

# SENATE BILL No. 531

May 24, 2005, Introduced by Senators HAMMERSTROM, BASHAM, BISHOP, GILBERT, OLSHOVE and SCOTT and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to regulate watercraft manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate their dealings with dealers and retail customers; 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

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

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

11 (i) A spouse, child, grandchild, parent, brother, or sister of  
12 a deceased new watercraft dealer who has otherwise been designated  
13 in writing by a deceased dealer to succeed the deceased dealer in  
14 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 of  
18 a deceased new watercraft dealer who is entitled to inherit the  
19 deceased dealer's ownership interest in the new watercraft  
20 dealership under the terms of the dealer's will or who is entitled  
21 to inherit under the laws of intestate succession of this state.

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

24 (d) "Distributor" means a resident or nonresident person who  
25 is engaged in the business of offering for sale, selling, or  
26 distributing new watercraft to a new watercraft dealer pursuant to  
27 a dealer agreement, who maintains a resident or nonresident factory

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

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

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

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

22 (h) "Good cause" means that term as defined in section  
23 5(1)(c).

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

26 Sec. 3. As used in this act:

27 (a) "Manufacturer" means a person who manufactures or

1 assembles new watercraft. The term also includes a distributor,  
2 factory branch, or factory representative.

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

8 (c) "New watercraft dealer" means either of the following:

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

14 (ii) A person that is engaged in the business of purchasing,  
15 selling, exchanging, or dealing in new watercraft and purchases,  
16 sells, exchanges, or deals in 5 or more new watercraft in this  
17 state in any 12-month period.

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

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

25 (f) "Relevant market area" means the area within a specific  
26 geographical area negotiated in good faith between a manufacturer  
27 and a new watercraft dealer and included in a dealer agreement.

1 (g) "Watercraft" means any type of watercraft or vessel used  
2 or capable of use as a means of transportation on water but does  
3 not include paddleboats, canoes, kayaks, or water skis or similar  
4 devises towed by watercraft.

5 Sec. 4. A manufacturer, wholesaler, or representative of a  
6 manufacturer or wholesaler shall not offer to sell a new watercraft  
7 to a new watercraft dealer, and a new watercraft dealer shall not  
8 offer to purchase a new watercraft from a manufacturer, wholesaler,  
9 or representative of a manufacturer or wholesaler, without first  
10 entering into a written agreement and complying with all applicable  
11 provisions of this act.

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

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

17 (b) Acts in good faith.

18 (c) Has good cause for the cancellation, termination,  
19 nonrenewal, or discontinuance. As used in this subdivision and  
20 section 8(1), subject to subsection (2), "good cause" means either  
21 of the following:

22 (i) There is a failure by the new watercraft dealer to comply  
23 with a provision of the dealer agreement, the provision is both  
24 reasonable and of material significance to the relationship between  
25 the manufacturer and the new watercraft dealer, and the  
26 manufacturer first acquired actual or constructive knowledge of the  
27 failure not more than 2 years before the date on which notice is

1 given under section 7.

2 (ii) If a failure described in subparagraph (i) is a failure by  
3 the new watercraft dealer to effectively execute a provision of a  
4 dealer agreement related to the performance of the new watercraft  
5 dealer in sales or service, all of the following have occurred:

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

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

10 (C) The new watercraft dealer was afforded a reasonable  
11 opportunity to exert good faith efforts to carry out the dealer  
12 agreement.

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

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

18 (a) A change in ownership of a new watercraft dealer's  
19 dealership if section 11 is met. This subdivision does not  
20 authorize a change in ownership that results in a sale or an  
21 assignment of the dealer agreement or a change in the principal  
22 management of the dealership without the manufacturer's prior  
23 written consent.

24 (b) A refusal of a new watercraft dealer to purchase or accept  
25 delivery of any new watercraft parts, or accessories or any other  
26 commodity or services not ordered by the new watercraft dealer.

