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BILL ANALYSIS

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Senate Bills 362 and 363 (as introduced 3-11-09)
Sponsor: Senator Jim Barcia (S.B. 362)
Senator Jason E. Allen (S.B. 363)
Committee: Commerce and Tourism

Date Completed: 3-24-09

CONTENT

Senate Bill 363 would create 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 would 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 would have to follow if a dealer received damaged RVs.
-- Prohibit coercive actions by a manufacturer.
-- Allow a dealer, manufacturer, or warrantor to bring a civil action for a violation of the proposed Act.
-- Require the parties to a dispute to attempt mediation before bringing a civil action.
-- In addition to any other available remedy, allow a party to apply for an injunction or other equitable relief for specified violations.

Senate Bill 362 would amend the Michigan Vehicle Code to include park model trailers in provisions regarding the transport of mobile homes.

The bills are tie-barred to each other and would take effect July 1, 2010.

Senate Bill 363

Dealer Agreement

The bill would prohibit a manufacturer from selling a recreational vehicle in Michigan to or through a dealer unless the manufacturer had a dealer agreement with the dealer that met the requirements of the proposed Act and was signed by both parties.

Except as otherwise provided, a dealer could not sell a new RV in Michigan unless the dealer had a dealer agreement with the vehicle's manufacturer that met the Act's requirements and was signed by both parties.

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

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

-- The manufacturer could 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 would not be 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 entered into an agreement to sell any RVs that competed with the vehicles included in the agreement, or entered into an agreement to increase a preexisting commitment to sell any competing RVs, while the dealer agreement was in place, the manufacturer could revise the dealer's area of sales responsibility if both of the following were met:

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

("Area of sales responsibility" would mean 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" would mean 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 could sell RVs outside of its designated area of sales responsibility if the dealer had 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 would have to meet one of the following:

-- If the sales were off-premises sales that took place at a location in another dealer's designated area of sales responsibility, the dealer obtained in advance a written agreement that was signed by both dealers and the manufacturer; designated the vehicles to be offered for sale; included the time period for the off-premises sales; and affirmatively authorized the sale of the designated vehicles.
-- The sales were off-premises sales that took place at a location that was not in another dealer's same line-make designated area of sales responsibility.
-- The sales were off-premises sales that took place in conjunction with a public vehicle show in which more than three dealers were participating and that was funded predominantly by manufacturers or sponsored by an RV trade association.

The dealer agreement would have to 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 could identify a family member as the successor of the designated principal or include that principal's succession plan. A dealer could change a designation or succession plan at any time by giving the manufacturer written notice.

From time to time, a manufacturer would have to publish its prices, charges, and terms of sale for RVs and could sell a vehicle to a dealer only in accordance with the published information in effect at the time of the sale.

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

In a renewal of a dealer agreement, the manufacturer could 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 would be prohibited from terminating or not renewing a dealer agreement without good cause, directly or through any officer, agent, or employee. A manufacturer would have the burden of showing good cause for terminating or not renewing an agreement. All of the following factors would have to be considered in determining whether there was 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 failed 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 would have to give a dealer written notice of a termination or nonrenewal. Except as described below, the notice would have to be given at least 90 days before the effective date of the termination or nonrenewal, and would have to state all of the reasons for it. The notice would have to state that if the dealer gave the manufacturer a written notification of intent to cure all claimed deficiencies within 30 days after the dealer received the notice, the dealer would have 30 days to correct the deficiencies. If all of the deficiencies were corrected within that time period, the notice would be void and the manufacturer could not terminate or fail to renew the agreement because of those deficiencies. If the dealer did not provide notification of intent to cure deficiencies within that time period, the termination or nonrenewal would take effect 90 days after the dealer received the notice. A manufacturer could reduce the required notice period to 10 days, and would not have to allow the dealer an opportunity to correct the deficiencies, if the manufacturer's grounds for termination or nonrenewal were 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 were due to an act of God, strike, labor difficulty, or other cause over which the dealer had no control.
-- A material misrepresentation to a manufacturer by a dealer that affected 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 proposed Act by a dealer that was not cured within 30 days after written notice of the violation by a manufacturer.

