




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536


 BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 363 (as enacted)  
House Bill 4781 (as enacted)  
Sponsor: Senator Jason E. Allen (S.B. 363)  
Representative Joel Sheltrown (H.B. 4781)  
Senate Committee: Commerce and Tourism  
House Committee: Tourism, Outdoor Recreation, and Natural Resources

**PUBLIC ACT 33 of 2009**  
**PUBLIC ACT 32 of 2009**

Date Completed: 7-28-09

### **CONTENT**

**Senate Bill 363** creates the "Recreational Vehicle Franchise Act" to do the following:

- Prohibit a manufacturer or a dealer from selling a recreational vehicle (RV) in Michigan without a dealer agreement.
- Prohibit a manufacturer or dealer from terminating or declining to renew a dealer agreement without good cause.
- Prescribe procedures for the termination or nonrenewal of an agreement.
- Require a dealer to notify a manufacturer of a proposed transaction that will result in a change of ownership, and give the manufacturer an opportunity to object.
- Prescribe a warrantor's obligations to a dealer.
- Prohibit specified actions by a warrantor or dealer.
- Prescribe procedures a dealer and manufacturer must follow if a dealer receives damaged RVs.
- Prohibit coercive actions by a manufacturer.
- Allow a dealer, manufacturer, or warrantor to bring a civil action for a violation of the Act.
- Require the parties to a dispute to attempt mediation before bringing a civil action.

-- Allow a party to apply for an injunction or other equitable relief for specified violations.

**House Bill 4781** amends the Michigan Vehicle Code to include park model trailers in provisions regarding the transport of mobile homes.

The bills were tie-barred to each other and will take effect December 1, 2009.

### **Senate Bill 363**

#### Dealer Agreement

A manufacturer may not sell a recreational vehicle in Michigan to or through a dealer unless the manufacturer has a dealer agreement with the dealer that meets the requirements of the Act and is signed by both parties.

Except as otherwise provided, a dealer may not sell a new RV in Michigan unless the dealer has a dealer agreement with the vehicle's manufacturer that meets the Act's requirements and is signed by both parties.

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

- The manufacturer must designate in the agreement the area of sales responsibility assigned exclusively to the dealer.

- The manufacturer may 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 agreement.
- The area of sales responsibility is not subject to review or change for one year after the date of the first delivery of new RVs to the dealer under the initial agreement.

Additionally, if the dealer enters into an agreement to sell any RVs that compete with the vehicles included in the agreement, or enters into an agreement to increase a preexisting commitment to sell any competing RVs, 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:

- The dealer agreement does not authorize or permit the dealer to enter into that subsequent agreement.
- The market penetration of the manufacturer's products is jeopardized by the subsequent agreement, in the manufacturer's reasonable opinion.

("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 RVs of a particular line-make to the public. "Line-make" means a specific series of RV products that are identified by a common series trade name or trademark; are targeted to a particular market segment based on their décor, features, equipment, size, weight, and price range; have dimensions and interior floor plans that distinguish them from recreational vehicles that have substantially the same décor, features, equipment, weight, and price; belong to a single, distinct classification of RV product type that has a substantial degree of commonality in the construction of the chassis, frame, and body; and are authorized for sale by the dealer in the dealer agreement.)

A dealer may sell RVs outside of its designated area of sales responsibility if the dealer has obtained a separate or supplemental license to sell them, if required under provisions of the Michigan Vehicle Code pertaining to RV shows. Additionally, the sales must meet one of the following:

- 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 a written agreement that is signed by both dealers and the manufacturer, designates the vehicles to be offered for sale, includes the time period for the off-premises sales, and affirmatively authorizes the sale of the designated vehicles.
- 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.
- The sales are off-premises sales that take place in conjunction with a public vehicle show in which more than three dealers are participating and that is funded predominantly by manufacturers or sponsored by an RV trade association.

The dealer agreement must include a designated principal of the dealer. For purposes of provisions regarding a proposed transaction resulting in a change of ownership (described below), a dealer agreement may identify a family member as the successor of the designated principal or include that principal's succession plan. A dealer may change a designation or succession plan at any time by giving the manufacturer written notice.