27 (c) The fact that a new watercraft dealer owns, has an

1 investment in, participates in the management of, or holds a dealer  
2 agreement for the sale of another make or line of new watercraft,  
3 or that the new watercraft dealer has established another make or  
4 line of new watercraft in the same dealership facilities as those  
5 of the manufacturer, if both of the following are met:

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

8 (ii) The new watercraft dealer remains in substantial  
9 compliance with the terms and conditions of the dealer agreement  
10 and with the reasonable facilities' requirements of the  
11 manufacturer.

12 (d) The fact that a new watercraft dealer sells or transfers  
13 ownership of the dealership or sells or transfers capital stock in  
14 the dealership to the new watercraft dealer's spouse, son, or  
15 daughter, if the sale or transfer does not have the effect of a  
16 sale or an assignment of the dealer agreement or a change in the  
17 principal management of the dealership without the manufacturer's  
18 prior written consent.

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

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

27 Sec. 7. (1) Before a manufacturer or a new watercraft dealer

1 who is a party to a dealer agreement terminates, cancels, does not  
2 renew, or discontinues the dealer agreement, the manufacturer or  
3 dealer shall provide written notice of the termination,  
4 cancellation, nonrenewal, or discontinuance to the other party to  
5 the dealer agreement and do all of the following:

6 (a) Provide the notice to the other party by certified mail.

7 (b) Include all of the following in the notice:

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

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

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

14 (c) Provide the notice within 1 of the following time periods:

15 (i) At least 30 days before the effective date of a  
16 termination, cancellation, nonrenewal, or discontinuance for any of  
17 the following reasons:

18 (A) Insolvency of the other party or the filing of a petition  
19 by or against the other party under any bankruptcy or receivership  
20 law.

21 (B) Failure of the other party to conduct its customary sales  
22 and service operations during its customary business hours for 30  
23 consecutive business days.

24 (C) Conviction of the other party or its principal owners of a  
25 misdemeanor that involves theft, dishonesty, or false statement or  
26 any felony.

27 (D) If the terminating, canceling, nonrenewing, or



1 discontinuing party is the manufacturer, revocation of a license  
2 the new watercraft dealer is required to have to operate a  
3 dealership or loss of authorization to purchase marine engines  
4 appropriate for the manufacturer's products.

5 (E) A fraudulent misrepresentation by the other party that is  
6 material to the dealer agreement.

7 (ii) At least 180 days before the effective date of a  
8 termination, cancellation, nonrenewal, or discontinuance because  
9 the manufacturer discontinued production of the new watercraft  
10 dealer's product line or discontinued distribution of that product  
11 line in this state.

12 (iii) If subparagraph (i) or (ii) does not apply, at least 180  
13 days before the effective date of the termination, cancellation,  
14 nonrenewal, or discontinuance. During this time period, the  
15 manufacturer may execute a dealer agreement with another new  
16 watercraft dealer and the new watercraft dealer may execute a  
17 dealer agreement with another manufacturer.

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

20 Sec. 8. (1) If a dealer agreement is terminated, canceled, not  
21 renewed, or discontinued by a manufacturer without good cause, the  
22 manufacturer shall pay the new watercraft dealer fair and  
23 reasonable compensation for all of the following:

24 (a) Each new current model year watercraft purchased from the  
25 manufacturer in the dealer's inventory that has not been materially  
26 altered or substantially damaged or is not a special ordered  
27 customized watercraft.

1 (b) Each new watercraft of the immediately preceding model  
2 year purchased from the manufacturer in the dealer's inventory that  
3 has not been materially altered or substantially damaged, if that  
4 watercraft was purchased from the manufacturer and drafted on the  
5 dealer's financing source or paid for within the 2-year period  
6 before the effective date of the termination, cancellation,  
7 nonrenewal, or discontinuance.

8 (c) Any electronic or printed parts catalogs or other supplies  
9 purchased from the manufacturer within the 18-month period before  
10 the effective date of the termination, cancellation, nonrenewal, or  
11 discontinuance.

12 (d) Any parts inventory, purchased from the manufacturer  
13 within the 18-month period before the effective date of the  
14 termination, cancellation, nonrenewal, or discontinuance, except  
15 special order parts.

16 (e) Any equipment, furnishings, and signs identifying the  
17 watercraft or the manufacturer brand or trade name purchased from  
18 the manufacturer in the current model year.

