

SENATE BILL No. 94

January 28, 2009, Introduced by Senator RICHARDVILLE and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1989 PA 88, entitled

"An act to regulate watercraft and outboard motor manufacturers, distributors, dealers, and their representatives; and to regulate dealings between those manufacturers and distributors and their dealers,"

by amending the title and sections 1, 2, 3, 4, 5, 6, and 7 (MCL 445.541, 445.542, 445.543, 445.544, 445.545, 445.546, and 445.547) and by adding sections 4a, 4b, 4c, 4d, 4e, 4f, 4g, 7a, 7b, 7c, 7d, 7e, 7f, and 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

~~An act to regulate watercraft and outboard motor manufacturers, distributors, dealers, and their representatives, and to regulate dealings between those manufacturers and distributors and their dealers.~~ **AN ACT TO REGULATE WATERCRAFT**

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1 MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, DEALERS, AND THEIR
2 REPRESENTATIVES; TO REGULATE THEIR DEALINGS WITH DEALERS AND RETAIL
3 CUSTOMERS; TO PROHIBIT UNFAIR PRACTICES; AND TO PROVIDE REMEDIES
4 AND PENALTIES.

5 Sec. 1. ~~For the purposes of this act, the words and phrases~~
6 ~~defined in sections 2 to 6 have the meanings ascribed to them in~~
7 ~~those sections, except where the context clearly indicates a~~
8 ~~different meaning.~~ THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
9 "WATERCRAFT MANUFACTURER AND DEALER ACT".

10 Sec. 2. (1) ~~"Dealer agreement" means the agreement or contract~~
11 ~~in writing between a manufacturer or distributor and a new~~
12 ~~watercraft dealer which purports to establish the legal rights and~~
13 ~~obligations of the parties to the agreement or contract with regard~~
14 ~~to the purchase and sale of new watercraft or new outboard motors.~~

15 ~~—— (2) "Designated successor" means 1 or more persons nominated~~
16 ~~by the new watercraft dealer, in a written document filed by the~~
17 ~~dealer with the manufacturer or distributor at the time the dealer~~
18 ~~agreement is executed, to succeed the dealer in the event of his or~~
19 ~~her death or incapacity.~~

20 ~~—— (3) "Distributor" means a person, resident or nonresident, who~~
21 ~~in whole or in part offers for sale, sells, or distributes a new~~
22 ~~watercraft or new outboard motor to a new watercraft dealer or who~~
23 ~~maintains a factory representative, resident or nonresident, or who~~
24 ~~controls a person, resident or nonresident, who in whole or in part~~
25 ~~offers for sale, sells, or distributes a new watercraft or new~~
26 ~~outboard motor to a new watercraft dealer.~~

27 ~~—— (4) "Manufacturer" means a person who manufactures or~~

1 ~~assembles new watercraft or new outboard motors, or a distributor,~~
2 ~~factory branch, or factory representative.~~

3 ~~—— (5) "New watercraft dealer" means a person who holds a dealer~~
4 ~~agreement granted by a manufacturer or distributor for the sale of~~
5 ~~the manufacturer's or distributor's watercraft or outboard motors,~~
6 ~~who is engaged in the business of purchasing, selling, exchanging,~~
7 ~~or servicing new watercraft or new outboard motors, and who has an~~
8 ~~established place of business.~~

9 ~~—— (6) "Person" means a natural person, partnership, corporation,~~
10 ~~association, trust, estate, or other legal entity.~~

11 ~~—— (7) "Proposed new watercraft dealer" means a person who has an~~
12 ~~application pending for a new dealer agreement with a manufacturer~~
13 ~~or distributor. Proposed new watercraft dealer does not include a~~
14 ~~person whose dealer agreement is being renewed or continued.~~

15 **AS USED IN THIS ACT:**

16 (A) "CLOSED DEALERSHIP" MEANS A NEW WATERCRAFT DEALER WHOSE
17 DEALER AGREEMENT IS TERMINATED, CANCELED, DISCONTINUED, OR NOT
18 RENEWED.

19 (B) "DEALER AGREEMENT" MEANS AN AGREEMENT OR CONTRACT IN
20 WRITING BETWEEN A DISTRIBUTOR AND A NEW WATERCRAFT DEALER, BETWEEN
21 A MANUFACTURER AND A DISTRIBUTOR OR A NEW WATERCRAFT DEALER, OR
22 BETWEEN A WATERCRAFT IMPORTER AND A DISTRIBUTOR OR A NEW WATERCRAFT
23 DEALER, THAT PURPORTS TO ESTABLISH THE LEGAL RIGHTS AND OBLIGATIONS
24 OF THE PARTIES TO THE AGREEMENT OR CONTRACT WITH REGARD TO THE
25 PURCHASE AND SALE OR RESALE OF NEW WATERCRAFT.

26 (C) "DESIGNATED FAMILY MEMBER" MEANS THE DESIGNATED SUCCESSOR
27 NOMINATED BY A NEW WATERCRAFT DEALER IN A WRITTEN DOCUMENT FILED BY

1 THE DEALER WITH A MANUFACTURER. IF THE DEALER DID NOT FILE THAT
2 DOCUMENT, THE TERM MEANS ANY OF THE FOLLOWING, IF APPLICABLE:

3 (i) A SPOUSE, CHILD, GRANDCHILD, PARENT, BROTHER, OR SISTER OF
4 A DECEASED NEW WATERCRAFT DEALER WHO HAS OTHERWISE BEEN DESIGNATED
5 IN WRITING BY A DECEASED DEALER TO SUCCEED THE DECEASED DEALER IN
6 THE NEW WATERCRAFT DEALERSHIP.

7 (ii) THE APPOINTED AND QUALIFIED PERSONAL REPRESENTATIVE AND
8 THE TESTAMENTARY TRUSTEE OF A DECEASED NEW WATERCRAFT DEALER.

9 (iii) A SPOUSE, CHILD, GRANDCHILD, PARENT, BROTHER, OR SISTER OF
10 A DECEASED NEW WATERCRAFT DEALER WHO IS ENTITLED TO INHERIT THE
11 DECEASED DEALER'S OWNERSHIP INTEREST IN THE NEW WATERCRAFT
12 DEALERSHIP UNDER THE TERMS OF THE DEALER'S WILL OR WHO IS ENTITLED
13 TO INHERIT UNDER THE LAWS OF INTESTATE SUCCESSION OF THIS STATE.

14 (iv) A PERSON APPOINTED BY A COURT AS THE LEGAL REPRESENTATIVE
15 OF THE PROPERTY OF AN INCAPACITATED NEW WATERCRAFT DEALER.

16 (D) "DISTRIBUTOR" MEANS A RESIDENT OR NONRESIDENT PERSON WHO
17 IS ENGAGED IN THE BUSINESS OF OFFERING FOR SALE, SELLING, OR
18 DISTRIBUTING NEW WATERCRAFT TO A NEW WATERCRAFT DEALER PURSUANT TO
19 A DEALER AGREEMENT, WHO MAINTAINS A RESIDENT OR NONRESIDENT FACTORY
20 REPRESENTATIVE FOR THAT BUSINESS, OR WHO CONTROLS ANY RESIDENT OR
21 NONRESIDENT PERSON WHO OFFERS FOR SALE, SELLS, OR DISTRIBUTES NEW
22 WATERCRAFT TO A NEW WATERCRAFT DEALER. THE TERM INCLUDES A
23 WATERCRAFT IMPORTER.

24 (E) "ESTABLISHED PLACE OF BUSINESS" MEANS A PERMANENT,
25 ENCLOSED COMMERCIAL BUILDING LOCATED IN THIS STATE AND OPEN TO THE
26 PUBLIC AT ALL REASONABLE TIMES AT WHICH A PERSON CONDUCTS ANY OF
27 THE BUSINESS OF A NEW WATERCRAFT DEALER, INCLUDING, BUT NOT LIMITED

1 TO, THE DISPLAY AND REPAIR OF WATERCRAFT.

2 (F) "FACTORY BRANCH" MEANS AN OFFICE MAINTAINED BY A
3 MANUFACTURER FOR THE PURPOSE OF SELLING OR OFFERING FOR SALE
4 WATERCRAFT TO A DISTRIBUTOR, WHOLESALER, OR NEW WATERCRAFT DEALER,
5 OR FOR DIRECTING OR SUPERVISING ANY FACTORY REPRESENTATIVES. THE
6 TERM INCLUDES A SALES PROMOTION ORGANIZATION MAINTAINED BY A
7 MANUFACTURER THAT IS ENGAGED IN THIS STATE IN PROMOTING THE SALE OF
8 A PARTICULAR MAKE OF NEW WATERCRAFT TO NEW WATERCRAFT DEALERS.

9 (G) "FACTORY REPRESENTATIVE" MEANS AN AGENT OR EMPLOYEE OF A
10 MANUFACTURER RETAINED OR EMPLOYED FOR THE PURPOSE OF MAKING OR
11 PROMOTING THE SALE OF NEW WATERCRAFT OR FOR SUPERVISING OR
12 CONTRACTING WITH NEW WATERCRAFT DEALERS OR PROPOSED WATERCRAFT
13 DEALERS.

14 (H) "FORMER DEALER" MEANS A NEW WATERCRAFT DEALER WHOSE DEALER
15 AGREEMENT IS TERMINATED, CANCELED, NOT RENEWED, OR DISCONTINUED BY
16 A MANUFACTURER.