A manufacturer must, from time to time, publish its prices, charges, and terms of sale for RVs, and may sell a vehicle to a dealer only in accordance with the published information in effect at the time of the sale.

If a manufacturer offers a dealer a rebate, discount, or program on any RVs, it must offer the same rebate, discount, or program to every similarly situated dealer.

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.

#### Termination or Nonrenewal by Manufacturer

A manufacturer may not terminate or fail to renew a dealer agreement without good cause, directly or through any officer, agent, or employee. A manufacturer has the burden of showing good cause for

terminating or not renewing an agreement. All of the following factors must be considered in determining whether there is good cause for a proposed termination or nonrenewal:

- The extent of the dealer's penetration in the relevant market area.
- The nature and extent of the dealer's investment in its business.
- The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.
- The effect of the proposed action on the community.
- The extent and quality of the dealer's service under RV warranties.
- Whether the dealer fails to follow agreed-upon procedures or standards related to the overall operation of the dealership.
- The dealer's performance under the terms of the agreement.

Except as otherwise provided, a manufacturer must give a dealer written notice of a termination or nonrenewal. As a rule, the notice must be given at least 90 days before the effective date of the termination or nonrenewal, and must state all of the reasons for that action. The notice must state that if the dealer gives the manufacturer a written notification of intent to cure all claimed deficiencies within 30 days after the dealer receives the notice, the dealer will have 30 days to correct the deficiencies. If all of the deficiencies are corrected within that time period, the notice will be void and the manufacturer may not terminate or fail to renew the agreement because of those deficiencies. If the dealer does not provide notification of intent to cure deficiencies within that time period, the termination or nonrenewal will take effect 90 days after the dealer receives the notice.

A manufacturer may reduce the required notice period to 10 days, and does not have to allow the dealer an opportunity to correct the deficiencies, if the manufacturer's grounds for termination or nonrenewal are any of the following specific categories included in the definition of "good cause":

- Conviction of, or plea of no contest by, a dealer or owner of a dealer to a felony.
- Abandonment or closing of 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.

- A material misrepresentation to a manufacturer by a dealer that affects the business relationship between the two parties.
- Suspension or revocation of a dealer's license, or refusal to renew a dealer's license, by the Department of State.
- A material violation of the Act by a dealer that is not cured within 30 days after written notice of the violation by a manufacturer.

"Good cause" also includes the dealer's becoming insolvent, being bankrupt, or making an assignment for the benefit of creditors. In that case, a manufacturer does not have to provide notice or an opportunity to correct deficiencies.

If a manufacturer terminates or does not renew an agreement for good cause, the manufacturer has the option to repurchase from the dealer all new, untitled RVs 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 their net invoice cost, including transportation, less applicable rebates and discounts to the dealer. The manufacturer also may repurchase 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 them.

In addition, the manufacturer may repurchase any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, purchased by the dealer within the five years before the effective date of the termination at the manufacturer's request, if they 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.

The dealer promptly must return or arrange for the return of all of the items the manufacturer elects to repurchase at the

manufacturer's expense. The manufacturer must pay all of the amounts owed to the dealer within 30 days after it receives the returned items.

#### Termination by Dealer

A dealer may not terminate an agreement without good cause. A dealer that terminates an agreement must give the manufacturer at least 90 days' written notice, stating all reasons for the proposed termination. The notice also must state that if the manufacturer gives the dealer a written notification of intent to cure all claimed deficiencies within 30 days after receiving the notice, the manufacturer will have 30 days to do so. If all of the deficiencies are corrected within that time period, the notice will be void and the dealer may not terminate the agreement because of those deficiencies. If the manufacturer does not provide notification of intent to cure deficiencies in that period, the termination will take effect 90 days after the manufacturer receives the notice.