19 (f) Any special tools purchased from or required by the  
20 manufacturer and purchased from the manufacturer in the current  
21 model year.

22 (g) Any expenditures by the new watercraft dealer in the  
23 current model year for boat show exhibit spaces that were committed  
24 to the dealer but not occupied by the dealer and any other  
25 expenditures made by the new watercraft dealer in the current model  
26 year in 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 of  
5 the termination, cancellation, nonrenewal, or discontinuance if the  
6 new watercraft dealer has met any reasonable requirements of the  
7 dealer agreement with respect to the return of the new watercraft  
8 inventory. A manufacturer shall pay any compensation required under  
9 subsection (1)(c), (d), (e), (f), or (g) within 90 days after the  
10 effective date of the termination, cancellation, nonrenewal, or  
11 discontinuance if the new watercraft dealer provides clear title to  
12 any items of personal property and has met any other reasonable  
13 requirements of the dealer agreement with respect to the return of  
14 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 invoice cost, freight, and floor  
25 plan interest paid by the watercraft dealer for the new watercraft.

26 (b) In subsection (1)(d), the amount stated in the  
27 manufacturer's invoice.

1 (c) In subsection (1)(c), (e), or (f), the actual cost to the  
2 dealer of personal property purchased from the manufacturer.

3 (d) In subsection (1)(g), the actual expenditures of the new  
4 watercraft dealer.

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

7 (a) Order or accept delivery of any new watercraft, part or  
8 accessory of a new watercraft, equipment, or any other commodity  
9 not required by law that was not voluntarily ordered by the new  
10 watercraft dealer. This subdivision does not apply to new  
11 watercraft delivered under a dealer agreement as part of the annual  
12 inventory required by the manufacturer.

13 (b) Order or accept delivery of any new watercraft with  
14 special features, accessories, or equipment not included in the  
15 list price of the new watercraft as publicly advertised by the  
16 manufacturer.

17 (c) Participate monetarily in any advertising campaign or  
18 contest, purchase any promotional materials, display devices, or  
19 display decorations or materials, or pay or assume directly in  
20 connection with the sale of new watercraft any part of the cost of  
21 a refund, rebate, or discount made by or lawfully imposed by the  
22 manufacturer to or in favor of a retail customer, unless the dealer  
23 voluntarily agrees.

24 (d) Enter into any agreement with the manufacturer, other than  
25 normal program purchase requirements or warranty service  
26 agreements, if the manufacturer represents to the new watercraft  
27 dealer that refusing to execute the agreement will cause a

1 termination of the dealer agreement or any other contractual  
2 agreement or understanding between the dealer and manufacturer. A  
3 notice given in good faith to a dealer of the dealer's violation of  
4 any terms or provisions of a dealer agreement is not a violation of  
5 this subdivision.

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

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

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

20 (h) Prospectively assent to a release, assignment, novation,  
21 waiver, or estoppel that relieves any person from liability imposed  
22 by this act; require that the law of a state other than this state  
23 govern a dealer agreement; or require referral of any controversy  
24 between a new watercraft dealer and a manufacturer to a person  
25 other than a court of this state or a federal court located in this  
26 state, if the referral is binding on the new watercraft dealer,  
27 unless the parties agree at the time of a controversy to refer the

1 controversy to a federal court located outside this state or agree  
2 at the time of an arbitration to conduct arbitration either within  
3 or outside this state. A provision in a dealer agreement that is  
4 contrary to this subdivision is unenforceable by a manufacturer.

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

6 (a) Adopt, change, establish, or implement a plan or system  
7 for the allocation and distribution of new watercraft to new  
8 watercraft dealers that is arbitrary or capricious, or modify an  
9 existing plan or system in a way that causes the plan or system to  
10 be arbitrary or capricious.

11 (b) If the manufacturer publicly advertises that a specific  
12 model of watercraft is available for immediate delivery in this  
13 state, refuse to deliver inventory of that watercraft to a new  
14 watercraft dealer entitled to sell that watercraft under a dealer  
15 agreement, in reasonable quantities and within a reasonable time  
16 after receipt of the dealer's order. This subdivision does not  
17 apply to a failure to deliver watercraft due to an act of God, a  
18 work stoppage or delay due to a strike or labor difficulty, a  
19 shortage of materials, a lack of manufacturing capacity, a freight  
20 embargo, or another cause over which the manufacturer has no  
21 control.

