

HOUSE BILL No. 4808

June 5, 2003, Introduced by Reps. Richardville, Ehardt, Tabor, Bieda, Gillard, Garfield, Farhat, Gleason, Rocca, Byrum and Meyer and referred to the Committee on Regulatory Reform.

A bill to regulate watercraft manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate their dealings with dealers and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "watercraft manufacturer and dealer act".

3 Sec. 2. As used in this act:

4 (a) "Closed dealership" means a new watercraft dealer whose
5 dealer agreement is terminated, canceled, discontinued, or not
6 renewed.

7 (b) "Dealer agreement" means an agreement or contract in
8 writing between a distributor and a new watercraft dealer,
9 between a manufacturer and a distributor or a new watercraft

1 dealer, or between a watercraft importer and a distributor or a
2 new watercraft dealer, that purports to establish the legal
3 rights and obligations of the parties to the agreement or
4 contract with regard to the purchase and sale or resale of new
5 watercraft.

6 (c) "Designated family member" means the designated successor
7 nominated by a new watercraft dealer in a written document filed
8 by the dealer with a manufacturer. If the dealer did not file
9 that document, the term means any of the following, if
10 applicable:

11 (i) A spouse, child, grandchild, parent, brother, or sister
12 of a deceased new watercraft dealer who has otherwise been
13 designated in writing by a deceased dealer to succeed the
14 deceased dealer in the new watercraft dealership.

15 (ii) The appointed and qualified personal representative and
16 the testamentary trustee of a deceased new watercraft dealer.

17 (iii) A spouse, child, grandchild, parent, brother, or sister
18 of a deceased new watercraft dealer who is entitled to inherit
19 the deceased dealer's ownership interest in the new watercraft
20 dealership under the terms of the dealer's will or who is
21 entitled to inherit under the laws of intestate succession of
22 this state.

23 (iv) A person appointed by a court as the legal
24 representative of the property of an incapacitated new watercraft
25 dealer.

26 (d) "Distributor" means a resident or nonresident person who
27 is engaged in the business of offering for sale, selling, or

1 distributing new watercraft to a new watercraft dealer pursuant
2 to a dealer agreement, who maintains a resident or nonresident
3 factory representative for that business, or who controls any
4 resident or nonresident person who offers for sale, sells, or
5 distributes new watercraft to a new watercraft dealer. The term
6 includes a watercraft importer.

7 (e) "Established place of business" means a permanent,
8 enclosed commercial building located in this state and open to
9 the public at all reasonable times at which a person conducts any
10 of the business of a new watercraft dealer, including, but not
11 limited to, the display and repair of watercraft.

12 (f) "Factory branch" means an office maintained by a
13 manufacturer for the purpose of selling or offering for sale
14 watercraft to a distributor, wholesaler, or new watercraft
15 dealer, or for directing or supervising any factory
16 representatives. The term includes a sales promotion
17 organization maintained by a manufacturer that is engaged in this
18 state in promoting the sale of a particular make of new
19 watercraft to new watercraft dealers.

20 (g) "Factory representative" means an agent or employee of a
21 manufacturer retained or employed for the purpose of making or
22 promoting the sale of new watercraft or for supervising or
23 contracting with new watercraft dealers or proposed watercraft
24 dealers.

25 (h) "Good faith" means that term as defined in section 2103
26 of the uniform commercial code, 1962 PA 174, MCL 440.2103.

27 Sec. 3. As used in this act:

1 (a) "Manufacturer" means a person who manufactures or
2 assembles new watercraft. The term also includes a distributor,
3 factory branch, or factory representative.

4 (b) "New watercraft" means a watercraft that is in the
5 possession of a manufacturer or wholesaler, or that a
6 manufacturer or wholesaler has sold to a new watercraft dealer,
7 and on which the new watercraft dealer has not issued an original
8 title or transfer document.

9 (c) "New watercraft dealer" means a distributor or other
10 person who is a party to a dealer agreement with a manufacturer
11 for the sale or distribution of its watercraft, that is engaged
12 in the business of purchasing, selling, exchanging, or dealing in
13 6 or more new watercraft each year, and that has an established
14 place of business in this state.

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

18 (e) "Proposed new watercraft dealer" means a person who has
19 an application pending for a new dealer agreement with a
20 manufacturer. The term does not include a person whose dealer
21 agreement is being renewed or continued.