17 (I) "GOOD CAUSE" MEANS THAT TERM AS DEFINED IN SECTION
18 4A(1)(C).

19 (J) "GOOD FAITH" MEANS THAT TERM AS DEFINED IN SECTION 2103 OF
20 THE UNIFORM COMMERCIAL CODE, 1962 PA 174, MCL 440.2103.

21 (K) "MANUFACTURER" MEANS A PERSON WHO MANUFACTURES OR
22 ASSEMBLES NEW WATERCRAFT. THE TERM ALSO INCLUDES A DISTRIBUTOR,
23 FACTORY BRANCH, OR FACTORY REPRESENTATIVE.

24 (L) "NEW WATERCRAFT" MEANS A WATERCRAFT THAT IS IN THE
25 POSSESSION OF A MANUFACTURER OR WHOLESALER, OR THAT A MANUFACTURER
26 OR WHOLESALER HAS SOLD TO A NEW WATERCRAFT DEALER, AND ON WHICH THE
27 NEW WATERCRAFT DEALER HAS NOT ISSUED AN ORIGINAL TITLE OR TRANSFER

1 DOCUMENT.

2 (M) "NEW WATERCRAFT DEALER" MEANS EITHER OF THE FOLLOWING:

3 (i) A DISTRIBUTOR OR OTHER PERSON WHO IS A PARTY TO A DEALER
4 AGREEMENT WITH A MANUFACTURER FOR THE SALE OR DISTRIBUTION OF ITS
5 WATERCRAFT, THAT IS ENGAGED IN THE BUSINESS OF PURCHASING, SELLING,
6 EXCHANGING, OR DEALING IN NEW WATERCRAFT, AND THAT HAS AN
7 ESTABLISHED PLACE OF BUSINESS IN THIS STATE.

8 (ii) A PERSON THAT IS ENGAGED IN THE BUSINESS OF PURCHASING,
9 SELLING, EXCHANGING, OR DEALING IN NEW WATERCRAFT AND PURCHASES,
10 SELLS, EXCHANGES, OR DEALS IN 5 OR MORE NEW WATERCRAFT IN THIS
11 STATE IN ANY 12-MONTH PERIOD.

12 (N) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
13 LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, ESTATE, OR OTHER
14 LEGAL ENTITY.

15 (O) "PROPOSED NEW WATERCRAFT DEALER" MEANS A PERSON WHO HAS AN
16 APPLICATION PENDING FOR A NEW DEALER AGREEMENT WITH A MANUFACTURER.
17 THE TERM DOES NOT INCLUDE A PERSON WHOSE DEALER AGREEMENT IS BEING
18 RENEWED OR CONTINUED.

19 (P) "RELEVANT MARKET AREA" MEANS THE AREA WITHIN A SPECIFIC
20 GEOGRAPHICAL AREA NEGOTIATED IN GOOD FAITH BETWEEN A MANUFACTURER
21 AND A NEW WATERCRAFT DEALER AND INCLUDED IN A DEALER AGREEMENT.

22 (Q) "WATERCRAFT" MEANS ANY TYPE OF WATERCRAFT OR VESSEL USED
23 OR CAPABLE OF USE AS A MEANS OF TRANSPORTATION ON WATER BUT DOES
24 NOT INCLUDE PADDLEBOATS, CANOES, KAYAKS, OR WATER SKIS OR SIMILAR
25 DEVICES TOWED BY WATERCRAFT.

26 ~~Sec. 3. A manufacturer or distributor shall not offer for sale~~
27 ~~to a new watercraft dealer, and a new or proposed new watercraft~~

1 ~~dealer shall not offer to purchase from a manufacturer, a new~~
 2 ~~watercraft or a new outboard motor without first entering into a~~
 3 ~~written dealer agreement and complying with all other applicable~~
 4 ~~provisions of this act. A MANUFACTURER, WHOLESALER, OR~~
 5 **REPRESENTATIVE OF A MANUFACTURER OR WHOLESALER SHALL NOT OFFER TO**
 6 **SELL A NEW WATERCRAFT TO A NEW WATERCRAFT DEALER, AND A NEW**
 7 **WATERCRAFT DEALER SHALL NOT OFFER TO PURCHASE A NEW WATERCRAFT FROM**
 8 **A MANUFACTURER, WHOLESALER, OR REPRESENTATIVE OF A MANUFACTURER OR**
 9 **WHOLESALER, WITHOUT FIRST ENTERING INTO A WRITTEN DEALER AGREEMENT**
 10 **AND COMPLYING WITH ALL APPLICABLE PROVISIONS OF THIS ACT.**

11 Sec. 4. ~~Each dealer agreement shall include, but is not~~
 12 ~~limited to, all of the following:~~

13 ~~—— (a) The territory or market area.~~

14 ~~—— (b) The period of time covered by the dealer agreement.~~

15 ~~—— (c) Performance and marketing standards.~~

16 ~~—— (d) Notice provisions for termination, cancellation, or~~
 17 ~~nonrenewal.~~

18 ~~—— (e) Obligations in the preparation and delivery of the product~~
 19 ~~and warranty service.~~

20 ~~—— (f) Disposal obligations upon termination, cancellation, or~~
 21 ~~nonrenewal of inventory, equipment, furnishings, special tools, and~~
 22 ~~required signs acquired within 18 months of the date of~~
 23 ~~termination, cancellation, or nonrenewal.~~

24 ~~—— (g) Dispute resolution procedures. A WRITTEN DEALER AGREEMENT~~
 25 **REQUIRED IN SECTION 3 SHALL INCLUDE AT LEAST ALL OF THE FOLLOWING**
 26 **PROVISIONS:**

27 **(A) A SPECIFIC TERM FOR THE AGREEMENT.**

1 (B) THAT THE MANUFACTURER SHALL RESPOND PROMPTLY AND PROVIDE
2 ADEQUATE INFORMATION IN RESPONSE TO THE NEW WATERCRAFT DEALER'S
3 REASONABLE INQUIRIES CONCERNING THE MANUFACTURER'S FINANCIAL
4 CONDITION.

5 (C) THAT THE NEW WATERCRAFT DEALER SHALL RESPOND PROMPTLY AND
6 PROVIDE ADEQUATE INFORMATION IN RESPONSE TO THE MANUFACTURER'S
7 REASONABLE INQUIRIES CONCERNING THE NEW WATERCRAFT DEALER'S
8 FINANCIAL CONDITION.

9 (D) THAT THE NEW WATERCRAFT DEALER IS NOT PROHIBITED FROM
10 SELLING A NEW WATERCRAFT TO A CUSTOMER WHO RESIDES OUTSIDE OF THE
11 DEALER'S RELEVANT MARKET AREA IF THE CUSTOMER VOLUNTARILY ELECTS TO
12 PURCHASE THE NEW WATERCRAFT FROM THE DEALER.

13 (E) THAT THE MANUFACTURER SHALL NOT APPOINT ANOTHER AUTHORIZED
14 DEALER IN THE RELEVANT MARKET AREA DURING THE TERM OF THE DEALER
15 AGREEMENT SO LONG AS THE NEW WATERCRAFT DEALER REMAINS IN
16 COMPLIANCE WITH THE DEALER AGREEMENT.

17 SEC. 4A. (1) A MANUFACTURER SHALL NOT CANCEL, TERMINATE, FAIL
18 TO RENEW, OR REFUSE TO CONTINUE A DEALER AGREEMENT WITH A NEW
19 WATERCRAFT DEALER UNLESS THE MANUFACTURER COMPLIES WITH ALL OF THE
20 FOLLOWING:

21 (A) SATISFIES THE NOTICE REQUIREMENT OF SECTION 4C.

22 (B) ACTS IN GOOD FAITH.

23 (C) HAS GOOD CAUSE FOR THE CANCELLATION, TERMINATION,
24 NONRENEWAL, OR DISCONTINUANCE. AS USED IN THIS SUBDIVISION AND
25 SECTION 4D(1), SUBJECT TO SUBSECTION (2), "GOOD CAUSE" MEANS EITHER
26 OF THE FOLLOWING:

27 (i) THERE IS A FAILURE BY THE NEW WATERCRAFT DEALER TO COMPLY

1 WITH A PROVISION OF THE DEALER AGREEMENT, THE PROVISION IS BOTH
2 REASONABLE AND OF MATERIAL SIGNIFICANCE TO THE RELATIONSHIP BETWEEN
3 THE MANUFACTURER AND THE NEW WATERCRAFT DEALER, AND THE
4 MANUFACTURER FIRST ACQUIRED ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE
5 FAILURE NOT MORE THAN 2 YEARS BEFORE THE DATE ON WHICH NOTICE IS
6 GIVEN UNDER SECTION 4C.

7 (ii) IF A FAILURE DESCRIBED IN SUBPARAGRAPH (i) IS A FAILURE BY
8 THE NEW WATERCRAFT DEALER TO EFFECTIVELY EXECUTE A PROVISION OF A
9 DEALER AGREEMENT RELATED TO THE PERFORMANCE OF THE NEW WATERCRAFT
10 DEALER IN SALES OR SERVICE, ALL OF THE FOLLOWING HAVE OCCURRED:

11 (A) THE NEW WATERCRAFT DEALER WAS GIVEN WRITTEN NOTICE BY THE
12 MANUFACTURER OF THE FAILURE.

13 (B) THE NOTICE STATED THAT THE NOTICE OF FAILURE OF
14 PERFORMANCE WAS PROVIDED UNDER THIS ACT.

