

HOUSE BILL No. 6178

September 23, 1998, Introduced by Rep. Alley and referred to the Committee on Commerce.

A bill to regulate recreational vehicle manufacturers, wholesalers, dealers, and their representatives; to regulate dealings between those manufacturers and wholesalers and their dealers; to regulate dealings between those manufacturers, wholesalers, dealers, and consumers; to prohibit unfair practices; and to provide remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Dealer agreement" means the agreement or contract in
3 writing between a manufacturer and a new recreational vehicle
4 dealer that establishes the legal rights and obligations of the
5 parties to the agreement or contract with regard to the purchase
6 and sale of new recreational vehicles and accessories for
7 recreational vehicles.

1 (b) "Designated family member" means the spouse, child,
2 grandchild, parent, brother, or sister of a deceased new
3 recreational vehicle dealer who is entitled to inherit the
4 deceased dealer's ownership interest in the new recreational
5 vehicle dealership under the terms of the dealer's will, or who
6 has otherwise been designated in writing by a deceased dealer to
7 succeed the deceased dealer in the new recreational vehicle deal-
8 ership, or who is entitled to inherit under the laws of intestate
9 succession of this state. With respect to an incapacitated new
10 recreational vehicle dealer, designated family member means the
11 person appointed by a court as the legal representative of the
12 new recreational vehicle dealer's property. Designated family
13 member also includes the appointed and qualified personal repre-
14 sentative and the testamentary trustee of a deceased new recrea-
15 tional vehicle dealer. However, if the new recreational vehicle
16 dealer files a written document with the manufacturer nominating
17 a designated successor, the term means only that designated suc-
18 cessor nominated by the new recreational vehicle dealer in that
19 written document.

20 (c) "Established place of business" means a permanent,
21 enclosed commercial building located within this state easily
22 accessible and open to the public at all reasonable times and at
23 which the business of a new recreational vehicle dealer, includ-
24 ing the display and repair of recreational vehicles, may be law-
25 fully carried on in accordance with the terms of all applicable
26 building codes, zoning, and other land-use regulatory
27 ordinances.

1 (d) "Factory branch" means an office maintained by a
2 manufacturer for the purpose of selling or offering for sale rec-
3 reational vehicles to a wholesaler or new recreational vehicle
4 dealer, or for directing or supervising in whole or in part fac-
5 tory representatives. Factory branch includes any sales promo-
6 tion organization maintained by a manufacturer that is engaged in
7 promoting the sale of a particular make of new recreational vehi-
8 cles in this state to new recreational vehicle dealers.

9 (e) "Factory representative" means an agent or employee of a
10 manufacturer or factory branch retained or employed for the pur-
11 pose of making or promoting the sale of new recreational vehicles
12 or for supervising or contracting with new recreational vehicle
13 dealers or proposed recreational vehicle dealers.

14 Sec. 2. As used in this act:

15 (a) "Good faith" means honesty in fact and the observation
16 of reasonable commercial standards of fair dealing in the trade,
17 as defined and interpreted under section 2103 of 1962 PA 174, MCL
18 440.2103.

19 (b) "Manufacturer" means a person who manufactures or assem-
20 bles new recreational vehicles or a factory branch or factory
21 representative.

22 (c) "New recreational vehicle or recreational vehicle" means
23 a personal watercraft as defined in section 80104 of part 801 of
24 1994 PA 451, MCL 324.80104, or a snowmobile as defined in section
25 82101 of part 821 of 1994 PA 451, MCL 324.82101, that is in the
26 possession of the manufacturer or wholesaler, or has been sold
27 only to a new recreational vehicle dealer and on which the

1 original title has not been issued from the new recreational
2 vehicle dealer.

3 (d) "New recreational vehicle dealer" means a person who
4 holds a dealer agreement granted by a manufacturer for the sale
5 of its recreational vehicles, who is engaged in the business of
6 purchasing, selling, exchanging, or dealing in new recreational
7 vehicles, and who has an established place of business in this
8 state.

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

11 (f) "Proposed new recreational vehicle dealer" means a
12 person who has an application pending for a new dealer agreement
13 with a manufacturer. Proposed recreational vehicle dealer does
14 not include a person whose dealer agreement is being renewed or
15 continued.