22 (f) For a proposed new watercraft dealer or a new watercraft
23 dealer who plans to relocate his or her place of business,
24 "relevant market area" means the area within a radius of 50 miles
25 of the intended site of the proposed or relocated dealer, or a
26 radius negotiated in good faith between the manufacturer or
27 wholesaler and the dealer, whichever is greater. As used in this

1 subdivision, "radius" is determined by measuring the distance
2 between the nearest surveyed boundary line of the existing new
3 watercraft dealer's principal place of business and the nearest
4 surveyed boundary line of the proposed or relocated new
5 watercraft dealer's principal place of business. This
6 subdivision does not apply to a dealer agreement between a
7 watercraft dealer and a manufacturer that is in existence on the
8 effective date of this act.

9 (g) "Watercraft" means any type of watercraft or vessel used
10 or capable of use as a means of transportation on water but does
11 not include paddleboats, canoes, kayaks, or water skis or similar
12 devices towed by watercraft.

13 Sec. 4. A manufacturer, wholesaler, or representative of a
14 manufacturer or wholesaler shall not offer to sell a new
15 watercraft to a new watercraft dealer, and a new watercraft
16 dealer shall not offer to purchase a new watercraft from a
17 manufacturer, wholesaler, or representative of a manufacturer or
18 wholesaler, without first entering into a written agreement and
19 complying with all applicable provisions of this act.

20 Sec. 5. (1) A manufacturer shall not cancel, terminate,
21 fail to renew, or refuse to continue a dealer agreement with a
22 new watercraft dealer unless the manufacturer complies with all
23 of the following:

24 (a) Satisfies the notice requirement of section 7.

25 (b) Acts in good faith.

26 (c) Has good cause for the cancellation, termination,
27 nonrenewal, or discontinuance. As used in this subdivision,

1 subject to subsection (2), "good cause" means either of the
2 following:

3 (i) There is a failure by the new watercraft dealer to comply
4 with a provision of the dealer agreement, the provision is both
5 reasonable and of material significance to the relationship
6 between the manufacturer and the new watercraft dealer, and the
7 manufacturer first acquired actual or constructive knowledge of
8 the failure not more than 2 years before the date on which notice
9 is given under section 7.

10 (ii) If a failure described in subparagraph (i) is a failure
11 by the new watercraft dealer to effectively execute a provision
12 of a dealer agreement related to the performance of the new
13 watercraft dealer in sales or service, all of the following have
14 occurred:

15 (A) The new watercraft dealer was given written notice by the
16 manufacturer of the failure.

17 (B) The notice stated that the notice of failure of
18 performance was provided under this act.

19 (C) The new watercraft dealer was afforded a reasonable
20 opportunity to exert good faith efforts to carry out the dealer
21 agreement.

22 (D) The failure or deficiency continued for more than 180
23 days after the date notice was given under sub-subparagraph (A).

24 (2) The following do not constitute good cause for the
25 termination, cancellation, nonrenewal, or discontinuance of a
26 dealer agreement under subsection (1)(c):

27 (a) A change in ownership of a new watercraft dealer's

1 dealership. This subdivision does not authorize a change in
2 ownership that results in a sale or an assignment of the dealer
3 agreement or a change in the principal management of the
4 dealership without the manufacturer's prior written consent.

5 (b) A refusal of a new watercraft dealer to purchase or
6 accept delivery of any new watercraft parts, or accessories or
7 any other commodity or services not ordered by the new watercraft
8 dealer.

9 (c) The fact that a new watercraft dealer owns, has an
10 investment in, participates in the management of, or holds a
11 dealer agreement for the sale of another make or line of new
12 watercraft, or that the new watercraft dealer has established
13 another make or line of new watercraft in the same dealership
14 facilities as those of the manufacturer, if both of the following
15 are met:

16 (i) The new watercraft dealer maintains a reasonable line of
17 credit for each make or line of new watercraft.

18 (ii) The new watercraft dealer remains in substantial
19 compliance with the terms and conditions of the dealer agreement
20 and with the reasonable facilities' requirements of the
21 manufacturer.

22 (d) The fact that a new watercraft dealer sells or transfers
23 ownership of the dealership or sells or transfers capital stock
24 in the dealership to the new watercraft dealer's spouse, son, or
25 daughter, if the sale or transfer does not have the effect of a
26 sale or an assignment of the dealer agreement or a change in the
27 principal management of the dealership without the manufacturer's

1 prior written consent.

2 (3) A provision in a dealer agreement that is contrary to
3 this section is not enforceable.

4 Sec. 6. In any proceeding concerning a termination,
5 cancellation, nonrenewal, or discontinuance of a dealer agreement
6 under section 5, the manufacturer has the burden of proof for
7 showing that it has acted in good faith, that it has complied
8 with any notice requirement, and that there was good cause for
9 the termination, cancellation, nonrenewal, or discontinuance.