22 (c) Require that a new watercraft dealer purchase essential  
23 service tools with a purchase price in the aggregate of more than  
24 \$7,500.00 in order to receive a specific model watercraft without  
25 providing the dealer a good faith estimate in writing of the number  
26 of watercraft of that specific model the manufacturer intends to  
27 allocate to that dealer during the model year in which the tool

1 purchase requirement is imposed. This subdivision does not apply if  
2 the dealer does not request the estimate in writing.

3 (d) Subject to subsection (2), if a new watercraft dealer  
4 orders a new watercraft for a retail customer within 15 days after  
5 receiving a written official price increase notification from the  
6 manufacturer, and that retail customer purchases that new  
7 watercraft, apply that price increase to that new watercraft. A  
8 sales contract signed by a retail customer and binding on a dealer  
9 is evidence of an order subject to this subdivision.

10 (e) Subject to subsection (2), if a new watercraft dealer  
11 orders a new current model year watercraft for a retail customer  
12 within 30 days after receiving notice of a price reduction of more  
13 than \$5.00 or a cash rebate for that model of watercraft, and that  
14 retail customer purchases that new watercraft, fail to reduce the  
15 price of or provide the rebate for that new watercraft.

16 (f) Except under subpoena in an administrative or judicial  
17 proceeding to which the new watercraft dealer or the manufacturer  
18 is a party, or where the new watercraft dealer has given written  
19 consent, release to a person any business, financial, or personal  
20 information that a new watercraft dealer provided to a  
21 manufacturer.

22 (g) Deny a new watercraft dealer the right to associate with  
23 another new watercraft dealer for any lawful purpose.

24 (h) Directly or indirectly own, operate, or control a new  
25 watercraft dealer including, but not limited to, a new watercraft  
26 dealer engaged primarily in performing warranty repair services on  
27 watercraft pursuant to the manufacturer's warranty. This

1 subdivision does not apply to either of the following:

2 (i) The ownership, operation, or control by a manufacturer of a  
3 new watercraft dealer for a period of not more than 24 months  
4 during the transition from 1 owner or operator to another. A  
5 circuit court may extend the 24-month time period for an additional  
6 12 months upon receipt of an application from a manufacturer and a  
7 showing of good cause.

8 (ii) The ownership, operation, or control of a new watercraft  
9 dealer by a manufacturer while it is being sold under a bona fide  
10 contract or purchase option to the operator of the new watercraft  
11 dealer.

12 (i) Sell a new watercraft directly to a retail customer other  
13 than through its new watercraft dealers located in this state. This  
14 subdivision does not prohibit a manufacturer from providing  
15 information to a retail customer for the purpose of marketing or  
16 facilitating the sale of new watercraft or from establishing a  
17 program to sell or offer to sell new watercraft through the  
18 manufacturer's new watercraft dealers and does not prohibit sales  
19 directly to retail customers in this state if the manufacturer does  
20 not have any new watercraft dealers in this state.

21 (j) Prevent or attempt to prevent by contract or otherwise a  
22 new watercraft dealer from changing its executive management,  
23 unless the manufacturer demonstrates that a proposed change of  
24 executive management will result in executive management by 1 or  
25 more individuals who are not of good moral character or who do not  
26 meet reasonable, preexisting, and equitably applied standards of  
27 the manufacturer. If a manufacturer rejects a proposed change in



1 executive management of a new watercraft dealer, the manufacturer  
2 shall give written notice of its reasons to the dealer within 60  
3 days after receiving written notice from the dealer of the proposed  
4 change and all related information reasonably requested by the  
5 manufacturer. Failure to provide the written notice within the 60-  
6 day time period is approval of the change in executive management  
7 by the manufacturer.

8 (k) Directly or through a subsidiary, terminate, cancel, fail  
9 to renew, or discontinue a lease of a new watercraft dealer's  
10 established place of business except for a material breach of the  
11 lease.