15 (C) THE NEW WATERCRAFT DEALER WAS AFFORDED A REASONABLE
16 OPPORTUNITY TO EXERT GOOD FAITH EFFORTS TO CARRY OUT THE DEALER
17 AGREEMENT.

18 (D) THE FAILURE OR DEFICIENCY CONTINUED FOR MORE THAN 180 DAYS
19 AFTER THE DATE NOTICE WAS GIVEN UNDER SUB-SUBPARAGRAPH (A).

20 (2) THE FOLLOWING DO NOT CONSTITUTE GOOD CAUSE FOR THE
21 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A
22 DEALER AGREEMENT UNDER SUBSECTION (1) (C):

23 (A) A CHANGE IN OWNERSHIP OF A NEW WATERCRAFT DEALER'S
24 DEALERSHIP IF SECTION 5 IS MET. THIS SUBDIVISION DOES NOT AUTHORIZE
25 A CHANGE IN OWNERSHIP THAT RESULTS IN A SALE OR AN ASSIGNMENT OF
26 THE DEALER AGREEMENT OR A CHANGE IN THE PRINCIPAL MANAGEMENT OF THE
27 DEALERSHIP WITHOUT THE MANUFACTURER'S PRIOR WRITTEN CONSENT.

1 (B) A REFUSAL OF A NEW WATERCRAFT DEALER TO PURCHASE OR ACCEPT
2 DELIVERY OF ANY NEW WATERCRAFT PARTS, OR ACCESSORIES OR ANY OTHER
3 COMMODITY OR SERVICES NOT ORDERED BY THE NEW WATERCRAFT DEALER.

4 (C) THE FACT THAT A NEW WATERCRAFT DEALER OWNS, HAS AN
5 INVESTMENT IN, PARTICIPATES IN THE MANAGEMENT OF, OR HOLDS A DEALER
6 AGREEMENT FOR THE SALE OF ANOTHER MAKE OR LINE OF NEW WATERCRAFT,
7 OR THAT THE NEW WATERCRAFT DEALER HAS ESTABLISHED ANOTHER MAKE OR
8 LINE OF NEW WATERCRAFT IN THE SAME DEALERSHIP FACILITIES AS THOSE
9 OF THE MANUFACTURER, IF BOTH OF THE FOLLOWING ARE MET:

10 (i) THE NEW WATERCRAFT DEALER MAINTAINS A REASONABLE LINE OF
11 CREDIT FOR EACH MAKE OR LINE OF NEW WATERCRAFT.

12 (ii) THE NEW WATERCRAFT DEALER REMAINS IN SUBSTANTIAL
13 COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE DEALER AGREEMENT
14 AND WITH THE REASONABLE FACILITIES' REQUIREMENTS OF THE
15 MANUFACTURER.

16 (D) THE FACT THAT A NEW WATERCRAFT DEALER SELLS OR TRANSFERS
17 OWNERSHIP OF THE DEALERSHIP OR SELLS OR TRANSFERS CAPITAL STOCK IN
18 THE DEALERSHIP TO THE NEW WATERCRAFT DEALER'S SPOUSE, SON, OR
19 DAUGHTER, IF THE SALE OR TRANSFER DOES NOT HAVE THE EFFECT OF A
20 SALE OR AN ASSIGNMENT OF THE DEALER AGREEMENT OR A CHANGE IN THE
21 PRINCIPAL MANAGEMENT OF THE DEALERSHIP WITHOUT THE MANUFACTURER'S
22 PRIOR WRITTEN CONSENT.

23 (3) A PROVISION IN A DEALER AGREEMENT THAT IS CONTRARY TO THIS
24 SECTION IS NOT ENFORCEABLE.

25 SEC. 4B. IN ANY PROCEEDING CONCERNING A TERMINATION,
26 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A DEALER AGREEMENT
27 UNDER SECTION 4A, THE MANUFACTURER HAS THE BURDEN OF PROOF FOR

1 SHOWING THAT IT HAS ACTED IN GOOD FAITH, THAT IT HAS COMPLIED WITH
2 ANY NOTICE REQUIREMENT, AND THAT THERE WAS GOOD CAUSE FOR THE
3 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE.

4 SEC. 4C. (1) BEFORE A MANUFACTURER OR A NEW WATERCRAFT DEALER
5 WHO IS A PARTY TO A DEALER AGREEMENT TERMINATES, CANCELS, DOES NOT
6 RENEW, OR DISCONTINUES THE DEALER AGREEMENT, THE MANUFACTURER OR
7 DEALER SHALL PROVIDE WRITTEN NOTICE OF THE TERMINATION,
8 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE TO THE OTHER PARTY TO
9 THE DEALER AGREEMENT AND DO ALL OF THE FOLLOWING:

10 (A) PROVIDE THE NOTICE TO THE OTHER PARTY BY CERTIFIED MAIL.

11 (B) INCLUDE ALL OF THE FOLLOWING IN THE NOTICE:

12 (i) A STATEMENT OF INTENTION TO TERMINATE, CANCEL, NOT RENEW,
13 OR DISCONTINUE THE DEALER AGREEMENT.

14 (ii) A STATEMENT OF THE REASON FOR THE TERMINATION,
15 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE.

16 (iii) THE DATE ON WHICH THE TERMINATION, CANCELLATION,
17 NONRENEWAL, OR DISCONTINUANCE TAKES EFFECT.

18 (C) PROVIDE THE NOTICE WITHIN 1 OF THE FOLLOWING TIME PERIODS:

19 (i) AT LEAST 30 DAYS BEFORE THE EFFECTIVE DATE OF A
20 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE FOR ANY OF
21 THE FOLLOWING REASONS:

22 (A) INSOLVENCY OF THE OTHER PARTY OR THE FILING OF A PETITION
23 BY OR AGAINST THE OTHER PARTY UNDER ANY BANKRUPTCY OR RECEIVERSHIP
24 LAW.

25 (B) FAILURE OF THE OTHER PARTY TO CONDUCT ITS CUSTOMARY SALES
26 AND SERVICE OPERATIONS DURING ITS CUSTOMARY BUSINESS HOURS FOR 30
27 CONSECUTIVE BUSINESS DAYS.

1 (C) CONVICTION OF THE OTHER PARTY OR ITS PRINCIPAL OWNERS OF A
2 MISDEMEANOR THAT INVOLVES THEFT, DISHONESTY, OR FALSE STATEMENT OR
3 ANY FELONY.

4 (D) IF THE TERMINATING, CANCELING, NONRENEWING, OR
5 DISCONTINUING PARTY IS THE MANUFACTURER, REVOCATION OF A LICENSE
6 THE NEW WATERCRAFT DEALER IS REQUIRED TO HAVE TO OPERATE A
7 DEALERSHIP OR LOSS OF AUTHORIZATION TO PURCHASE MARINE ENGINES
8 APPROPRIATE FOR THE MANUFACTURER'S PRODUCTS.

9 (E) A FRAUDULENT MISREPRESENTATION BY THE OTHER PARTY THAT IS
10 MATERIAL TO THE DEALER AGREEMENT.

11 (i) AT LEAST 180 DAYS BEFORE THE EFFECTIVE DATE OF A
12 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE BECAUSE
13 THE MANUFACTURER DISCONTINUED PRODUCTION OF THE NEW WATERCRAFT
14 DEALER'S PRODUCT LINE OR DISCONTINUED DISTRIBUTION OF THAT PRODUCT
15 LINE IN THIS STATE.

16 (ii) IF SUBPARAGRAPH (i) OR (ii) DOES NOT APPLY, AT LEAST 180
17 DAYS BEFORE THE EFFECTIVE DATE OF THE TERMINATION, CANCELLATION,
18 NONRENEWAL, OR DISCONTINUANCE. DURING THIS TIME PERIOD, THE
19 MANUFACTURER MAY EXECUTE A DEALER AGREEMENT WITH ANOTHER NEW
20 WATERCRAFT DEALER AND THE NEW WATERCRAFT DEALER MAY EXECUTE A
21 DEALER AGREEMENT WITH ANOTHER MANUFACTURER.

22 (2) A NOTICE PROVISION IN A DEALER AGREEMENT THAT IS CONTRARY
23 TO THIS SECTION IS NOT ENFORCEABLE.

24 SEC. 4D. (1) IF A DEALER AGREEMENT IS TERMINATED, CANCELED,
25 NOT RENEWED, OR DISCONTINUED BY A MANUFACTURER WITHOUT GOOD CAUSE,
26 THE MANUFACTURER SHALL PAY THE NEW WATERCRAFT DEALER FAIR AND
27 REASONABLE COMPENSATION FOR ALL OF THE FOLLOWING:

1 (A) EACH NEW CURRENT MODEL YEAR WATERCRAFT PURCHASED FROM THE
2 MANUFACTURER IN THE DEALER'S INVENTORY THAT HAS NOT BEEN MATERIALLY
3 ALTERED OR SUBSTANTIALLY DAMAGED.

4 (B) EACH NEW WATERCRAFT OF THE IMMEDIATELY PRECEDING MODEL
5 YEAR PURCHASED FROM THE MANUFACTURER IN THE DEALER'S INVENTORY THAT
6 HAS NOT BEEN MATERIALLY ALTERED OR SUBSTANTIALLY DAMAGED, IF THAT
7 WATERCRAFT WAS PURCHASED FROM THE MANUFACTURER AND DRAFTED ON THE
8 DEALER'S FINANCING SOURCE OR PAID FOR WITHIN THE 2-YEAR PERIOD
9 BEFORE THE EFFECTIVE DATE OF THE TERMINATION, CANCELLATION,
10 NONRENEWAL, OR DISCONTINUANCE.