A dealer may reduce the notice period to 10 days, and does not have to allow the manufacturer an opportunity to correct the deficiencies, if the dealer's grounds for termination or nonrenewal are any of the following specified categories of "good cause":

- Conviction of, or plea of no contest by, the manufacturer to a felony.
- Abandonment or closing of business operations 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.
- A material violation of the Act that is not cured within 30 days after written notice by the dealer.
- A material breach of the dealer agreement by the manufacturer.

"Good cause" also includes the manufacturer's becoming insolvent, being bankrupt, or making an assignment for the benefit of creditors. In that case, a dealer does not have to provide notice or an opportunity to correct deficiencies.

The dealer has the burden of showing good cause.

If the manufacturer fails to cure any claimed deficiencies, the dealer may require the manufacturer to repurchase items as described in the provisions related to termination or nonrenewal by a manufacturer.

The dealer promptly must return or arrange for the return of all of the items the manufacturer is required to repurchase at the manufacturer's expense. The manufacturer must pay all of the amounts owed to the dealer within 30 days after receiving the items.

#### Existing Inventory

The Department of State may not prohibit a dealer from selling a particular line-make after a dealer agreement is terminated or not renewed. If RVs of a line-make are not returned or required to be returned to the manufacturer, the dealer may continue to sell all that are subject to the agreement and are in stock currently, until they are no longer in the dealer inventory.

#### Proposed Transaction

All of the following provisions 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 as otherwise provided.

The dealer must give the manufacturer written notice at least 90 days before the proposed closing of the transaction. The notice must include complete copies of all documentation of the proposed transaction and any other documentation the manufacturer reasonably requests in order to determine if it will object to the transaction.

If the dealer is not in breach of the dealer agreement or in violation of the Act when it provides the notice, the manufacturer may not object to the proposed transaction unless the prospective transferee meets one or more of the following criteria:

- Previously was a party to a dealer agreement with the manufacturer that the manufacturer terminated.
- Was convicted previously of a felony or any crime of fraud, deceit, or moral turpitude.

- Does not have any license required by law to conduct business as a dealer in Michigan.
- Does not have an active line of credit sufficient to purchase RVs from the manufacturer according to the terms of the dealer agreement.
- In the preceding 10 years, was bankrupt or insolvent, or made a general assignment for the benefit of creditors.

The manufacturer also may object if, in the preceding 10 years, a receiver, trustee, or conservator was appointed to take possession of the transferee's business or property.

If the manufacturer objects to the proposed transaction, it must give the dealer written notice of its objection, including its reasons, within 30 days after receiving the dealer's notice. If the manufacturer does not give notice of its objection within that time period, the proposed transaction will be considered approved by the manufacturer. The manufacturer has the burden of demonstrating its objection to a proposed transaction.

#### Designated Principal

All of the following provisions apply concerning the death, incapacity, or retirement of a dealer's designated principal.

The manufacturer must give 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.

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

Except as provided below, unless the dealer is in breach of the dealer agreement, a manufacturer may not object to the succession to a dealership by a family member of the designated principal unless the successor meets one of the following:

- Was convicted previously of a felony or any crime of fraud, deceit, or moral turpitude.
- In the preceding 10 years, was bankrupt or insolvent, or made an assignment for the benefit of creditors.
- Was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated for a breach of the agreement.
- Does not have an active line of credit sufficient to purchase RVs from the manufacturer according to the terms of the agreement.
- Does not have any license required by law to conduct business as a dealer in Michigan.

The manufacturer has the burden of proof regarding any objection to the succession to a dealership by a family member of the designated principal.

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

#### Warrantor

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:

- To specify in writing to the dealer the dealer's obligations, if any, for preparation, delivery, and warranty service on its products.
- To compensate the dealer for warranty service required of the dealer by the warrantor.
- 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.
- To deny claims for warranty compensation only for cause, including performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation of claims, fraud, or misrepresentation.
- To give the dealer a schedule of compensation the warrantor will pay for

warranty work and the warrantor's time allowances for performing that work.

The schedule of compensation must include reasonable compensation for diagnostic work and warranty labor, and time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In addition, the compensation of a dealer for warranty labor must 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 the dealer pays and the actual retail labor rates it charges in the community where it does business.