16 Sec. 3. As used in this act, "relevant market area" means:

17 (a) For a proposed new recreational vehicle dealer or a new
18 recreational vehicle dealer who plans to relocate his or her
19 place of business in a county having a population which is
20 greater than 25,000, the area within a radius of 6 miles of the
21 intended site of the proposed or relocated dealer. The 6-mile
22 distance shall be determined by measuring the distance between
23 the nearest surveyed boundary of the existing new recreational
24 vehicle dealer's principal place of business and the nearest sur-
25 veyed boundary line of the proposed or relocated new recreational
26 vehicle dealer's principal place of business.

1 (b) For a proposed new recreational vehicle dealer or a new
2 recreational vehicle dealer who plans to relocate his or her
3 place of business in a county having a population which is not
4 greater than 25,000, the area within a radius of 10 miles of the
5 intended site of the proposed or relocated dealer, or the county
6 line, whichever is closer to the intended site. The 10-mile dis-
7 tance shall be determined by measuring the distance between the
8 nearest surveyed boundary line of the existing new recreational
9 vehicle dealer's principal place of business and the nearest sur-
10 veyed boundary line of the proposed or relocated new recreational
11 vehicle dealer's principal place of business.

12 Sec. 4. (1) Notwithstanding any agreement, a manufacturer
13 shall not cancel, terminate, fail to renew, or refuse to continue
14 a dealer agreement with a new recreational vehicle dealer unless
15 the manufacturer has complied with all of the following:

16 (a) Satisfied the notice requirement of section 7.

17 (b) Acted in good faith.

18 (c) Has good cause for the cancellation, termination, nonre-
19 newal, or discontinuance.

20 (2) Notwithstanding any agreement, good cause shall exist
21 for the purposes of a termination, cancellation, nonrenewal, or
22 discontinuance under subsection (1)(c) if both of the following
23 occur:

24 (a) There is a failure by the new recreational vehicle
25 dealer to comply with a provision of the dealer agreement and the
26 provision is both reasonable and of material significance to the

1 relationship between the manufacturer and the new recreational
2 vehicle dealer.

3 (b) The manufacturer first acquired actual or constructive
4 knowledge of the failure not more than 2 years prior to the date
5 on which notification was given pursuant to section 7.

6 (3) If the failure by the new recreational vehicle dealer to
7 comply with a provision of the dealer agreement relates to the
8 performance of the new recreational vehicle dealer in sales or
9 service, good cause exists for the purposes of a termination,
10 cancellation, nonrenewal, or discontinuance under subsection (1)
11 when the new recreational vehicle dealer fails to effectively
12 carry out the performance provisions of the dealer agreement if
13 all of the following have occurred:

14 (a) The new recreational vehicle dealer was given written
15 notice by the manufacturer of the failure.

16 (b) The notification stated that the notice of failure of
17 performance was provided pursuant to this act.

18 (c) The new recreational vehicle dealer was given a reason-
19 able opportunity to exert good faith efforts to carry out the
20 dealer agreement.

21 (d) The failure continued for more than 180 days after the
22 date notification was given pursuant to subdivision (a).

23 Sec. 5. Notwithstanding any agreement, the occurrence of
24 any of the following alone is not good cause for the termination,
25 cancellation, nonrenewal, or discontinuance of a dealer agreement
26 under section 4(1)(c):

1 (a) A change in ownership of the new recreational vehicle
2 dealer's dealership. This subdivision does not authorize a
3 change in ownership that would have the effect of a sale or an
4 assignment of the dealer agreement or a change in the principal
5 management of the dealership without the manufacturer's prior
6 written consent.

7 (b) The refusal of the new recreational vehicle dealer to
8 purchase or accept delivery of new recreational vehicle parts,
9 accessories, or other commodities or services not ordered by the
10 new recreational vehicle dealer.

11 (c) The fact that the new recreational vehicle dealer owns,
12 has an investment in, participates in the management of, or holds
13 a dealer agreement for the sale of another make or line of new
14 recreational vehicles, or that the new recreational vehicle
15 dealer has established another make or line of new recreational
16 vehicles in the same dealership facilities as those of the manu-
17 facturer, provided that the new recreational vehicle dealer main-
18 tains a reasonable line of credit for each make or line of new
19 recreational vehicles, and that the new recreational vehicle
20 dealer remains in substantial compliance with the terms and con-
21 ditions of the dealer agreement and with the reasonable
22 facilities' requirements of the manufacturer.