11 (C) ANY ELECTRONIC OR PRINTED PARTS CATALOGS OR OTHER SUPPLIES
12 PURCHASED FROM THE MANUFACTURER WITHIN THE 18-MONTH PERIOD BEFORE
13 THE EFFECTIVE DATE OF THE TERMINATION, CANCELLATION, NONRENEWAL, OR
14 DISCONTINUANCE.

15 (D) ANY PARTS INVENTORY, PURCHASED FROM THE MANUFACTURER
16 WITHIN THE 18-MONTH PERIOD BEFORE THE EFFECTIVE DATE OF THE
17 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE, EXCEPT
18 SPECIAL ORDER PARTS.

19 (E) ANY EQUIPMENT, FURNISHINGS, AND SIGNS IDENTIFYING THE
20 WATERCRAFT OR THE MANUFACTURER BRAND OR TRADE NAME PURCHASED FROM
21 THE MANUFACTURER IN THE CURRENT MODEL YEAR.

22 (F) 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), OR (F) 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) OR (E), THE ACTUAL COST TO THE DEALER
2 OF PERSONAL PROPERTY PURCHASED FROM THE MANUFACTURER.

3 (D) IN SUBSECTION (1) (F), THE ACTUAL EXPENDITURES OF THE NEW
4 WATERCRAFT DEALER.

5 SEC. 4E. (1) IN ADDITION TO THE PROVISIONS OF SUBSECTION (2)
6 AND SECTIONS 4A, 4B, 4C, AND 4D, ALL OF THE FOLLOWING APPLY IF A
7 DEALER AGREEMENT IS TERMINATED, CANCELED, NOT RENEWED, OR
8 DISCONTINUED BY THE MANUFACTURER:

9 (A) FOR A 12-MONTH PERIOD BEGINNING ON THE EFFECTIVE DATE OF
10 THE TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
11 DEALER AGREEMENT, THE FORMER DEALER MAY CONTINUE TO PURCHASE PARTS
12 AND ACCESSORIES FROM THE MANUFACTURER TO SERVICE CUSTOMERS OF THE
13 MANUFACTURER'S PRODUCTS BY SUBMITTING A PURCHASE ORDER TO THE
14 MANUFACTURER. THE MANUFACTURER SHALL SELL PARTS OR ACCESSORIES
15 UNDER THIS SUBDIVISION AT ITS STANDARD DEALER RATES AND ACCORDING
16 TO ITS STANDARD DEALER TERMS AND CONDITIONS.

17 (B) BEGINNING 12 MONTHS AFTER THE EFFECTIVE DATE OF THE
18 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
19 DEALER AGREEMENT, THE FORMER DEALER MAY CONTINUE TO PURCHASE PARTS
20 AND ACCESSORIES FROM THE MANUFACTURER TO SERVICE CUSTOMERS OF THE
21 MANUFACTURER'S PRODUCTS BY SUBMITTING A PURCHASE ORDER TO THE
22 MANUFACTURER. THE MANUFACTURER SHALL SELL PARTS OR ACCESSORIES
23 UNDER THIS SUBDIVISION AT ITS STANDARD RATES FOR RETAIL SALES OF
24 THE PARTS AND ACCESSORIES AND ACCORDING TO ITS STANDARD TERMS AND
25 CONDITIONS FOR RETAIL SALES OF THE PARTS AND ACCESSORIES.

26 (C) THE MANUFACTURER OR FORMER DEALER SHALL NOT CONSTRUE A
27 SALE OF PARTS OR ACCESSORIES UNDER THIS SECTION AS A WAIVER OF THE

1 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
2 DEALER AGREEMENT, A CONTINUATION OF THE DEALER AGREEMENT, OR THE
3 COMMENCEMENT OF A NEW DEALER AGREEMENT.

4 (2) ALL OF THE FOLLOWING APPLY IF A DEALER AGREEMENT IS
5 TERMINATED, CANCELED, NOT RENEWED, OR DISCONTINUED BY A
6 MANUFACTURER OR A DEALER:

7 (A) THE MANUFACTURER IS RELIEVED FROM ANY OBLIGATION CONTAINED
8 IN THE DEALER AGREEMENT TO DELIVER ADDITIONAL NEW WATERCRAFT TO THE
9 FORMER DEALER AND MAY CANCEL ALL OUTSTANDING ORDERS FOR NEW
10 WATERCRAFT, INCLUDING ORDERS THAT THE FORMER DEALER HAS PREVIOUSLY
11 ACCEPTED. THIS SUBDIVISION DOES NOT APPLY TO A NEW WATERCRAFT IF
12 THE FORMER DEALER PROVES TO THE MANUFACTURER'S SATISFACTION THAT
13 THE WATERCRAFT IS THE SUBJECT OF A BINDING CUSTOMER ORDER RECEIVED
14 BY THE FORMER DEALER BEFORE RECEIPT OF THE WRITTEN NOTICE REQUIRED
15 UNDER SECTION 4C.

16 (B) FOR A 12-MONTH PERIOD BEGINNING ON THE EFFECTIVE DATE OF
17 THE TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
18 DEALER AGREEMENT, THE FORMER DEALER MAY CONTINUE TO PERFORM
19 WARRANTY WORK FOR CUSTOMERS OF THE MANUFACTURER'S WATERCRAFT. THE
20 MANUFACTURER SHALL REIMBURSE THE FORMER DEALER FOR WARRANTY WORK
21 PERFORMED UNDER THIS SUBDIVISION AT THE RATES GENERALLY CHARGED BY
22 THE FORMER DEALER FOR LIKE SERVICE TO RETAIL CUSTOMERS FOR
23 NONWARRANTY PARTS, SERVICE, OR REPAIRS AND ACCORDING TO THE
24 STANDARD TERMS AND CONDITIONS IN EFFECT BEFORE THE TERMINATION,
25 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE DEALER
26 AGREEMENT.

27 (C) THE MANUFACTURER OR FORMER DEALER SHALL NOT CONSTRUE THE

1 PERFORMANCE OF WARRANTY WORK UNDER SUBDIVISION (B), ACCEPTANCE BY
2 THE MANUFACTURER OF AN ORDER FOR NEW WATERCRAFT FROM THE FORMER
3 DEALER, CONTINUED SALES OF NEW WATERCRAFT TO THE FORMER DEALER, OR
4 ANY OTHER ACT AFTER TERMINATION, CANCELLATION, NONRENEWAL, OR
5 DISCONTINUANCE OF THE DEALER AGREEMENT AS A WAIVER OF THE
6 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
7 DEALER AGREEMENT, A CONTINUATION OF THE DEALER AGREEMENT, OR THE
8 COMMENCEMENT OF A NEW DEALER AGREEMENT.

9 (D) ANY COMPENSATION OWED BY THE FORMER DEALER TO THE
10 MANUFACTURER IS DUE AND PAYABLE WITHIN 30 DAYS AFTER THE EFFECTIVE
11 DATE OF THE TERMINATION, CANCELLATION, NONRENEWAL, OR
12 DISCONTINUANCE OF THE DEALER AGREEMENT.

13 SEC. 4F. A MANUFACTURER SHALL NOT REQUIRE A NEW WATERCRAFT
14 DEALER IN THIS STATE TO DO ANY OF THE FOLLOWING:

15 (A) ORDER OR ACCEPT DELIVERY OF ANY NEW WATERCRAFT, PART OR
16 ACCESSORY OF A NEW WATERCRAFT, EQUIPMENT, OR ANY OTHER COMMODITY
17 NOT REQUIRED BY LAW THAT WAS NOT VOLUNTARILY ORDERED BY THE NEW
18 WATERCRAFT DEALER. THIS SUBDIVISION DOES NOT APPLY TO NEW
19 WATERCRAFT DELIVERED UNDER A DEALER AGREEMENT AS PART OF THE ANNUAL
20 INVENTORY REQUIRED BY THE MANUFACTURER.

21 (B) ORDER OR ACCEPT DELIVERY OF ANY NEW WATERCRAFT WITH
22 SPECIAL FEATURES, ACCESSORIES, OR EQUIPMENT NOT INCLUDED IN THE
23 LIST PRICE OF THE NEW WATERCRAFT AS PUBLICLY ADVERTISED BY THE
24 MANUFACTURER.

25 (C) PARTICIPATE MONETARILY IN ANY ADVERTISING CAMPAIGN OR
26 CONTEST, PURCHASE ANY PROMOTIONAL MATERIALS, DISPLAY DEVICES, OR
27 DISPLAY DECORATIONS OR MATERIALS, OR PAY OR ASSUME DIRECTLY IN

1 CONNECTION WITH THE SALE OF NEW WATERCRAFT ANY PART OF THE COST OF
2 A REFUND, REBATE, OR DISCOUNT MADE BY OR LAWFULLY IMPOSED BY THE
3 MANUFACTURER TO OR IN FAVOR OF A RETAIL CUSTOMER, UNLESS THE DEALER
4 VOLUNTARILY AGREES.