12 (2) Subsection (1)(d) and (e) does not apply to a price  
13 increase or reduction caused by any of the following:

14 (a) The introduction of a new model or new model year of a new  
15 watercraft.

16 (b) Adding optional equipment or equipment required by state  
17 or federal law to a new watercraft.

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

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

22 Sec. 11. (1) All of the following apply to a sale, transfer,  
23 or exchange of the ownership of a new watercraft dealership to a  
24 person other than a designated family member under section 12:

25 (a) A manufacturer shall not unfairly prevent a new watercraft  
26 dealer from receiving reasonable compensation for the value of the  
27 new watercraft dealership.

1 (b) A manufacturer shall consent to a sale, transfer, or  
2 exchange of the ownership of a new watercraft dealership to a  
3 qualified buyer. The manufacturer shall respond in writing to a  
4 request for consent to a sale or other transfer of a new watercraft  
5 dealership under this subdivision within 30 days after receipt of a  
6 written request for consent from the new watercraft dealer. Failure  
7 to respond to the request within the 30-day period is consent to  
8 the sale or other transfer by the manufacturer.

9 (c) A manufacturer shall consent to assignment of an existing  
10 dealer agreement to, or to execution of a new dealer agreement on  
11 the same terms with, the purchaser or other transferee of an  
12 existing new watercraft dealership if the purchaser or other  
13 transferee is a qualified buyer. The manufacturer shall respond in  
14 writing to a request for consent to an assignment of an existing  
15 dealer agreement or execution of a new dealer agreement within 30  
16 days after receipt of a written request for consent from the new  
17 watercraft dealer. Failure to respond to the request within the 30-  
18 day period is consent to the assignment of an existing dealer  
19 agreement or execution of a new dealer agreement.

20 (2) As used in this section, "qualified buyer" means a  
21 purchaser or other transferee of an existing new watercraft  
22 dealership that meets the manufacturer's financial and business  
23 criteria as generally applied by the manufacturer in qualifying new  
24 watercraft dealers. These criteria may include the business  
25 experience, moral character, financial qualifications, and criminal  
26 record of the purchaser or transferee. The manufacturer has the  
27 burden of proving that a prospective purchaser or transferee is not

1 a qualified buyer.

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

13       (2) A manufacturer may request that a designated family member  
14 provide any personal and financial data that is reasonably  
15 necessary to determine whether the designated family member meets  
16 the requirements of subsection (1). The designated family member  
17 shall supply the personal and financial data promptly upon request.

18       (3) If a manufacturer believes that good cause exists, it may  
19 refuse to approve the succession of a designated family member  
20 under subsection (1). A manufacturer who refuses shall provide the  
21 designated family member with notice of its refusal to approve the  
22 succession within 60 days after receipt of the written notice of  
23 intention from the designated family member under subsection (1) or  
24 within 60 days after the receipt of the requested personal and  
25 financial data under subsection (2).

26       (4) A notice of refusal provided by a manufacturer under  
27 subsection (3) shall state the specific grounds for the refusal to

1 approve the succession and that discontinuance of the agreement  
2 takes effect not less than 90 days after the date the notice is  
3 served.

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

8 (6) This section does not preclude a new watercraft dealer  
9 from designating any person as his or her successor in a written  
10 instrument filed with a manufacturer. If a written instrument  
11 described in this subsection is filed with a manufacturer, that  
12 instrument determines the succession rights to the ownership and  
13 operation of the dealership.

14 Sec. 13. (1) Before a manufacturer enters into a dealer  
15 agreement establishing or relocating a new watercraft dealer within  
16 a relevant market area where another dealer sells the same make,  
17 model, or size range of new watercraft for the manufacturer, the  
18 manufacturer shall give written notice to each new watercraft  
19 dealer of the same make, model, or size range of watercraft in the  
20 relevant market area of its intention to establish an additional  
21 dealer or to relocate an existing dealer within that relevant  
22 market area.