10 Sec. 7. (1) Before a termination, cancellation, nonrenewal,
11 or discontinuance of a dealer agreement, a manufacturer shall
12 provide written notice of the termination, cancellation,
13 nonrenewal, or discontinuance to the new watercraft dealer that
14 meets all of the following:

15 (a) The manufacturer shall provide the notice to the new
16 watercraft dealer by certified mail.

17 (b) The notice shall contain all of the following:

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

20 (ii) A statement of the reason for the termination,
21 cancellation, nonrenewal, or discontinuance.

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

24 (c) The manufacturer shall provide the notice within 1 of the
25 following time periods:

26 (i) At least 30 days before the effective date of a
27 termination, cancellation, nonrenewal, or discontinuance for any

1 of the following reasons:

2 (A) Insolvency of the new watercraft dealer, or the filing of
3 a petition by or against the new watercraft dealer under any
4 bankruptcy or receivership law.

5 (B) Failure of a new watercraft dealer to conduct his or her
6 customary sales and service operations during his or her
7 customary business hours for 30 consecutive business days.

8 (C) Conviction of the new watercraft dealer or its principal
9 owners of a crime, but only if the crime is punishable by
10 imprisonment for more than 1 year under the law under which the
11 dealer or owner was convicted, or if the crime involved theft,
12 dishonesty, or false statement regardless of the punishment.

13 (D) Revocation of a license the new watercraft dealer is
14 required to have to operate a dealership.

15 (E) The new watercraft dealer makes a fraudulent
16 misrepresentation to the manufacturer that is material to the
17 dealer agreement.

18 (ii) At least 12 months before the effective date of a
19 termination, cancellation, nonrenewal, or discontinuance if a
20 manufacturer discontinues production of the new watercraft
21 dealer's product line or discontinues distribution of that
22 product line in this state.

23 (iii) If subparagraph (i) or (ii) does not apply, at least
24 180 days before the effective date of the termination,
25 cancellation, nonrenewal, or discontinuance.

26 (2) A notice provision in a dealer agreement that is contrary
27 to this section is not enforceable.

1 Sec. 8. (1) If a dealer agreement is terminated, canceled,
2 not renewed, or discontinued, the manufacturer shall pay the new
3 watercraft dealer fair and reasonable compensation for all of the
4 following:

5 (a) Each new current model year watercraft purchased from the
6 manufacturer in the dealer's inventory that has not been
7 materially altered or substantially damaged.

8 (b) Each new watercraft not of the current model year
9 purchased from the manufacturer in the dealer's inventory that
10 has not been materially altered or substantially damaged, if that
11 watercraft was purchased from the manufacturer and drafted on the
12 dealer's financing source or paid for within the 2-year period
13 before the effective date of the termination, cancellation, or
14 nonrenewal or discontinuance.

15 (c) Any electronic or printed parts catalogs or other
16 supplies, and any parts inventory, purchased from the
17 manufacturer.

18 (d) Any equipment, furnishings, and signs identifying the
19 watercraft or the manufacturer brand or trade name.

20 (e) Any special tools purchased from or required by the
21 manufacturer within the 3-year period before the effective date
22 of termination, cancellation, nonrenewal, or discontinuance.

23 (f) Any manufacturer required dealer staff training or
24 mandatory dealer meetings.

25 (g) Any expenditures made by the new watercraft dealer in
26 marketing the manufacturer's products based upon future
27 anticipated incentives, holdbacks on boats not refunded by the

1 manufacturer, or similar financial promotions before the
2 cancellation of the agreement.

3 (2) A manufacturer shall pay any compensation required under
4 subsection (1)(a) or (b) within 30 days after the effective date
5 of the termination, cancellation, nonrenewal, or discontinuance
6 if the new watercraft dealer has met any reasonable requirements
7 of the dealer agreement with respect to the return of the new
8 watercraft inventory. A manufacturer shall pay any compensation
9 required under subsection (1)(c), (d), (e), (f), or (g) within 90
10 days after the effective date of the termination, cancellation,
11 nonrenewal, or discontinuance if the new watercraft dealer
12 provides clear title to any items of personal property and has
13 met any other reasonable requirements of the dealer agreement
14 with respect to the return of that personal property.

15 (3) If a manufacturer does not pay any compensation required
16 under subsection (1) within the applicable 30- or 90-day time
17 period provided in subsection (2), interest shall accrue on the
18 amount due the new watercraft dealer at a rate of 12% per annum
19 from the date the applicable time period expires to the date the
20 payment is made.