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

If a manufacturer terminated or did not renew an agreement for good cause, at its option, the manufacturer could repurchase any of the following 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 had not been used, except for demonstration purposes, and that had not been altered or damaged, at 100% of their net invoice cost, including transportation, less applicable rebates and discounts to the dealer.
-- 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 were 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.
-- 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 could not 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 would have to return or arrange for the return of all of the items the manufacturer elected to repurchase at the manufacturer's expense. The manufacturer would have to pay all of the amounts owed to the dealer within 30 days after it received the returned items.

Termination by Dealer

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

A dealer could reduce the notice period to 10 days, and would not have to allow the manufacturer an opportunity to correct the deficiencies, if the dealer's grounds for termination or nonrenewal were 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 were due to an act of God, strike, labor difficulty, or other cause over which the manufacturer had no control.
-- A material violation of the proposed Act that was not cured within 30 days after written notice by the dealer.
-- A material breach of the dealer agreement by the manufacturer.

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

The dealer would have the burden of showing good cause.

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

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

Existing Inventory

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

Proposed Transaction

All of the following provisions would apply to a proposed sale of the business assets, transfer of the stock, or other transaction that would result in a change of ownership of a dealer, except as otherwise provided.

The dealer would have to give the manufacturer written notice at least 90 days before the proposed closing of the transaction. The notice would have to include complete copies of all documentation of the proposed transaction and any other documentation the manufacturer reasonably requested in order to determine if it would make an objection.

If the dealer were not in breach of the dealer agreement or in violation of the proposed Act when it provided the notice, the manufacturer could not object to the

proposed transaction unless the prospective transferee met 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.
-- Did not have any license required by law to conduct business as a dealer in Michigan.
-- Did 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 could 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 objected to the proposed transaction, it would have to give written notice of its objection, including its reasons, to the dealer within 30 days. If the manufacturer did not give notice of its objection within that time period, the proposed transaction would be considered approved by the manufacturer. The manufacturer would have the burden of demonstrating its objection to a proposed transaction.

Designated Principal

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

The manufacturer would have to 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 could 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 were in breach of the dealer agreement, a manufacturer could not object to the succession to a dealership by a family member of the designated principal unless the successor met 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 a party previously to a dealer agreement with the manufacturer that the manufacturer terminated for a breach of the agreement.
-- Did not have an active line of credit sufficient to purchase RVs from the manufacturer according to the terms of the agreement.
-- Did not have any license required by law to conduct business as a dealer in Michigan.

The manufacturer would have 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 would be required for the succession to a dealership by a family member of the designated principal if the succession involved a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

Warrantor

A warrantor would have all of the following obligations to each dealer engaged in the sale or lease of products that were 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 would pay for warranty work and the warrantor's time allowances for performing that work.

The schedule of compensation would have to include reasonable compensation for diagnostic work and warranty labor, and time allowances for the diagnosis and performance of warranty labor would have to be reasonable for the work to be performed. In addition, the compensation of a dealer for warranty labor would have to equal or exceed the lowest retail labor rates actually charged by the dealer for similar nonwarranty labor if those rates were consistent with the actual wage rates the dealer paid and the actual retail labor rates it charged in the community where it was doing business.

A warrantor could audit the records of a dealer that sold or leased its warranted products on a reasonable basis.

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

A dealer immediately would have to notify a warrantor orally or in writing if it were unable to perform warranty repairs on a warranted product as soon as reasonably possible, but not later than 12 days after the vehicle was delivered to the dealer for warranty repair. The warrantor would have to 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 would have to approve or disapprove a warranty claim in writing within 30 days after the dealer submitted it, if it were submitted in the manner and in the form prescribed by the warrantor. If a claim that was submitted properly were not disapproved specifically in writing within that period, it would be considered approved and the warrantor would have to pay the amount of the claim to the dealer within 45 days after the dealer submitted it.

A warrantor could not do any of the following:

-- Fail to perform all of its warranty obligations within respect to a warranted product.
-- Subject to provisions regarding damaged RVs (below), 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.
-- 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 were performed in a timely and competent manner.
-- Misrepresent intentionally in any way to a purchaser of a warranted product that any warranty concerning the manufacture, performance, or design of the product was 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 would have to include the expected date by which necessary parts and equipment, including tires and chassis or chassis parts if required, would be available to dealers to perform the campaign work. The warrantor would have to provide sufficient parts to a dealer to perform the campaign work. If the number of parts provided to the dealer exceeded the dealer's requirements to perform the campaign work, the dealer could return unused parts to the warrantor for credit after the campaign's completion.