23 (2) Within 30 days after receiving a notice under subsection  
24 (1), or within 30 days after the end of any appeal procedure  
25 provided by the manufacturer, a new watercraft dealer may bring a  
26 declaratory judgment action in the circuit court for the county in  
27 which the new watercraft dealer is located to determine whether

1 good cause exists for establishing an additional dealer or  
2 relocating an existing dealer within the plaintiff's relevant  
3 market area. If a declaratory judgment action is filed under this  
4 subsection, a manufacturer shall not establish the additional  
5 dealer or relocate the existing dealer until the circuit court has  
6 rendered a decision on the matter. The circuit court shall give an  
7 action brought under this subsection precedence over all other  
8 civil matters on the court's docket.

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

12 (a) Permanency of the investment.

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

15 (c) Whether it is injurious or beneficial to the public  
16 welfare.

17 (d) Whether the new watercraft dealers of the same make,  
18 model, or size range in that relevant market area are providing  
19 adequate competition and convenient retail customer care for the  
20 watercraft of that make, model, or size range in the market area,  
21 considering the adequacy of watercraft sales, availability of  
22 qualified service personnel, and other factors determined by the  
23 court.

24 (e) Whether the establishment of the additional new watercraft  
25 dealer or relocation of the existing new watercraft dealer would  
26 promote competition.

27 (f) Growth or decline of the population and the number of new

1 watercraft registrations in the relevant market area.

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

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

7 (5) This section shall not apply to the reopening or  
8 replacement in a relevant market area of a closed dealership that  
9 has been closed within the preceding year, if the established place  
10 of business of the reopened or replacement dealer is within 2 miles  
11 of the established place of business of the closed dealership.

12 Sec. 14. If a new watercraft dealer enters into a dealer  
13 agreement, the dealer shall within 30 days of executing that dealer  
14 agreement notify every other manufacturer with which it has a  
15 dealer agreement of the new dealer agreement.

16 Sec. 15. (1) A manufacturer shall specify in writing to each  
17 of its new watercraft dealers in this state the dealer's  
18 obligations for preparation, delivery, and warranty service on its  
19 products and for any repreparing and repairing required if the new  
20 watercraft dealer improperly prepares a new watercraft. The  
21 manufacturer shall compensate the new watercraft dealer for any  
22 preparation, repreparation, delivery, or warranty service it  
23 requires that the dealer perform.

24 (2) A manufacturer shall provide each of its new watercraft  
25 dealers with a schedule of compensation it shall pay the dealer for  
26 parts, diagnostic time, work, or service performed under subsection  
27 (1) and a time allowance for the performance of any work or

1 service. The manufacturer shall pay compensation to a dealer for  
2 diagnostic time, warranty work, parts used, or service performed  
3 that is the same as the rates generally charged by the dealer for  
4 like service to retail customers for nonwarranty parts, service, or  
5 repairs.

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

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

10 (a) Fail to perform any warranty obligation.

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

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

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

20 (a) The dealer shall submit the claim on the claim form  
21 generally used by the manufacturer and provide all of the  
22 information usually required by the manufacturer.

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

26 (c) If a manufacturer does not specifically disapprove of a  
27 claim in writing within the 30-day time period described in

1 subdivision (b), the claim is considered approved and the  
2 manufacturer shall pay the amount of the claim to the dealer.

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

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

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

9 (e) The manufacturer shall pay the claim within 30 days after  
10 the warranty work is completed.

11 (f) The new watercraft dealer shall maintain all records of  
12 any warranty repair for at least 12 months following payment of the  
13 warranty claim.

14 (6) A manufacturer shall compensate a new watercraft dealer  
15 for sales or service promotion events, programs, or activities  
16 sponsored by the manufacturer in accordance with the manufacturer's  
17 established guidelines for those events, programs, or activities.

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

21 (a) The dealer shall submit the claim on the claim form  
22 generally used by the manufacturer and provide all of the  
23 information usually required by the manufacturer.

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

27 (c) If a manufacturer does not specifically disapprove of a



1 claim in writing within the 30-day time period described in  
2 subdivision (b), the claim is considered approved and the  
3 manufacturer shall pay the amount of the claim to the dealer.