21 (4) As used in subsection (1), "fair and reasonable
22 compensation" means 1 of the following:

23 (a) In subsection (1)(a) or (b), an amount that is at least
24 the new watercraft dealer's net acquisition cost, freight, and
25 floor plan interest paid by the watercraft dealer.

26 (b) In subsection (1)(c), the amount stated in the
27 manufacturer's parts price lists at the time the watercraft

1 dealer purchased the parts.

2 (c) In subsection (1)(d) or (e), the actual cost to the
3 dealer of the personal property.

4 (d) In subsection (1)(f), the actual training registration
5 fees and reasonable travel expenses connected with a meeting.

6 (e) In subsection (1)(g), the actual expenditures made by the
7 new watercraft dealer for boat show exhibit spaces, for other
8 exhibit events, and for any other marketing of the manufacturer's
9 products.

10 Sec. 9. A manufacturer shall not require a new watercraft
11 dealer in this state to do any of the following:

12 (a) Order or accept delivery of any new watercraft, part or
13 accessory of a new watercraft, equipment, or any other commodity
14 not required by law that was not voluntarily ordered by the new
15 watercraft dealer. This subdivision does not prevent a
16 manufacturer from requiring that new watercraft dealers carry a
17 reasonable inventory of models offered for sale by the
18 manufacturer.

19 (b) Order or accept delivery of any new watercraft with
20 special features, accessories, or equipment not included in the
21 list price of the new watercraft as publicly advertised by the
22 manufacturer.

23 (c) Participate monetarily in any advertising campaign or
24 contest, purchase any promotional materials, display devices, or
25 display decorations or materials, or pay or assume directly in
26 connection with the sale of new watercraft any part of the cost
27 of a refund, rebate, or discount made by or lawfully imposed by

1 the manufacturer to or in favor of a consumer, unless the dealer
2 voluntarily agrees.

3 (d) Enter into any agreement with the manufacturer or do any
4 other act prejudicial to the new watercraft dealer by threatening
5 to terminate a dealer agreement or any contractual agreement or
6 understanding existing between the dealer and the manufacturer.
7 A notice given in good faith to a dealer of the dealer's
8 violation of any terms or provisions of a dealer agreement is not
9 a violation of this subdivision.

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

15 (f) Refrain from participation in the management of,
16 investment in, or acquisition of, any other line of new
17 watercraft or related products, if the dealer maintains a
18 reasonable line of credit for each make or line of watercraft,
19 remains in compliance with reasonable facilities requirements,
20 and does not change the principal management of the dealer.

21 (g) Change the location of the new watercraft dealership or
22 make any substantial alterations to the dealership premises,
23 unless that requirement is reasonable.

24 (h) Prospectively assent to a release, assignment, novation,
25 waiver, or estoppel that relieves any person from liability
26 imposed by this act; require that the law of a state other than
27 this state govern a dealer agreement; or require referral of any

1 controversy between a new watercraft dealer and a manufacturer to
2 a person other than a court of this state or a federal court
3 located in this state, if the referral is binding on the new
4 watercraft dealer, unless the parties agree at the time of a
5 controversy to refer the controversy to a federal court located
6 outside this state or agree at the time of an arbitration to
7 conduct arbitration either within or outside this state. A
8 provision in a dealer agreement that is contrary to this
9 subdivision is unenforceable by a manufacturer.

10 Sec. 10. (1) A manufacturer shall not do any of the
11 following:

12 (a) Adopt, change, establish, or implement a plan or system
13 for the allocation and distribution of new watercraft to new
14 watercraft dealers that is arbitrary or capricious, or modify an
15 existing plan or system in a way that causes the plan or system
16 to be arbitrary or capricious.

17 (b) If a new watercraft dealer that has a dealer agreement
18 submits a written request, fail or refuse to advise or disclose
19 to that new watercraft dealer the basis on which the manufacturer
20 allocates or distributes new watercraft of the same line make to
21 new watercraft dealers in this state, and the basis on which the
22 manufacturer currently allocates or distributes or intends to
23 allocate or distribute new watercraft to that new watercraft
24 dealer.

25 (c) If the manufacturer publicly advertises that a specific
26 model of watercraft is available for immediate delivery in this
27 state, refuse to deliver inventory of that watercraft to a new

1 watercraft dealer entitled to sell that watercraft under a dealer
2 agreement, in reasonable quantities and within a reasonable time
3 after receipt of the dealer's order. This subdivision does not
4 apply to a failure to deliver watercraft due to an act of God, a
5 work stoppage or delay due to a strike or labor difficulty, a
6 shortage of materials, a lack of manufacturing capacity, a
7 freight embargo, or another cause over which the manufacturer has
8 no control.