23 (d) The fact that the new recreational vehicle dealer sells
24 or transfers ownership of the dealership or sells or transfers
25 capital stock in the dealership to the new recreational vehicle
26 dealer's spouse, son, or daughter, provided that the sale or
27 transfer does not have the effect of a sale or an assignment of

1 the dealer agreement or a change in the principal management of
2 the dealership without the manufacturer's prior written consent.

3 Sec. 6. For each termination, cancellation, nonrenewal, or
4 discontinuance, the manufacturer has the burden of proof for
5 showing that it has acted in good faith, that the notice require-
6 ment has been complied with, and that there was good cause for
7 the termination, cancellation, nonrenewal, or discontinuance.

8 Sec. 7. Notwithstanding any agreement, before the termina-
9 tion, cancellation, nonrenewal, or discontinuance of a dealer
10 agreement, the manufacturer shall furnish notice of the termina-
11 tion, cancellation, nonrenewal, or discontinuance to the new rec-
12 reational vehicle dealer as follows:

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

16 (b) Notice shall be by certified mail to the new recrea-
17 tional vehicle dealer and shall contain all 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 shall be made
25 not less than 15 days before the effective date of the termina-
26 tion, cancellation, nonrenewal, or discontinuance for any of the
27 following reasons:

1 (i) Insolvency of the new recreational vehicle dealer, or
2 the filing of a petition by or against the new recreational vehi-
3 cle dealer under bankruptcy or receivership law.

4 (ii) Failure of the new recreational vehicle dealer to con-
5 duct his or her customary sales and service operations during his
6 or her customary business hours for 7 consecutive business days.

7 (iii) Conviction of the new recreational vehicle dealer or
8 its principal owners of a crime, but only if the crime is punish-
9 able by imprisonment in excess of 1 year under the law under
10 which the dealer was convicted, or the crime involved theft, dis-
11 honesty, or false statement regardless of the punishment.

12 (iv) Revocation of a license that the new recreational vehi-
13 cle dealer is required to have to operate a dealership.

14 (v) A fraudulent misrepresentation by the new recreational
15 vehicle dealer to the manufacturer that is material to the dealer
16 agreement.

17 (d) Notwithstanding subdivision (a), if a manufacturer dis-
18 continues production of the new recreational vehicle dealer's
19 product line or discontinues distribution of the product line in
20 this state, the manufacturer shall provide notice not less than
21 12 months before the effective date of a termination, cancella-
22 tion, nonrenewal, or discontinuance.

23 Sec. 8. (1) Upon the termination, cancellation, nonrenewal,
24 or discontinuance of a dealer agreement, the new recreational
25 vehicle dealer is entitled to fair and reasonable compensation by
26 the manufacturer for all of the following:

1 (a) All new current model year recreational vehicle
2 inventory purchased from the manufacturer that has not been
3 materially altered, substantially damaged, or driven for more
4 than 300 miles and all new recreational vehicle inventory not of
5 the current model year that has not been materially altered, sub-
6 stantially damaged, or driven for more than 300 miles, provided
7 the noncurrent model recreational vehicles were purchased from
8 the manufacturer and drafted on the dealer's financing source or
9 paid for within 120 days of the effective date of the termina-
10 tion, cancellation, or nonrenewal.

11 (b) Supplies and parts inventory purchased from the manufac-
12 turer and listed in the manufacturer's current parts catalog.

13 (c) Equipment, furnishings, and signs purchased from the
14 manufacturer.

15 (d) Special tools purchased from the manufacturer within 3
16 years of the date of termination, cancellation, nonrenewal, or
17 discontinuance.

18 (2) Upon the termination, cancellation, nonrenewal, or dis-
19 continuance of a dealer agreement, the manufacturer shall also
20 pay to the new recreational vehicle dealer a sum equal to the
21 current, fair rental value of his or her established place of
22 business for a period of 1 year from the effective date of termi-
23 nation, cancellation, nonrenewal, or discontinuance, or the
24 remainder of any lease, whichever is less. However, the payment
25 required by this subsection does not apply to a termination, can-
26 cellation, nonrenewal, or discontinuance made pursuant to section
27 7(c).

1 (3) The requirement of paying an annual fair rental value
2 pursuant to subsection (2) applies only to the extent the new
3 recreational vehicle dealer's established place of business is
4 used for performance of sales and service obligations under the
5 manufacturer's dealer agreement.