5 (D) ENTER INTO ANY AGREEMENT WITH THE MANUFACTURER, OTHER THAN
6 NORMAL PROGRAM PURCHASE REQUIREMENTS OR WARRANTY SERVICE
7 AGREEMENTS, IF THE MANUFACTURER REPRESENTS TO THE NEW WATERCRAFT
8 DEALER THAT REFUSING TO EXECUTE THE AGREEMENT WILL CAUSE A
9 TERMINATION OF THE DEALER AGREEMENT OR ANY OTHER CONTRACTUAL
10 AGREEMENT OR UNDERSTANDING BETWEEN THE DEALER AND MANUFACTURER. A
11 NOTICE GIVEN IN GOOD FAITH TO A DEALER OF THE DEALER'S VIOLATION OF
12 ANY TERMS OR PROVISIONS OF A DEALER AGREEMENT IS NOT A VIOLATION OF
13 THIS SUBDIVISION.

14 (E) CHANGE THE CAPITAL STRUCTURE OF THE NEW WATERCRAFT
15 DEALERSHIP OR THE MEANS BY OR THROUGH WHICH THE DEALER FINANCES THE
16 OPERATION OF THE DEALERSHIP, IF THE DEALERSHIP AT ALL TIMES MEETS
17 ANY REASONABLE CAPITAL STANDARDS DETERMINED BY THE MANUFACTURER IN
18 ACCORDANCE WITH UNIFORMLY APPLIED CRITERIA.

19 (F) REFRAIN FROM PARTICIPATION IN THE MANAGEMENT OF,
20 INVESTMENT IN, OR ACQUISITION OF, ANY OTHER LINE OF NEW WATERCRAFT
21 OR RELATED PRODUCTS, IF THE DEALER MAINTAINS A REASONABLE LINE OF
22 CREDIT FOR EACH MAKE OR LINE OF WATERCRAFT, REMAINS IN COMPLIANCE
23 WITH REASONABLE FACILITIES REQUIREMENTS, AND DOES NOT CHANGE THE
24 PRINCIPAL MANAGEMENT OF THE DEALER.

25 (G) CHANGE THE LOCATION OF THE NEW WATERCRAFT DEALERSHIP OR
26 MAKE ANY SUBSTANTIAL ALTERATIONS TO THE DEALERSHIP PREMISES, UNLESS
27 THAT REQUIREMENT IS REASONABLE.

1 (H) PROSPECTIVELY ASSENT TO A RELEASE, ASSIGNMENT, NOVATION,
2 WAIVER, OR ESTOPPEL THAT RELIEVES ANY PERSON FROM LIABILITY IMPOSED
3 BY THIS ACT; REQUIRE THAT THE LAW OF A STATE OTHER THAN THIS STATE
4 GOVERN A DEALER AGREEMENT; OR REQUIRE REFERRAL OF ANY CONTROVERSY
5 BETWEEN A NEW WATERCRAFT DEALER AND A MANUFACTURER TO A PERSON
6 OTHER THAN A COURT OF THIS STATE OR A FEDERAL COURT LOCATED IN THIS
7 STATE, IF THE REFERRAL IS BINDING ON THE NEW WATERCRAFT DEALER,
8 UNLESS THE PARTIES AGREE AT THE TIME OF A CONTROVERSY TO REFER THE
9 CONTROVERSY TO A FEDERAL COURT LOCATED OUTSIDE THIS STATE OR AGREE
10 AT THE TIME OF AN ARBITRATION TO CONDUCT ARBITRATION EITHER WITHIN
11 OR OUTSIDE THIS STATE. A PROVISION IN A DEALER AGREEMENT THAT IS
12 CONTRARY TO THIS SUBDIVISION IS UNENFORCEABLE BY A MANUFACTURER.

13 SEC. 4G. (1) A MANUFACTURER SHALL NOT DO ANY OF THE FOLLOWING:

14 (A) ADOPT, CHANGE, ESTABLISH, OR IMPLEMENT A PLAN OR SYSTEM
15 FOR THE ALLOCATION AND DISTRIBUTION OF NEW WATERCRAFT TO NEW
16 WATERCRAFT DEALERS THAT IS ARBITRARY OR CAPRICIOUS, OR MODIFY AN
17 EXISTING PLAN OR SYSTEM IN A WAY THAT CAUSES THE PLAN OR SYSTEM TO
18 BE ARBITRARY OR CAPRICIOUS.

19 (B) IF THE MANUFACTURER PUBLICLY ADVERTISES THAT A SPECIFIC
20 MODEL OF WATERCRAFT IS AVAILABLE FOR IMMEDIATE DELIVERY IN THIS
21 STATE, REFUSE TO DELIVER INVENTORY OF THAT WATERCRAFT TO A NEW
22 WATERCRAFT DEALER ENTITLED TO SELL THAT WATERCRAFT UNDER A DEALER
23 AGREEMENT, IN REASONABLE QUANTITIES AND WITHIN A REASONABLE TIME
24 AFTER RECEIPT OF THE DEALER'S ORDER. THIS SUBDIVISION DOES NOT
25 APPLY TO A FAILURE TO DELIVER WATERCRAFT DUE TO AN ACT OF GOD, A
26 WORK STOPPAGE OR DELAY DUE TO A STRIKE OR LABOR DIFFICULTY, A
27 SHORTAGE OF MATERIALS, A LACK OF MANUFACTURING CAPACITY, A FREIGHT

1 EMBARGO, OR ANOTHER CAUSE OVER WHICH THE MANUFACTURER HAS NO
2 CONTROL.

3 (C) REQUIRE THAT A NEW WATERCRAFT DEALER PURCHASE ESSENTIAL
4 SERVICE TOOLS WITH A PURCHASE PRICE IN THE AGGREGATE OF MORE THAN
5 \$7,500.00 IN ORDER TO RECEIVE A SPECIFIC MODEL WATERCRAFT WITHOUT
6 PROVIDING THE DEALER A GOOD FAITH ESTIMATE IN WRITING OF THE NUMBER
7 OF WATERCRAFT OF THAT SPECIFIC MODEL THE MANUFACTURER INTENDS TO
8 ALLOCATE TO THAT DEALER DURING THE MODEL YEAR IN WHICH THE TOOL
9 PURCHASE REQUIREMENT IS IMPOSED. THIS SUBDIVISION DOES NOT APPLY IF
10 THE DEALER DOES NOT REQUEST THE ESTIMATE IN WRITING.

11 (D) SUBJECT TO SUBSECTION (2), IF A NEW WATERCRAFT DEALER
12 ORDERS A NEW WATERCRAFT FOR A RETAIL CUSTOMER WITHIN 15 DAYS AFTER
13 RECEIVING A WRITTEN OFFICIAL PRICE INCREASE NOTIFICATION FROM THE
14 MANUFACTURER, AND THAT RETAIL CUSTOMER PURCHASES THAT NEW
15 WATERCRAFT, APPLY THAT PRICE INCREASE TO THAT NEW WATERCRAFT. A
16 SALES CONTRACT SIGNED BY A RETAIL CUSTOMER AND BINDING ON A DEALER
17 IS EVIDENCE OF AN ORDER SUBJECT TO THIS SUBDIVISION.

18 (E) SUBJECT TO SUBSECTION (2), IF A NEW WATERCRAFT DEALER
19 ORDERS A NEW CURRENT MODEL YEAR WATERCRAFT FOR A RETAIL CUSTOMER
20 WITHIN 30 DAYS AFTER RECEIVING NOTICE OF A PRICE REDUCTION OF MORE
21 THAN \$5.00 OR A CASH REBATE FOR THAT MODEL OF WATERCRAFT, AND THAT
22 RETAIL CUSTOMER PURCHASES THAT NEW WATERCRAFT, FAIL TO REDUCE THE
23 PRICE OF OR PROVIDE THE REBATE FOR THAT NEW WATERCRAFT.

24 (F) EXCEPT UNDER SUBPOENA IN AN ADMINISTRATIVE OR JUDICIAL
25 PROCEEDING TO WHICH THE NEW WATERCRAFT DEALER OR THE MANUFACTURER
26 IS A PARTY, OR WHERE THE NEW WATERCRAFT DEALER HAS GIVEN WRITTEN
27 CONSENT, RELEASE TO A PERSON ANY BUSINESS, FINANCIAL, OR PERSONAL

1 INFORMATION THAT A NEW WATERCRAFT DEALER PROVIDED TO A
2 MANUFACTURER.

3 (G) DENY A NEW WATERCRAFT DEALER THE RIGHT TO ASSOCIATE WITH
4 ANOTHER NEW WATERCRAFT DEALER FOR ANY LAWFUL PURPOSE.

5 (H) DIRECTLY OR INDIRECTLY OWN, OPERATE, OR CONTROL A NEW
6 WATERCRAFT DEALER INCLUDING, BUT NOT LIMITED TO, A NEW WATERCRAFT
7 DEALER ENGAGED PRIMARILY IN PERFORMING WARRANTY REPAIR SERVICES ON
8 WATERCRAFT PURSUANT TO THE MANUFACTURER'S WARRANTY. THIS
9 SUBDIVISION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

10 (i) THE OWNERSHIP, OPERATION, OR CONTROL BY A MANUFACTURER OF A
11 NEW WATERCRAFT DEALER FOR A PERIOD OF NOT MORE THAN 24 MONTHS
12 DURING THE TRANSITION FROM 1 OWNER OR OPERATOR TO ANOTHER. A
13 CIRCUIT COURT MAY EXTEND THE 24-MONTH TIME PERIOD FOR AN ADDITIONAL
14 12 MONTHS UPON RECEIPT OF AN APPLICATION FROM A MANUFACTURER AND A
15 SHOWING OF GOOD CAUSE.

