making the demand for mediation shall serve the demand by certified mail to 1 of the following addresses:

(a) In an action between a dealer and a manufacturer, the address stated in the dealer agreement between the parties.

(b) In an action between a dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties.

(c) In an action between 2 dealers, the address of the offending dealer in the records of the department.

(4) Within 20 days after a demand for mediation is served under subsection (3), the parties shall mutually select an independent mediator who is approved by the department, and meet with that mediator for the purpose of attempting to resolve the dispute at a location in this state selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or if the parties agree to the extension.

(5) The service of a demand for mediation under subsection (3) tolls the time for the filing of any complaint, petition, protest, or other action under this act until representatives of both parties have met with the mediator selected under subsection (4) for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, if all of the parties to the proceeding or action stipulate in writing that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the court considers appropriate. The court may modify, extend, or revoke a suspension order issued under this subsection if it considers that action appropriate.

(6) Each of the parties to the mediation under this section is responsible for its own attorney fees. The parties shall equally divide the cost of the mediator.

Sec. 29. (1) In addition to any remedy available under this act or otherwise available by law, a manufacturer, warrantor, or dealer may apply to a circuit court for the grant, after a hearing and for cause shown, of a temporary or permanent injunction or other equitable relief restraining any person from doing any of the following:

(a) Acting as a dealer without a proper license.

(b) Violating or continuing to violate this act. A single violation of this act is a sufficient basis for the court to grant equitable relief under this section.

(c) Failing or refusing to comply with any requirement of this act.

(2) The court may not require a bond as a condition to the grant of equitable relief under this section.

Enacting section 1. This act takes effect December 1, 2009.

Enacting section 2. This act does not take effect unless House Bill No. 4781 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

.....
Governor