6 (4) If the termination is made by the dealer, the payment
7 required by subsection (2) is required only if the new recrea-
8 tional vehicle dealer makes available to the manufacturer use and
9 possession of the premises free of claims of others for the
10 1-year period, except for use by the dealer for closing his or
11 her business.

12 (5) If the termination is made by the dealer, the payment
13 required by subsection (2) shall not exceed \$20,000.00 unless
14 provided otherwise by contract entered into between the parties.

15 (6) This section does not relieve a new recreational vehicle
16 dealer, lessor, or other owner of an established place of busi-
17 ness from the obligation of mitigating damages.

18 Sec. 9. (1) Compensation for new recreational vehicle
19 inventory under section 8(1)(a) shall be paid, if possible,
20 within 30 days after the effective date of the termination, can-
21 cellation, nonrenewal, or discontinuance, if the new recreational
22 vehicle dealer has met all reasonable requirements of the dealer
23 agreement with respect to the return of the new recreational
24 vehicle inventory. Compensation for items of personal property
25 required by section 8(1)(b), (c), and (d) shall be paid within 90
26 days after the effective date of the termination, cancellation,
27 nonrenewal, or discontinuance, if the new recreational vehicle

1 dealer has met all reasonable requirements of the dealer
2 agreement with respect to the return of the repurchased personal
3 property, including providing clear title.

4 (2) Fair and reasonable compensation pursuant to section
5 8(1)(a) shall be not less than the new recreational vehicle
6 dealer's net acquisition cost. Fair and reasonable compensation
7 pursuant to section 8(1)(b) shall be the amount stated in the
8 manufacturer's current parts price list. Fair and reasonable
9 compensation pursuant to section 8(1)(c) and (d) shall be the
10 fair market value of the personal property.

11 (3) In the event payment is not made within 90 days as pro-
12 vided in subsection (1), interest shall accrue thereafter on all
13 amounts due the new recreational vehicle dealer at a rate of 12%
14 per annum.

15 Sec. 10. A manufacturer shall not require a new recrea-
16 tional vehicle dealer in this state to do any of the following:

17 (a) Order or accept delivery of a new recreational vehicle,
18 part or accessory, equipment, or other commodity not required by
19 law that was not voluntarily ordered by the new recreational
20 vehicle dealer. This section does not prevent the manufacturer
21 from requiring that a new recreational vehicle dealer carry a
22 reasonable inventory of models offered for sale by the
23 manufacturer.

24 (b) Order or accept delivery of a new recreational vehicle
25 with special features, accessories, or equipment not included in
26 the list price of the new recreational vehicle as publicly
27 advertised by the manufacturer.

1 (c) Participate monetarily in an advertising campaign or
2 contest, or purchase promotional materials, display devices, or
3 display decorations or materials at the expense of the new recre-
4 ational vehicle dealer.

5 (d) Enter into an agreement with the manufacturer or do any
6 other act prejudicial to the new recreational vehicle dealer by
7 threatening to terminate a dealer agreement or contractual agree-
8 ment or understanding existing between the dealer and the
9 manufacturer. Notice in good faith to a dealer of the dealer's
10 violation of the terms or provisions of the dealer agreement is
11 not a violation of this act.

12 (e) Change the capital structure of the new recreational
13 vehicle dealership or the means by or through which the dealer
14 finances the operation of the dealership, if the dealership at
15 all times meets any reasonable capital standards determined by
16 the manufacturer in accordance with uniformly applied criteria.

17 (f) Refrain from participation in the management of, invest-
18 ment in, or acquisition of any other line of new recreational
19 vehicle or related products, if the dealer maintains a reasonable
20 line of credit for each make or line of vehicle, remains in com-
21 pliance with reasonable facilities requirements, and makes no
22 change in the principal management of the dealer.

23 (g) Change the location of the new recreational vehicle
24 dealership or make substantial alterations to the dealership
25 premises, if to do so would be unreasonable.

26 (h) Prospectively assent to a release, assignment, novation,
27 waiver, or estoppel that would relieve a person from liability

1 imposed by this act; or require a controversy between a new
2 recreational vehicle dealer and a manufacturer to be referred to
3 a person other than the courts of this state or the United
4 States, if the referral would be binding on the new recreational
5 vehicle dealer.