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

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

12 Sec. 16. (1) A new watercraft dealer is solely responsible for  
13 any damage to a new watercraft that occurs after it accepts the  
14 watercraft from the carrier or transporter and before delivery to  
15 the ultimate purchaser that is not the result of a latent or hidden  
16 defect or are not reasonably observable at the time it accepts the  
17 watercraft. A new watercraft dealer accepts a new watercraft when  
18 it signs a delivery receipt for the watercraft. A provision in a  
19 dealer agreement that is contrary to this subsection is  
20 unenforceable by a manufacturer.

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

25 (3) A new watercraft dealer is responsible for damage to a new  
26 watercraft that occurs while the new watercraft is in the  
27 possession of the carrier or transporter only if the dealer selects

1 the method of transportation, mode of transportation, and the  
2 carrier or transporter. If not, the manufacturer is responsible for  
3 damage to the new watercraft.

4 (4) A new watercraft dealer may refuse to accept a damaged new  
5 watercraft by providing written notice to the manufacturer within  
6 10 business days after the watercraft is delivered to the dealer.  
7 If a new watercraft dealer refuses to accept a new watercraft, the  
8 manufacturer shall credit the dealer's account for the invoice cost  
9 to the dealer, plus freight and interest, within 10 business days  
10 after receipt of the notice from the dealer.

11 Sec. 17. (1) A manufacturer shall indemnify a new watercraft  
12 dealer for a judgment for damages or settlement agreed to in  
13 writing by the manufacturer, and for the court costs and reasonable  
14 attorney fees of the new watercraft dealer, if the complaint,  
15 claim, or action is based solely on a defect or defects occurring  
16 in the manufacture, construction, assembly, or design of a new  
17 watercraft or parts or accessories other than outboard motors and  
18 trailers, the selection by the manufacturer of parts or components  
19 for the watercraft, any damage to the new watercraft, parts, or  
20 accessories occurring in transit to the dealer if the carrier or  
21 transporter is designated by the manufacturer, or another function  
22 or action of the manufacturer that is beyond the control of the  
23 dealer. If the complaint, claim, or action contains independent  
24 allegations against the dealer, the manufacturer shall pay only  
25 that portion of the costs, fees, and judgment or settlement that is  
26 directly related to the manufacture, assembly, or design of the  
27 watercraft, parts or accessories, or other functions of the

1 manufacturer beyond the control of the dealer.

2 (2) A manufacturer is not required to indemnify a new  
3 watercraft dealer under subsection (1) if the dealer has not given  
4 reasonable notice in writing of the complaint, claim, or action to  
5 the manufacturer.

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

8 Sec. 18. (1) If a manufacturer terminates, cancels, fails to  
9 renew, or discontinues a dealer agreement without good cause under  
10 section 5, a new watercraft dealer may bring an action against the  
11 manufacturer to recover actual damages reasonably incurred as a  
12 result of the termination, cancellation, nonrenewal, or  
13 discontinuance.

14 (2) A manufacturer that violates this act is responsible for  
15 all damages sustained by a new watercraft dealer as a result of the  
16 violation and for court costs and reasonable attorney fees incurred  
17 by the dealer. A new watercraft dealer that violates this act is  
18 responsible for all damages sustained by a manufacturer as a result  
19 of the violation and for court costs and reasonable attorney fees  
20 incurred by the manufacturer.

21 (3) A manufacturer or new watercraft dealer may bring an  
22 action for declaratory judgment for determination of any  
23 controversy arising under this act.

24 (4) A manufacturer or new watercraft dealer may apply to the  
25 circuit court and obtain appropriate injunctive relief against  
26 termination, cancellation, nonrenewal, or discontinuance of a  
27 dealer agreement or any other violation of this act. The court may

1 grant injunctive relief or a temporary restraining order without  
2 bond.

3       Sec. 19. This act does not apply to dealers located outside  
4 this state. A provision in a dealer agreement that is contrary to  
5 this section is unenforceable by a manufacturer.

6       Sec. 20. (1) The attorney general may commence a civil action  
7 in the circuit court for the county in which a violation occurs to  
8 enforce compliance with this act or to restrain the violation of  
9 this act.

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

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

17       Enacting section 1. 1989 PA 88, MCL 445.541 to 445.547, is  
18 repealed.

19       Enacting section 2. This act takes effect 30 days after the  
20 date it is enacted.