A warrantor may audit the records of a dealer that sells or leases its warranted products on a reasonable basis.

A dealer must submit warranty claims to a warrantor within 45 days after completing warranty work on a warranted product.

A dealer immediately must notify a warrantor orally or in writing if it cannot perform warranty repairs on a warranted product as soon as reasonably possible, but not later than 12 days after the vehicle is delivered to the dealer for warranty repair. The warrantor must make arrangements for another dealer or repair facility to perform the repairs identified by the dealer in the notification within 12 days after receiving it.

A warrantor must approve or disapprove a warranty claim in writing within 30 days after the dealer submits it, if it is submitted in the manner and in the form prescribed by the warrantor. If a properly submitted claim is not disapproved specifically in writing within that period, it will be considered approved and the warrantor must pay the amount of the claim to the dealer within 45 days after the dealer submitted it.

A warrantor may not do any of the following:

- Fail to perform all of its warranty obligations within respect to a warranted product.
- 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 (subject to provisions regarding damaged RVs).

- Fail to compensate a dealer for authorized warranty service in accordance with the applicable schedule of compensation given to the dealer if the warranty service is performed in a timely and competent manner.
- Intentionally misrepresent in any way to a purchaser of a warranted product that any warranty concerning the manufacture, performance, or design of the product is made by the dealer as either a warrantor or a co-warrantor.
- Require a dealer to make warranties to customers in any manner related to the manufacture of a warranted product.

Also, in any written notice of a factory campaign to RV owners and dealers, a warrantor must 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 must provide sufficient parts to a dealer to perform the campaign work. If the number of parts provided to the dealer exceeds the dealer's requirements to perform the campaign work, the dealer may return unused parts to the warrantor for credit after the campaign's completion.

A warrantor must indemnify a dealer for any money the dealer pays or costs it incurs in connection with a claim or cause of action asserted against it, to the extent that payment or those costs are based on the warrantor's negligence or intentional conduct. A warrantor may not limit the obligation to indemnify by agreement with the dealer. The dealer must give a warrantor a copy of any claim or complaint in which an allegation is made within 10 days after receiving it.

#### Dealers

A dealer may not do any of the following:

- Fail to perform predelivery inspection of products, if required, in a competent and timely manner.
- Make a fraudulent warranty claim to a warrantor.
- Misrepresent the terms of any warranty.

Also, if a transient customer requests service work on an RV of a line-make that

the dealer is authorized to display and sell, the dealer may not fail without good cause to perform any warranty service work authorized by a warrantor in a reasonably competent and timely manner.

A dealer must indemnify a warrantor for any money the warrantor pays or costs it incurs in connection with a claim or cause of action asserted against it, to the extent that payment or those costs are based on the dealer's negligence or intentional conduct. A dealer may not limit the obligation to indemnify by agreement with the warrantor. The warrantor must give the dealer a copy of any claim or complaint in which an allegation is made within 10 days after receiving it.

#### Damaged Vehicles

All of the following provisions apply if a new RV 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.

The dealer must notify the manufacturer of the damage within the time period specified in the dealer agreement and do one of the following:

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

If the manufacturer refuses or fails to authorize repair of the damage within 10 days after receiving the notice, or if the dealer rejects the vehicle because of the damage within the time period specified in the agreement, ownership of the vehicle will revert to the manufacturer.

The dealer must exercise due care in the custody of the damaged vehicle, but has no financial or other obligation with respect to it.

A dealer agreement must include a time period for inspection and rejection of damaged RVs that is at least two business days after their physical delivery to the dealer.

If a dealer determines that a new RV has an unreasonable number of miles on its odometer when it is delivered, the dealer may reject it and ownership of the vehicle will revert to the manufacturer. If the number of miles on the odometer, however, is less than 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 this purpose.

#### Prohibited Manufacturer Actions

A manufacturer may not coerce or attempt to coerce a dealer to purchase a product or service that the dealer did not order, or to enter into any agreement with the manufacturer. Additionally, 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 the Act.