16 (ii) THE OWNERSHIP, OPERATION, OR CONTROL OF A NEW WATERCRAFT
17 DEALER BY A MANUFACTURER WHILE IT IS BEING SOLD UNDER A BONA FIDE
18 CONTRACT OR PURCHASE OPTION TO THE OPERATOR OF THE NEW WATERCRAFT
19 DEALER.

20 (I) SELL A NEW WATERCRAFT DIRECTLY TO A RETAIL CUSTOMER OTHER
21 THAN THROUGH ITS NEW WATERCRAFT DEALERS LOCATED IN THIS STATE. THIS
22 SUBDIVISION DOES NOT PROHIBIT A MANUFACTURER FROM PROVIDING
23 INFORMATION TO A RETAIL CUSTOMER FOR THE PURPOSE OF MARKETING OR
24 FACILITATING THE SALE OF NEW WATERCRAFT OR FROM ESTABLISHING A
25 PROGRAM TO SELL OR OFFER TO SELL NEW WATERCRAFT THROUGH THE
26 MANUFACTURER'S NEW WATERCRAFT DEALERS AND DOES NOT PROHIBIT SALES
27 DIRECTLY TO RETAIL CUSTOMERS IN THIS STATE IF THE MANUFACTURER DOES

1 NOT HAVE ANY NEW WATERCRAFT DEALERS IN THIS STATE.

2 (J) PREVENT OR ATTEMPT TO PREVENT BY CONTRACT OR OTHERWISE A
3 NEW WATERCRAFT DEALER FROM CHANGING ITS EXECUTIVE MANAGEMENT,
4 UNLESS THE MANUFACTURER DEMONSTRATES THAT A PROPOSED CHANGE OF
5 EXECUTIVE MANAGEMENT WILL RESULT IN EXECUTIVE MANAGEMENT BY 1 OR
6 MORE INDIVIDUALS WHO ARE NOT OF GOOD MORAL CHARACTER OR WHO DO NOT
7 MEET REASONABLE, PREEXISTING, AND EQUITABLY APPLIED STANDARDS OF
8 THE MANUFACTURER. IF A MANUFACTURER REJECTS A PROPOSED CHANGE IN
9 EXECUTIVE MANAGEMENT OF A NEW WATERCRAFT DEALER, THE MANUFACTURER
10 SHALL GIVE WRITTEN NOTICE OF ITS REASONS TO THE DEALER WITHIN 60
11 DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE DEALER OF THE PROPOSED
12 CHANGE AND ALL RELATED INFORMATION REASONABLY REQUESTED BY THE
13 MANUFACTURER. FAILURE TO PROVIDE THE WRITTEN NOTICE WITHIN THE 60-
14 DAY TIME PERIOD IS APPROVAL OF THE CHANGE IN EXECUTIVE MANAGEMENT
15 BY THE MANUFACTURER.

16 (K) DIRECTLY OR THROUGH A SUBSIDIARY, TERMINATE, CANCEL, FAIL
17 TO RENEW, OR DISCONTINUE A LEASE OF A NEW WATERCRAFT DEALER'S
18 ESTABLISHED PLACE OF BUSINESS EXCEPT FOR A MATERIAL BREACH OF THE
19 LEASE.

20 (2) SUBSECTION (1) (D) AND (E) DOES NOT APPLY TO A PRICE
21 INCREASE OR REDUCTION CAUSED BY ANY OF THE FOLLOWING:

22 (A) THE INTRODUCTION OF A NEW MODEL OR NEW MODEL YEAR OF A NEW
23 WATERCRAFT.

24 (B) ADDING OPTIONAL EQUIPMENT OR EQUIPMENT REQUIRED BY STATE
25 OR FEDERAL LAW TO A NEW WATERCRAFT.

26 (C) IF A NEW WATERCRAFT OR COMPONENTS OF A NEW WATERCRAFT ARE
27 MADE IN ANOTHER COUNTRY, REVALUATION OF THE UNITED STATES DOLLAR.

1 (D) AN INCREASE IN TRANSPORTATION CHARGES DUE TO AN INCREASE
2 IN RATES CHARGED BY A COMMON CARRIER OR TRANSPORTER.

3 Sec. 5. ~~(1) A manufacturer or distributor shall not~~
4 ~~unreasonably withhold consent to the sale, transfer, or exchange of~~
5 ~~a dealership to a person who meets the criteria set forth in the~~
6 ~~dealer agreement.~~

7 ~~Failure to respond within 60 days of receipt of a written~~
8 ~~request for the sale, transfer, or exchange of a dealership shall~~
9 ~~be considered consent to the request.~~

10 ~~(3) Except for a material breach of the lease, a manufacturer~~
11 ~~or distributor shall not terminate, cancel, fail to renew, or~~
12 ~~discontinue a lease of a new watercraft dealer's place of business.~~

13 (1) ALL OF THE FOLLOWING APPLY TO A SALE, TRANSFER, OR
14 EXCHANGE OF THE OWNERSHIP OF A NEW WATERCRAFT DEALERSHIP TO A
15 PERSON OTHER THAN A DESIGNATED FAMILY MEMBER UNDER SECTION 6:

16 (A) A MANUFACTURER SHALL NOT UNFAIRLY PREVENT A NEW WATERCRAFT
17 DEALER FROM RECEIVING REASONABLE COMPENSATION FOR THE VALUE OF THE
18 NEW WATERCRAFT DEALERSHIP.

19 (B) A MANUFACTURER SHALL CONSENT TO A SALE, TRANSFER, OR
20 EXCHANGE OF THE OWNERSHIP OF A NEW WATERCRAFT DEALERSHIP TO A
21 QUALIFIED BUYER. THE MANUFACTURER SHALL RESPOND IN WRITING TO A
22 REQUEST FOR CONSENT TO A SALE OR OTHER TRANSFER OF A NEW WATERCRAFT
23 DEALERSHIP UNDER THIS SUBDIVISION WITHIN 30 DAYS AFTER RECEIPT OF A
24 WRITTEN REQUEST FOR CONSENT FROM THE NEW WATERCRAFT DEALER. FAILURE
25 TO RESPOND TO THE REQUEST WITHIN THE 30-DAY PERIOD IS CONSENT TO
26 THE SALE OR OTHER TRANSFER BY THE MANUFACTURER.

27 (C) A MANUFACTURER SHALL CONSENT TO ASSIGNMENT OF AN EXISTING

1 DEALER AGREEMENT TO, OR TO EXECUTION OF A NEW DEALER AGREEMENT ON
2 THE SAME TERMS WITH, THE PURCHASER OR OTHER TRANSFEREE OF AN
3 EXISTING NEW WATERCRAFT DEALERSHIP IF THE PURCHASER OR OTHER
4 TRANSFEREE IS A QUALIFIED BUYER. THE MANUFACTURER SHALL RESPOND IN
5 WRITING TO A REQUEST FOR CONSENT TO AN ASSIGNMENT OF AN EXISTING
6 DEALER AGREEMENT OR EXECUTION OF A NEW DEALER AGREEMENT WITHIN 30
7 DAYS AFTER RECEIPT OF A WRITTEN REQUEST FOR CONSENT FROM THE NEW
8 WATERCRAFT DEALER. FAILURE TO RESPOND TO THE REQUEST WITHIN THE 30-
9 DAY PERIOD IS CONSENT TO THE ASSIGNMENT OF AN EXISTING DEALER
10 AGREEMENT OR EXECUTION OF A NEW DEALER AGREEMENT.

11 (2) AS USED IN THIS SECTION, "QUALIFIED BUYER" MEANS A
12 PURCHASER OR OTHER TRANSFEREE OF AN EXISTING NEW WATERCRAFT
13 DEALERSHIP THAT MEETS THE MANUFACTURER'S FINANCIAL AND BUSINESS
14 CRITERIA AS GENERALLY APPLIED BY THE MANUFACTURER IN QUALIFYING NEW
15 WATERCRAFT DEALERS. THESE CRITERIA MAY INCLUDE THE BUSINESS
16 EXPERIENCE, MORAL CHARACTER, FINANCIAL QUALIFICATIONS, AND CRIMINAL
17 RECORD OF THE PURCHASER OR TRANSFEREE. THE MANUFACTURER HAS THE
18 BURDEN OF PROVING THAT A PROSPECTIVE PURCHASER OR TRANSFEREE IS NOT
19 A QUALIFIED BUYER.

20 ~~Sec. 6. If a designated successor is not able to succeed the~~
21 ~~new watercraft dealer because of the designated successor's death~~
22 ~~or legal incapacity, the dealer, within 60 days after that death or~~
23 ~~incapacity, shall execute a new document nominating a designated~~
24 ~~successor.~~

25 (1) A DESIGNATED FAMILY MEMBER OF A DECEASED OR INCAPACITATED
26 NEW WATERCRAFT DEALER MAY SUCCEED THE DEALER IN THE OWNERSHIP OR
27 OPERATION OF THE DEALERSHIP UNDER THE EXISTING DEALER AGREEMENT IF

1 THE DESIGNATED FAMILY MEMBER GIVES THE MANUFACTURER WRITTEN NOTICE
2 OF HIS OR HER INTENTION TO SUCCEED THE DEALER WITHIN 120 DAYS AFTER
3 THE DEALER'S DEATH OR INCAPACITY, AGREES TO BE BOUND BY ALL OF THE
4 TERMS AND CONDITIONS OF THE DEALER AGREEMENT, AND MEETS THE CURRENT
5 CRITERIA GENERALLY APPLIED BY THE MANUFACTURER IN QUALIFYING NEW
6 WATERCRAFT DEALERS. A MANUFACTURER MAY REFUSE TO HONOR THE EXISTING
7 DEALER AGREEMENT WITH THE DESIGNATED FAMILY MEMBER ONLY FOR GOOD
8 CAUSE.