9 (d) Require that a new watercraft dealer purchase essential
10 service tools with a purchase price in the aggregate of more than
11 \$7,500.00 in order to receive a specific model watercraft without
12 providing the dealer a good faith estimate in writing of the
13 number of watercraft of that specific model the manufacturer
14 intends to allocate to that dealer during the model year in which
15 the tool purchase requirement is imposed. This subdivision does
16 not apply if the dealer does not request the estimate in
17 writing.

18 (e) Subject to subsection (3), if a new watercraft dealer
19 orders a new watercraft for a retail consumer before receiving a
20 written official price increase notification from the
21 manufacturer, and that retail consumer purchases that new
22 watercraft, increase the price of the new watercraft. A sales
23 contract signed by a consumer and binding on a dealer is evidence
24 of an order subject to this subdivision.

25 (f) Subject to subsection (3), if a new watercraft dealer
26 orders a new watercraft for a retail consumer before receiving
27 notice of a price reduction of more than \$5.00 or a cash rebate

1 for that model of watercraft, and that retail consumer purchases
2 that new watercraft, fail to reduce the price of or provide the
3 rebate for the new watercraft.

4 (g) Offer a refund or other type of inducement to a dealer to
5 purchase a make of new watercraft for sale anywhere in this state
6 without making the same offer available upon request to all other
7 new watercraft dealers of that make.

8 (h) Except under subpoena in an administrative or judicial
9 proceeding to which the new watercraft dealer or the manufacturer
10 is a party, or where the new watercraft dealer has given written
11 consent, release to a person any business, financial, or personal
12 information that a new watercraft dealer provided to a
13 manufacturer.

14 (i) Deny a new watercraft dealer the right to associate with
15 another new watercraft dealer for any lawful purpose.

16 (j) Directly or indirectly own, operate, or control a new
17 watercraft dealer including, but not limited to, a new watercraft
18 dealer engaged primarily in performing warranty repair services
19 on watercraft pursuant to the manufacturer's warranty. This
20 subdivision does not apply to either of the following:

21 (i) The ownership, operation, or control by a manufacturer of
22 a new watercraft dealer for a period of not more than 24 months
23 during the transition from 1 owner or operator to another. A
24 circuit court may extend the 24-month time period for an
25 additional 12 months upon receipt of an application from a
26 manufacturer and a showing of good cause.

27 (ii) The ownership, operation, or control of a new watercraft

1 dealer by a manufacturer while it is being sold under a bona fide
2 contract or purchase option to the operator of the new watercraft
3 dealer.

4 (k) Sell a new watercraft directly to a retail customer other
5 than through its new watercraft dealers. This subdivision does
6 not prohibit a manufacturer from providing information to a
7 consumer for the purpose of marketing or facilitating the sale of
8 new watercraft or from establishing a program to sell or offer to
9 sell new watercraft through the manufacturer's new watercraft
10 dealers.

11 (l) Prevent or attempt to prevent by contract or otherwise a
12 new watercraft dealer from changing its executive management,
13 unless the manufacturer demonstrates that a proposed change of
14 executive management will result in executive management by 1 or
15 more individuals who are not of good moral character or who do
16 not meet reasonable, preexisting, and equitably applied standards
17 of the manufacturer. If a manufacturer rejects a proposed change
18 in executive management of a new watercraft dealer, the
19 manufacturer shall give written notice of its reasons to the
20 dealer within 60 days after receiving written notice from the
21 dealer of the proposed change and all related information
22 reasonably requested by the manufacturer. Failure to provide the
23 written notice within the 60-day time period is approval of the
24 change in executive management by the manufacturer.

25 (m) Unreasonably withhold consent to the sale, transfer, or
26 exchange of a new watercraft dealership to a qualified buyer if
27 the dealership remains in the same relevant market area.

1 (n) Fail to respond in writing to a request for consent to a
2 sale, transfer, or exchange of a new watercraft dealership within
3 60 days after receipt of a written application from the new
4 watercraft dealer. Failure to respond to the request within the
5 60-day period is consent to the sale, transfer, or exchange by
6 the manufacturer.

7 (o) Unfairly prevent a new watercraft dealer from receiving
8 reasonable compensation for the value of the new watercraft
9 dealership.

10 (p) Fail or refuse to continue a dealer agreement with the
11 purchaser of an existing new watercraft dealer.

12 (q) Directly or through a subsidiary, terminate, cancel, fail
13 to renew, or discontinue a lease of a new watercraft dealer's
14 established place of business except for a material breach of the
15 lease.