"Coerce" includes 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 agreement; or delay delivery of RVs as an inducement to amend the agreement.

#### Civil Action

A dealer, manufacturer, or warrantor injured by another party's violation of the Act may bring a civil action in circuit court to recover its actual damages. The court must award attorney's fees and costs to the prevailing party.

The venue for a civil action involving one dealer is the county in which the dealer's business is located. In an action involving more than one dealer, any county in which the business of any dealer that is party to the action is located is a proper venue.

Before bringing a civil action, a party must serve a written demand for mediation on the offending party. The demand for mediation must include a brief statement of the dispute and the relief sought. The party making the demand must serve it by certified mail to one of the following addresses:

- In an action between a dealer and a manufacturer, the address stated in the dealer agreement between the parties.
- In an action between a dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties.
- In an action between two dealers, the address of the offending dealer in the records of the Department of State.

Within 20 days after a demand for mediation is served, the parties mutually must select an independent mediator who is approved by the Department, and meet with the mediator for the purposes of attempting to resolve the dispute at a location in Michigan 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 an extension.

The service of a demand for mediation will toll the time for the filing of any complaint, petition, protest, or other action until representatives of both parties have met with the selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court must enter an order suspending the proceeding or action until the mediation meeting occurs. If all of the parties stipulate in writing that they wish to continue to mediate, the court may enter an order suspending the proceeding or action for as long as the court considers appropriate. The court may modify, extend, or revoke a suspension order if it considers that action appropriate.

Each of the parties to the mediation is responsible for its own attorney fees. The parties must divide the costs of the mediator equally.

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

- Acting as a dealer without a proper license.
- Failing or refusing to comply with any requirement of the Act.
- Violating or continuing to violate the Act.

A single violation is sufficient basis for the court to grant equitable relief. The court may not require a bond as a condition to the grant of equitable relief.

### **House Bill 4781**

Every motor vehicle, trailer, semitrailer, pole trailer, and, under the bill, recreational vehicle, when driven or moved on a street or highway, is subject to the Vehicle Code's registration and certificate of title provisions, with certain exceptions. Previously, this provision included a pickup camper and trailer coach, rather than an RV.

The bill defines "recreational vehicle" as a new or used vehicle that has its own motive power or is towed by a motor vehicle; is designed primarily to provide temporary living quarters for recreational, camping, travel, or seasonal use; complies with all applicable Federal vehicle regulations; and does not require a special mobile home highway movement permit to be operated or towed on a street or highway. The term includes a motor home, travel trailer, park model trailer that does not require a special mobile home highway movement permit, and pickup camper.

The bill defines "travel trailer" as a trailer coach, fifth wheel trailer, camping trailer, or other vehicle that is designed to be towed by a motor vehicle; is designed to provide temporary living quarters for recreational, camping, or travel use; and does not require a special mobile home highway movement permit to be towed on a street or highway.

The bill defines "park model trailer" as a vehicle that meets all of the following:

- Is built on a single chassis, mounted on wheels, and designed to be towed by a motor vehicle from time to time.
- Depending on its size, may require a special mobile home highway movement permit to be towed on a street or highway.
- Is designed to provide recreational seasonal or temporary living quarters.
- When used as recreational seasonal or temporary living quarters, may be connected to utilities necessary for the operation of installed fixtures and appliances.



-- Is not a mobile home under the Mobile Home Commission Act.

(Under that Act, "mobile home" means a structure, transportable in one or more sections, that is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.)

The Code prescribes the maximum dimensions of a mobile home being towed on a street or highway, provides for special permits for the towing of a mobile home that exceeds the maximum dimensions, prescribes other requirements for the transport of a mobile home, and authorizes the State Transportation Commission to order the Michigan Department of Transportation to cease issuing the permits under certain conditions. A person who violates these provisions is responsible for a civil infraction and may be assessed a civil fine of up to \$500. Under the bill, these provisions also apply to the towing of a park model trailer.

MCL 445.1921-445.1949 (S.B. 363)  
257.38a et al. (H.B. 4781)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco  
Debra Hollon

S0910\s363es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.