6 Sec. 11. (1) A manufacturer shall not do any of the
7 following:

8 (a) Fail to deliver new recreational vehicles or new recrea-
9 tional vehicle parts or accessories within a reasonable time and
10 in reasonable quantities relative to the new recreational vehicle
11 dealer's market area and facilities, unless the failure is caused
12 by acts or occurrences beyond the control of the manufacturer or
13 unless the failure results from an order by the new recreational
14 vehicle dealer in excess of quantities reasonably and fairly
15 allocated by the manufacturer.

16 (b) Refuse to disclose to a new recreational vehicle dealer
17 the method and manner of distribution of new recreational vehi-
18 cles by the manufacturer.

19 (c) Refuse to disclose to a new recreational vehicle dealer
20 the total number of new recreational vehicles of a given model
21 that the manufacturer has sold during the current model year
22 within the dealer's marketing district, zone, or region, which-
23 ever geographical area is the smallest.

24 (d) Increase prices of new recreational vehicles that the
25 new recreational vehicle dealer had ordered from, and then even-
26 tually delivered to, the same retail consumer for whom the
27 vehicle was ordered, if the order was made before the dealer's

1 receipt of the written official price increase notification. A
2 sales contract signed by a private retail consumer and binding on
3 the dealer is evidence of each order. In the event of manufac-
4 turer price reductions or cash rebates, the amount of a reduction
5 or rebate received by a dealer shall be passed on to the private
6 retail consumer by the dealer. A price reduction in excess of
7 \$5.00 shall apply to all vehicles in the dealer's inventory that
8 were subject to the price reduction. A price difference applica-
9 ble to new model or series recreational vehicles at the time of
10 the introduction of the new models or the series is not a price
11 increase or price decrease. This subdivision does not apply to
12 price changes caused by any of the following:

13 (i) The addition to a recreational vehicle of required or
14 optional equipment pursuant to state or federal law.

15 (ii) In the case of foreign made recreational vehicles or
16 components, revaluation of the United States dollar.

17 (iii) An increase in transportation charges due to an
18 increase in rates charged by a common carrier and transporters.

19 (e) Offer a refund or other type of inducement to a dealer
20 for the purchase of new recreational vehicles of a certain line
21 make to be sold to this state or political subdivision of this
22 state without making the same offer available upon request to all
23 other new recreational vehicle dealers of the same line make.

24 (f) Release to an outside party, except under subpoena or in
25 an administrative or judicial proceeding to which the new recrea-
26 tional vehicle dealer and the manufacturer are parties, business,
27 financial, or personal information that has been provided by the

1 dealer to the manufacturer, unless the new recreational vehicle
2 dealer gives his or her written consent.

3 (g) Deny a new recreational vehicle dealer the right to
4 associate with another new recreational vehicle dealer for any
5 lawful purpose.

6 (h) Establish a dealership that would unfairly compete with
7 a new recreational vehicle dealer of the same line make operating
8 under a dealer agreement with the manufacturer in the relevant
9 market area. A manufacturer is not unfairly competing if the
10 manufacturer is:

11 (i) Operating a dealership temporarily for a reasonable
12 period.

13 (ii) Operating a dealership that is for sale at a reasonable
14 price.

15 (iii) Operating a dealership with another person who has
16 made a significant investment in the dealership and who will
17 acquire full ownership of the dealership under reasonable terms
18 and conditions.

19 (i) Unreasonably withhold consent to the sale, transfer, or
20 exchange of the dealership to a qualified buyer capable of being
21 licensed as a new recreational vehicle dealer in this state.

22 (j) Fail to respond in writing to a request for consent to a
23 sale, transfer, or exchange of a dealership within 60 days after
24 receipt of a written application from the new recreational vehi-
25 cle dealer on the forms generally utilized by the manufacturer
26 for that purpose and containing the information required.

1 Failure to respond to the request within the 60 days is
2 considered consent.

3 (k) Unfairly prevent a new recreational vehicle dealer from
4 receiving reasonable compensation for the value of the new recre-
5 ational vehicle dealership.

6 (2) A manufacturer, either directly or through a subsidiary,
7 shall not terminate, cancel, fail to renew, or discontinue a
8 lease of the new recreational vehicle dealer's established place
9 of business except for a material breach of the lease.