16 (2) Subject to subsection (3), if a manufacturer offers a
17 price reduction of more than \$5.00 or a cash rebate on a new
18 watercraft model, the manufacturer shall provide that price
19 reduction or rebate for all new watercraft of that model sold to
20 any watercraft dealer, and each new watercraft dealer shall
21 provide that price reduction or rebate on any new watercraft of
22 that model sold to any retail consumer.

23 (3) Subsections (1)(e) and (f) and (2) do not apply to a
24 price increase or reduction caused by any of the following:

25 (a) The introduction of a new model or new model year of a
26 new watercraft.

27 (b) Adding optional equipment or equipment required by state

1 or federal law to a new watercraft.

2 (c) If a new watercraft or components of a new watercraft are
3 made in another country, revaluation of the United States
4 dollar.

5 (d) An increase in transportation charges due to an increase
6 in rates charged by a common carrier or transporter.

7 Sec. 11. (1) A designated family member of a deceased or
8 incapacitated new watercraft dealer may succeed the dealer in the
9 ownership or operation of the dealership under the existing
10 dealer agreement if the designated family member gives the
11 manufacturer written notice of his or her intention to succeed
12 the dealer within 120 days after the dealer's death or
13 incapacity, agrees to be bound by all of the terms and conditions
14 of the dealer agreement, and meets the current criteria generally
15 applied by the manufacturer in qualifying new watercraft
16 dealers. A manufacturer may refuse to honor the existing dealer
17 agreement with the designated family member only for good cause.

18 (2) A manufacturer may request that a designated family
19 member provide any personal and financial data that is reasonably
20 necessary to determine whether the designated family member meets
21 the requirements of subsection (1). The designated family member
22 shall supply the personal and financial data promptly upon
23 request.

24 (3) If a manufacturer believes that good cause exists, it may
25 refuse to approve the succession of a designated family member
26 under subsection (1). A manufacturer who refuses shall provide
27 the designated family member with notice of its refusal to

1 approve the succession within 60 days after receipt of the
2 written notice of intention from the designated family member
3 under subsection (1) or within 60 days after the receipt of the
4 requested personal and financial data under subsection (2).

5 (4) A notice of refusal provided by a manufacturer under
6 subsection (3) shall state the specific grounds for the refusal
7 to approve the succession and that discontinuance of the
8 agreement takes effect not less than 90 days after the date the
9 notice is served.

10 (5) If a notice of refusal is not provided within the 60-day
11 period described in subsection (3), the dealer agreement
12 continues in effect and is subject to termination only as
13 otherwise permitted by this act.

14 (6) This section does not preclude a new watercraft dealer
15 from designating any person as his or her successor in a written
16 instrument filed with a manufacturer. If a written instrument
17 described in this subsection is filed with a manufacturer, that
18 instrument determines the succession rights to the ownership and
19 operation of the dealership.

20 Sec. 12. (1) Before a manufacturer enters into a dealer
21 agreement establishing or relocating a new watercraft dealer
22 within a relevant market area where another dealer sells the same
23 make, model, or size range of new watercraft for the
24 manufacturer, the manufacturer shall give written notice to each
25 new watercraft dealer of the same make, model, or size range of
26 watercraft in the relevant market area of its intention to
27 establish an additional dealer or to relocate an existing dealer

1 within that relevant market area.

2 (2) Within 30 days after receiving a notice under subsection
3 (1), or within 30 days after the end of any appeal procedure
4 provided by the manufacturer, a new watercraft dealer may bring a
5 declaratory judgment action in the circuit court for the county
6 in which the new watercraft dealer is located to determine
7 whether good cause exists for establishing an additional dealer
8 or relocating an existing dealer within the plaintiff's relevant
9 market area. If a declaratory judgment action is filed under
10 this subsection, a manufacturer shall not establish the
11 additional dealer or relocate the existing dealer until the
12 circuit court has rendered a decision on the matter. The circuit
13 court shall give an action brought under this subsection
14 precedence over all other civil matters on the court's docket.

15 (3) In determining whether good cause exists under subsection
16 (2), a circuit court shall take into consideration the existing
17 circumstances, including, but not limited to, all of the
18 following:

19 (a) Permanency of the investment.

20 (b) Effect on the retail new watercraft business and the
21 consuming public in the relevant market area.

22 (c) Whether it is injurious or beneficial to the public
23 welfare.

24 (d) Whether the new watercraft dealers of the same make,
25 model, or size range in that relevant market area are providing
26 adequate competition and convenient consumer care for the
27 watercraft of that make, model, or size range in the market area,

1 considering the adequacy of watercraft sales, availability of
2 qualified service personnel, and other factors determined by the
3 court.

4 (e) Whether the establishment of the additional new
5 watercraft dealer or relocation of the existing new watercraft
6 dealer would promote competition.