9 (2) A MANUFACTURER MAY REQUEST THAT A DESIGNATED FAMILY MEMBER
10 PROVIDE ANY PERSONAL AND FINANCIAL DATA THAT IS REASONABLY
11 NECESSARY TO DETERMINE WHETHER THE DESIGNATED FAMILY MEMBER MEETS
12 THE REQUIREMENTS OF SUBSECTION (1). THE DESIGNATED FAMILY MEMBER
13 SHALL SUPPLY THE PERSONAL AND FINANCIAL DATA PROMPTLY UPON REQUEST.

14 (3) IF A MANUFACTURER BELIEVES THAT GOOD CAUSE EXISTS, IT MAY
15 REFUSE TO APPROVE THE SUCCESSION OF A DESIGNATED FAMILY MEMBER
16 UNDER SUBSECTION (1). A MANUFACTURER WHO REFUSES SHALL PROVIDE THE
17 DESIGNATED FAMILY MEMBER WITH NOTICE OF ITS REFUSAL TO APPROVE THE
18 SUCCESSION WITHIN 60 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE OF
19 INTENTION FROM THE DESIGNATED FAMILY MEMBER UNDER SUBSECTION (1) OR
20 WITHIN 60 DAYS AFTER THE RECEIPT OF THE REQUESTED PERSONAL AND
21 FINANCIAL DATA UNDER SUBSECTION (2).

22 (4) A NOTICE OF REFUSAL PROVIDED BY A MANUFACTURER UNDER
23 SUBSECTION (3) SHALL STATE THE SPECIFIC GROUNDS FOR THE REFUSAL TO
24 APPROVE THE SUCCESSION AND THAT DISCONTINUANCE OF THE AGREEMENT
25 TAKES EFFECT NOT LESS THAN 90 DAYS AFTER THE DATE THE NOTICE IS
26 SERVED.

27 (5) IF A NOTICE OF REFUSAL IS NOT PROVIDED WITHIN THE 60-DAY

1 PERIOD DESCRIBED IN SUBSECTION (3), THE DEALER AGREEMENT CONTINUES
2 IN EFFECT AND IS SUBJECT TO TERMINATION ONLY AS OTHERWISE PERMITTED
3 BY THIS ACT.

4 (6) THIS SECTION DOES NOT PRECLUDE A NEW WATERCRAFT DEALER
5 FROM DESIGNATING ANY PERSON AS HIS OR HER SUCCESSOR IN A WRITTEN
6 INSTRUMENT FILED WITH A MANUFACTURER. IF A WRITTEN INSTRUMENT
7 DESCRIBED IN THIS SUBSECTION IS FILED WITH A MANUFACTURER, THAT
8 INSTRUMENT DETERMINES THE SUCCESSION RIGHTS TO THE OWNERSHIP AND
9 OPERATION OF THE DEALERSHIP.

10 Sec. 7. ~~(1) A designated successor of a deceased or~~
11 ~~incapacitated new watercraft dealer may succeed the dealer in the~~
12 ~~ownership or operation of the dealership under the existing dealer~~
13 ~~agreement if the designated successor gives the manufacturer or~~
14 ~~distributor written notice of his or her intention to succeed to~~
15 ~~the dealership within 60 days after the dealer's death or~~
16 ~~incapacity and agrees to be bound by all of the terms and~~
17 ~~conditions of the dealer agreement. A manufacturer or distributor~~
18 ~~may refuse to honor the existing dealer agreement with the~~
19 ~~designated successor for good cause or criteria agreed to in the~~
20 ~~existing dealer agreement.~~

21 ~~—— (2) The manufacturer or distributor may request from a~~
22 ~~designated successor the personal and financial data necessary to~~
23 ~~determine whether the existing dealer agreement should be honored.~~
24 ~~Upon request, the designated successor shall supply the personal~~
25 ~~and financial data.~~

26 ~~—— (3) Within 60 days after receiving the notice of the~~
27 ~~designated successor's intent to succeed the dealer in the~~

1 ~~ownership and operation of the dealership or within 60 days after~~
2 ~~receiving the requested personal and financial data, whichever last~~
3 ~~occurs, if a manufacturer or distributor believes that good cause~~
4 ~~or other criteria exist for refusing to honor the succession, the~~
5 ~~manufacturer or distributor may serve upon the designated successor~~
6 ~~notice of its refusal to approve the succession.~~

7 (1) BEFORE A MANUFACTURER ENTERS INTO A DEALER AGREEMENT
8 ESTABLISHING OR RELOCATING A NEW WATERCRAFT DEALER WITHIN A
9 RELEVANT MARKET AREA WHERE ANOTHER DEALER SELLS THE SAME MAKE,
10 MODEL, OR SIZE RANGE OF NEW WATERCRAFT FOR THE MANUFACTURER, THE
11 MANUFACTURER SHALL GIVE WRITTEN NOTICE TO EACH NEW WATERCRAFT
12 DEALER OF THE SAME MAKE, MODEL, OR SIZE RANGE OF WATERCRAFT IN THE
13 RELEVANT MARKET AREA OF ITS INTENTION TO ESTABLISH AN ADDITIONAL
14 DEALER OR TO RELOCATE AN EXISTING DEALER WITHIN THAT RELEVANT
15 MARKET AREA.

16 (2) WITHIN 30 DAYS AFTER RECEIVING A NOTICE UNDER SUBSECTION
17 (1), OR WITHIN 30 DAYS AFTER THE END OF ANY APPEAL PROCEDURE
18 PROVIDED BY THE MANUFACTURER, A NEW WATERCRAFT DEALER MAY BRING A
19 DECLARATORY JUDGMENT ACTION IN THE CIRCUIT COURT FOR THE COUNTY IN
20 WHICH THE NEW WATERCRAFT DEALER IS LOCATED TO DETERMINE WHETHER
21 GOOD CAUSE EXISTS FOR ESTABLISHING AN ADDITIONAL DEALER OR
22 RELOCATING AN EXISTING DEALER WITHIN THE PLAINTIFF'S RELEVANT
23 MARKET AREA. IF A DECLARATORY JUDGMENT ACTION IS FILED UNDER THIS
24 SUBSECTION, A MANUFACTURER SHALL NOT ESTABLISH THE ADDITIONAL
25 DEALER OR RELOCATE THE EXISTING DEALER UNTIL THE CIRCUIT COURT HAS
26 RENDERED A DECISION ON THE MATTER. THE CIRCUIT COURT SHALL GIVE AN
27 ACTION BROUGHT UNDER THIS SUBSECTION PRECEDENCE OVER ALL OTHER

1 CIVIL MATTERS ON THE COURT'S DOCKET.

2 (3) IN DETERMINING WHETHER GOOD CAUSE EXISTS UNDER SUBSECTION
3 (2), A CIRCUIT COURT SHALL TAKE INTO CONSIDERATION THE EXISTING
4 CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

5 (A) PERMANENCY OF THE INVESTMENT.

6 (B) EFFECT ON THE RETAIL NEW WATERCRAFT BUSINESS AND THE
7 CONSUMING PUBLIC IN THE RELEVANT MARKET AREA.

8 (C) WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC
9 WELFARE.

10 (D) WHETHER THE NEW WATERCRAFT DEALERS OF THE SAME MAKE,
11 MODEL, OR SIZE RANGE IN THAT RELEVANT MARKET AREA ARE PROVIDING
12 ADEQUATE COMPETITION AND CONVENIENT RETAIL CUSTOMER CARE FOR THE
13 WATERCRAFT OF THAT MAKE, MODEL, OR SIZE RANGE IN THE MARKET AREA,
14 CONSIDERING THE ADEQUACY OF WATERCRAFT SALES, AVAILABILITY OF
15 QUALIFIED SERVICE PERSONNEL, AND OTHER FACTORS DETERMINED BY THE
16 COURT.

17 (E) WHETHER THE ESTABLISHMENT OF THE ADDITIONAL NEW WATERCRAFT
18 DEALER OR RELOCATION OF THE EXISTING NEW WATERCRAFT DEALER WOULD
19 PROMOTE COMPETITION.

20 (F) GROWTH OR DECLINE OF THE POPULATION AND THE NUMBER OF NEW
21 WATERCRAFT REGISTRATIONS IN THE RELEVANT MARKET AREA.

22 (G) THE EFFECT ON THE ADDITIONAL OR RELOCATING DEALER OF A
23 DENIAL OF ITS RELOCATION INTO THE RELEVANT MARKET AREA.

24 (4) THIS SECTION DOES NOT APPLY TO THE RELOCATION OF A NEW
25 WATERCRAFT DEALER WITHIN 2 MILES OF ITS ESTABLISHED PLACE OF
26 BUSINESS.

27 (5) THIS SECTION SHALL NOT APPLY TO THE REOPENING OR

1 REPLACEMENT IN A RELEVANT MARKET AREA OF A CLOSED DEALERSHIP THAT
2 HAS BEEN CLOSED WITHIN THE PRECEDING YEAR, IF THE ESTABLISHED PLACE
3 OF BUSINESS OF THE REOPENED OR REPLACEMENT DEALER IS WITHIN 2 MILES
4 OF THE ESTABLISHED PLACE OF BUSINESS OF THE CLOSED DEALERSHIP.