A warrantor would have to indemnify the dealer for any money the dealer paid or costs it incurred in connection with a claim or cause of action asserted against it, to the extent that payment or those costs were based on the warrantor's negligence or intentional conduct. A warrantor could not limit the obligation to indemnify by agreement with the dealer. The dealer

would have to give a warrantor a copy of any claim or complaint in which an allegation was made within 10 days after receiving it.

Dealers

A dealer could not do any of the following:

-- Fail to perform predelivery inspection of products, if required, in a competent and timely manner.
-- If a transient customer requested service work on an RV of a line-make that the dealer was authorized to display and sell, fail to perform any warranty service work authorized by a warrantor in a reasonably competent and timely manner without good cause.
-- Make a fraudulent warranty claim to a warrantor.
-- Misrepresent the terms of any warranty.

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

Damaged Vehicles

All of the following provisions would apply if a new RV were damaged before it was shipped to a dealer, or were damaged in transit to the dealer and the manufacturer selected the carrier or means of transportation.

The dealer would have to 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 damage.
-- Reject the vehicle within the time period specified in the dealer agreement.

If the manufacturer refused or failed to authorize repair of the damage within 10 days after receiving the notice, or if the dealer rejected the vehicle because of the damage within the time period specified in the agreement, ownership of the vehicle would revert to the manufacturer.

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

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

If a dealer determined that a new RV had an unreasonable number of miles on its odometer at the time it was delivered, the dealer could reject it and ownership of the vehicle would revert to the manufacturer. If the number of miles on the odometer, however, were less than the sum of the distance between the dealer and the manufacturer's factory or point of distribution plus 100 miles, the dealer could not consider the number of miles on the odometer unreasonable for the purposes of this provision.

Prohibited Manufacturer Actions

A manufacturer could 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 could not coerce or attempt to coerce a dealer to enter into an agreement with the manufacturer or any other person that required the dealer to submit its disputes to binding arbitration or otherwise waive its rights or responsibilities under the proposed Act.

"Coerce" would include threatening to terminate or not renew a dealer agreement without good cause; threatening to withhold line-makes or other product lines the dealer was 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 proposed Act could bring a civil action in circuit court

to recover its actual damages. The court would have to award attorney's fees and costs to the prevailing party.

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

Before bringing a civil action, a party would have to serve a written demand for mediation on the offending party. The demand for mediation would have to include a brief statement of the dispute and the relief sought. The party making the demand would have to 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 was 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 was served, the parties mutually would have to select an independent mediator who was approved by the Department of State, 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 could extend the date of the meeting for good cause shown by either party or if the parties agreed to an extension.

The service of a demand for mediation would toll the time for the filing of any complaint, petition, protest, or other action until representatives of both parties had met with the selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action were filed before that meeting, the court would have to enter an order suspending the proceeding or action until the mediation meeting had occurred and, if all of the parties stipulated in writing that they wished to continue to mediate, could enter an order suspending the proceeding or action for as long a period as the court considered appropriate. The court could modify, extend, or revoke a suspension order if it considered that action appropriate.

Each of the parties to the mediation would be responsible for its own attorney fees. The parties would have to divide the costs of the mediator equally.

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

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

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

Senate Bill 362

Under the Michigan Vehicle Code, every motor vehicle, pickup camper, trailer coach, trailer, semitrailer, and pole trailer, when driven or moved on a street or highway, is subject to the Code's registration and certificate of title provisions, subject to certain exceptions. The bill would refer to a "recreational vehicle", rather than a pickup camper and trailer coach.

"Recreational vehicle" would mean 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 mobile home permit to be operated or towed on a street or highway. The term would include a motor home, travel trailer, park model trailer, or pickup camper.

"Travel trailer" would mean 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 because of its size or weight when towed on a street or highway.

"Park model trailer" would mean 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.
-- Requires a mobile home 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 would apply to the towing of a park model trailer.

MCL 257.216 et al. (S.B. 362)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Joe Carrasco
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