7 (f) Growth or decline of the population and the number of new
8 watercraft registrations in the relevant market area.

9 (g) The effect on the additional or relocating dealer of a
10 denial of its relocation into the relevant market area.

11 (4) This section does not apply to the relocation of a new
12 watercraft dealer within 2 miles of its established place of
13 business.

14 (5) This section shall not apply to the reopening or
15 replacement in a relevant market area of a closed dealership that
16 has been closed within the preceding year, if the established
17 place of business of the reopened or replacement dealer is within
18 2 miles of the established place of business of the closed
19 dealership.

20 Sec. 13. (1) A manufacturer shall specify in writing to
21 each of its new watercraft dealers in this state the dealer's
22 obligations for preparation, delivery, and warranty service on
23 its products and for any repreparing and repairing required if
24 the new watercraft dealer improperly prepares a new watercraft.
25 The manufacturer shall compensate the new watercraft dealer for
26 any preparation, reparation, delivery, or warranty service it
27 requires that the dealer perform.

1 (2) The manufacturer shall provide the new watercraft dealer
2 with the schedule of compensation it shall pay the dealer for
3 parts, work, or service performed under subsection (1) and the
4 time allowance for the performance of the work or service. The
5 schedule of compensation shall include reasonable compensation
6 for diagnostic work. In determining what constitutes reasonable
7 compensation under this subdivision, the principal factor is the
8 prevailing wage rates paid by dealers in the community in which
9 the dealer is doing business. The manufacturer shall not pay
10 compensation to a dealer for warranty labor that is less than the
11 rates charged by the dealer for like service to retail customers
12 for nonwarranty parts, service, or repairs, if those rates are
13 reasonable.

14 (3) The manufacturer or dealer shall establish reasonable and
15 adequate time allowances for the diagnosis and performance of
16 warranty work and service under subsection (1).

17 (4) A manufacturer shall not do any of the following:

18 (a) Fail to perform any warranty obligation.

19 (b) Fail to include in a written notice of a factory recall
20 to new watercraft owners and dealers the date by which the
21 manufacturer expects any necessary parts and equipment will be
22 available to dealers for the correction of the defects.

23 (c) Fail to compensate a new watercraft dealer in this state
24 for a repair performed pursuant to a recall.

25 (5) All of the following apply to a claim made to a
26 manufacturer by a new watercraft dealer under this section for
27 labor or parts:

1 (a) The dealer shall submit the claim on the claim form
2 generally used by the manufacturer and provide all of the
3 information usually required by the manufacturer.

4 (b) The manufacturer in writing shall approve or disapprove
5 the claim within 30 days after receiving the claim and
6 information described in subdivision (a).

7 (c) If a manufacturer does not specifically disapprove of a
8 claim in writing within the 30-day time period described in
9 subdivision (b), the claim is considered approved and the
10 manufacturer shall pay the amount of the claim to the dealer.

11 (d) A manufacturer may not charge a claim that it has
12 approved and paid under this subsection back to the dealer unless
13 the manufacturer can demonstrate both of the following:

14 (i) The claim was fraudulent, false, or unsubstantiated.

15 (ii) The manufacturer paid the claim within the 6-month
16 period preceding the charge back to the dealer.

17 (e) The manufacturer shall pay the claim within 30 days after
18 the claim is approved under subdivision (b) or considered
19 approved under subdivision (c).

20 (f) The new watercraft dealer shall maintain all records of
21 any warranty repair for at least 6 months following payment of
22 the warranty claim.

23 (6) A manufacturer shall compensate a new watercraft dealer
24 for sales or service promotion events, programs, or activities
25 sponsored by the manufacturer in accordance with the
26 manufacturer's established guidelines for those events, programs,
27 or activities.

1 (7) All of the following apply to a claim made by a new
2 watercraft dealer under subsection (6) for compensation for a
3 promotion event, program, or activity:

4 (a) The dealer shall submit the claim on the claim form
5 generally used by the manufacturer and provide all of the
6 information usually required by the manufacturer.

7 (b) The manufacturer in writing shall approve or disapprove
8 the claim within 30 days after receiving the claim and
9 information described in subdivision (a).

10 (c) If a manufacturer does not specifically disapprove of a
11 claim in writing within the 30-day time period described in
12 subdivision (b), the claim is considered approved and the
13 manufacturer shall pay the amount of the claim to the dealer.

14 (d) A manufacturer may charge a claim that it has approved
15 and paid under this subsection back to the dealer, if the charge
16 back occurs within a 6-month period after the end of the
17 promotion event, program, or activity, or after it paid the
18 claim, whichever is later.

19 (e) The manufacturer shall pay a claim within 10 days after
20 the claim is approved under subdivision (b) or within 30 days
21 after a claim is considered approved under subdivision (c).

22 Sec. 14. (1) A new watercraft dealer is solely responsible
23 for any damage to a new watercraft that occurs after it accepts
24 the watercraft from the carrier or transporter and before
25 delivery to the ultimate purchaser that is not the result of a
26 latent or hidden defect or are not reasonably observable at the
27 time it accepts the watercraft. A new watercraft dealer accepts

1 a new watercraft when it signs a delivery receipt for the
2 watercraft. A provision in a dealer agreement that is contrary
3 to this subsection is unenforceable by a manufacturer.

4 (2) The manufacturer is solely responsible for any damage to
5 a new watercraft that occurs before delivery to the carrier or
6 transporter. A provision in a dealer agreement that is contrary
7 to this subsection is unenforceable by a manufacturer.

8 (3) A new watercraft dealer is responsible for damage to a
9 new watercraft that occurs while the new watercraft is in the
10 possession of the carrier or transporter only if the dealer
11 selects the method of transportation, mode of transportation, and
12 the carrier or transporter. If not, the manufacturer is
13 responsible for damage to the new watercraft.

14 (4) A new watercraft dealer may refuse to accept a new
15 watercraft by providing written notice to the manufacturer. If a
16 new watercraft dealer refuses to accept a new watercraft, the
17 manufacturer shall credit the dealer's account for the invoice
18 cost to the dealer, plus freight and interest, within 10 business
19 days after receipt of the notice from the dealer.

20 Sec. 15. (1) A manufacturer shall indemnify a dealer for a
21 judgment for damages or settlement agreed to in writing by the
22 manufacturer, and for the court costs and reasonable attorney
23 fees of the new watercraft dealer, if the complaint, claim, or
24 action is based solely on a defect or defects occurring in the
25 manufacture, assembly, or design of a new watercraft, parts, or
26 accessories, the selection by the manufacturer of parts or
27 components for the watercraft, any damage to the new watercraft,

1 parts, or accessories occurring in transit to the dealer if the
2 carrier or transporter is designated by the manufacturer, or
3 another function or action of the manufacturer that is beyond the
4 control of the dealer. If the complaint, claim, or action
5 contains independent allegations against the dealer, the
6 manufacturer shall pay only that portion of the costs, fees, and
7 judgment or settlement that is directly related to the
8 manufacture, assembly, or design of the watercraft, parts or
9 accessories, or other functions of the manufacturer beyond the
10 control of the dealer.

11 (2) A manufacturer is not required to indemnify a dealer
12 under subsection (1) if the dealer has not given reasonable
13 notice in writing of the complaint, claim, or action to the
14 manufacturer.

15 (3) An indemnification provision in a dealer agreement that
16 is contrary to this section is unenforceable by a manufacturer.

17 Sec. 16. (1) If a manufacturer terminates, cancels, fails
18 to renew, or discontinues a dealer agreement without good cause
19 under section 5, the new watercraft dealer may bring an action
20 against the manufacturer to recover actual damages reasonably
21 incurred as a result of the termination, cancellation, failure,
22 or discontinuance.

23 (2) A manufacturer that violates this act is responsible for
24 all damages sustained by a new watercraft dealer as a result of
25 the violation and for court costs and reasonable attorney fees
26 incurred by the dealer.

27 (3) A manufacturer or new watercraft dealer may bring an

1 action for declaratory judgment for determination of any
2 controversy arising under this act.

3 (4) A manufacturer or new watercraft dealer may apply to the
4 circuit court and obtain appropriate injunctive relief against
5 termination, cancellation, nonrenewal, or discontinuance of a
6 dealer agreement or any other violation of this act. The court
7 may grant injunctive relief or a temporary restraining order
8 without bond.

9 Sec. 17. This act does not apply to dealers located outside
10 this state. A provision in a dealer agreement that is contrary
11 to this section is unenforceable by a manufacturer.

12 Sec. 18. (1) The attorney general may commence a civil
13 action in the circuit court for the county in which a violation
14 occurs to enforce compliance with this act or to restrain the
15 violation of this act.

16 (2) In a civil action for a violation of this act, in
17 addition to any other relief granted, the circuit court may
18 assess a civil fine of not more than \$5,000.00 per day for each
19 day the violation continues.

20 (3) A person who violates this act is guilty of a misdemeanor
21 punishable by a fine of not more than \$5,000.00 per day for each
22 day the violation continues.

23 Enacting section 1. 1989 PA 88, MCL 445.541 to 445.547, is
24 repealed.