5 SEC. 7A. IF A NEW WATERCRAFT DEALER ENTERS INTO A DEALER
6 AGREEMENT, THE DEALER SHALL WITHIN 30 DAYS OF EXECUTING THAT DEALER
7 AGREEMENT NOTIFY EVERY OTHER MANUFACTURER WITH WHICH IT HAS A
8 DEALER AGREEMENT OF THE NEW DEALER AGREEMENT.

9 SEC. 7B. (1) A MANUFACTURER SHALL PROVIDE EACH OF ITS NEW
10 WATERCRAFT DEALERS WITH A SCHEDULE OF COMPENSATION IT SHALL PAY THE
11 DEALER FOR PARTS, DIAGNOSTIC TIME, WORK, OR SERVICE PERFORMED
12 PURSUANT TO A WARRANTY AND A TIME ALLOWANCE FOR THE PERFORMANCE OF
13 ANY WORK OR SERVICE UNLESS A FLAT RATE IS ESTABLISHED. THE
14 MANUFACTURER SHALL PAY COMPENSATION TO A DEALER FOR DIAGNOSTIC
15 TIME, WARRANTY WORK, PARTS USED, OR SERVICE PERFORMED THAT IS THE
16 SAME AS THE RATES GENERALLY CHARGED BY THE DEALER FOR LIKE SERVICE
17 TO RETAIL CUSTOMERS FOR NONWARRANTY PARTS, SERVICE, OR REPAIRS. IF
18 THE SCHEDULE OF COMPENSATION PROVIDES THAT THE MANUFACTURER SHALL
19 COMPENSATE THE NEW WATERCRAFT DEALER FOR A SPECIFIC TYPE OF
20 WARRANTY WORK AT AN ESTABLISHED FLAT RATE, THAT ESTABLISHED FLAT
21 RATE FOR WARRANTY WORK MAY NOT FALL BELOW 90% OF THE RATE CHARGED
22 BY THE DEALER FOR NONWARRANTY WORK OF THE SAME KIND.

23 (2) THE MANUFACTURER OR DEALER SHALL ESTABLISH REASONABLE AND
24 ADEQUATE TIME ALLOWANCES FOR THE DIAGNOSIS AND PERFORMANCE OF
25 WARRANTY WORK AND SERVICE UNDER SUBSECTION (1).

26 (3) A MANUFACTURER SHALL NOT DO ANY OF THE FOLLOWING:

27 (A) FAIL TO PERFORM ANY WARRANTY OBLIGATION.

1 (B) FAIL TO INCLUDE IN A WRITTEN NOTICE OF A FACTORY RECALL TO
2 NEW WATERCRAFT OWNERS AND DEALERS THE DATE BY WHICH THE
3 MANUFACTURER EXPECTS ANY NECESSARY PARTS AND EQUIPMENT WILL BE
4 AVAILABLE TO DEALERS FOR THE CORRECTION OF THE DEFECTS.

5 (C) FAIL TO COMPENSATE A NEW WATERCRAFT DEALER IN THIS STATE
6 FOR A REPAIR PERFORMED PURSUANT TO A RECALL.

7 (4) ALL OF THE FOLLOWING APPLY TO A CLAIM MADE TO A
8 MANUFACTURER BY A NEW WATERCRAFT DEALER UNDER THIS SECTION FOR
9 LABOR OR PARTS:

10 (A) THE DEALER SHALL SUBMIT THE CLAIM ON THE CLAIM FORM
11 GENERALLY USED BY THE MANUFACTURER AND PROVIDE ALL OF THE
12 INFORMATION USUALLY REQUIRED BY THE MANUFACTURER.

13 (B) THE MANUFACTURER IN WRITING SHALL APPROVE, DISAPPROVE, OR
14 REQUEST MORE INFORMATION ABOUT THE CLAIM WITHIN 2 DAYS AFTER
15 RECEIVING THE CLAIM AND INFORMATION DESCRIBED IN SUBDIVISION (A).

16 (C) IF A MANUFACTURER DOES NOT SPECIFICALLY DISAPPROVE OF A
17 CLAIM IN WRITING WITHIN THE 2-DAY TIME PERIOD DESCRIBED IN
18 SUBDIVISION (B), THE CLAIM IS CONSIDERED APPROVED AND THE
19 MANUFACTURER SHALL PAY THE AMOUNT OF THE CLAIM TO THE DEALER.

20 (D) A MANUFACTURER MAY NOT CHARGE A CLAIM THAT IT HAS APPROVED
21 AND PAID UNDER THIS SUBSECTION BACK TO THE DEALER UNLESS THE
22 MANUFACTURER CAN DEMONSTRATE BOTH OF THE FOLLOWING:

23 (i) THE CLAIM WAS FRAUDULENT, FALSE, OR UNSUBSTANTIATED.

24 (ii) THE MANUFACTURER PAID THE CLAIM WITHIN THE 6-MONTH PERIOD
25 PRECEDING THE CHARGE BACK TO THE DEALER.

26 (E) THE MANUFACTURER SHALL PAY THE CLAIM WITHIN 30 DAYS AFTER
27 THE WARRANTY WORK IS COMPLETED.

1 (F) THE NEW WATERCRAFT DEALER SHALL MAINTAIN ALL RECORDS OF
2 ANY WARRANTY REPAIR FOR AT LEAST 12 MONTHS FOLLOWING PAYMENT OF THE
3 WARRANTY CLAIM.

4 (5) A MANUFACTURER SHALL COMPENSATE A NEW WATERCRAFT DEALER
5 FOR SALES OR SERVICE PROMOTION EVENTS, PROGRAMS, OR ACTIVITIES
6 SPONSORED BY THE MANUFACTURER IN ACCORDANCE WITH THE MANUFACTURER'S
7 ESTABLISHED GUIDELINES FOR THOSE EVENTS, PROGRAMS, OR ACTIVITIES.

8 (6) ALL OF THE FOLLOWING APPLY TO A CLAIM MADE BY A NEW
9 WATERCRAFT DEALER UNDER SUBSECTION (5) FOR COMPENSATION FOR A
10 PROMOTION EVENT, PROGRAM, OR ACTIVITY:

11 (A) THE DEALER SHALL SUBMIT THE CLAIM ON THE CLAIM FORM
12 GENERALLY USED BY THE MANUFACTURER AND PROVIDE ALL OF THE
13 INFORMATION USUALLY REQUIRED BY THE MANUFACTURER.

14 (B) THE MANUFACTURER IN WRITING SHALL APPROVE OR DISAPPROVE
15 THE CLAIM WITHIN 30 DAYS AFTER RECEIVING THE CLAIM AND INFORMATION
16 DESCRIBED IN SUBDIVISION (A).

17 (C) IF A MANUFACTURER DOES NOT SPECIFICALLY DISAPPROVE OF A
18 CLAIM IN WRITING WITHIN THE 30-DAY TIME PERIOD DESCRIBED IN
19 SUBDIVISION (B), THE CLAIM IS CONSIDERED APPROVED AND THE
20 MANUFACTURER SHALL PAY THE AMOUNT OF THE CLAIM TO THE DEALER.

21 (D) A MANUFACTURER MAY CHARGE A CLAIM THAT IT HAS APPROVED AND
22 PAID UNDER THIS SUBSECTION BACK TO THE DEALER, IF THE CHARGE BACK
23 OCCURS WITHIN A 6-MONTH PERIOD AFTER THE END OF THE PROMOTION
24 EVENT, PROGRAM, OR ACTIVITY, OR AFTER IT PAID THE CLAIM, WHICHEVER
25 IS LATER.

26 (E) THE MANUFACTURER SHALL PAY A CLAIM WITHIN 10 DAYS AFTER
27 THE CLAIM IS APPROVED UNDER SUBDIVISION (B) OR WITHIN 30 DAYS AFTER

1 A CLAIM IS CONSIDERED APPROVED UNDER SUBDIVISION (C).

2 (7) WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF A DEALER
3 AGREEMENT, THE MANUFACTURER SHALL ACT AS A SINGLE SOURCE OF CONTACT
4 FOR THE NEW WATERCRAFT DEALER FOR ALL OF THE MANUFACTURER'S
5 COMPONENT PART PRODUCT WARRANTIES. THIS SUBSECTION DOES NOT APPLY
6 TO A WARRANTY FOR ENGINE RELATED PARTS OR COMPONENTS.

7 (8) BEGINNING 2 YEARS AFTER THE EFFECTIVE DATE OF THIS
8 AMENDATORY ACT, A MANUFACTURER MUST PROVIDE EACH OF ITS NEW
9 WATERCRAFT DEALERS A PARTS AND COMPONENTS MANUAL.

10 (9) BEGINNING 2 YEARS AFTER THE EFFECTIVE DATE OF THIS
11 AMENDATORY ACT, A MANUFACTURER MUST INCLUDE AN OWNER'S MANUAL FOR
12 EACH NEW WATERCRAFT DELIVERED TO A NEW WATERCRAFT DEALER.

13 SEC. 7C. (1) A NEW WATERCRAFT DEALER IS SOLELY RESPONSIBLE FOR
14 ANY DAMAGE TO A NEW WATERCRAFT THAT OCCURS AFTER IT ACCEPTS THE
15 WATERCRAFT FROM THE CARRIER OR TRANSPORTER AND BEFORE DELIVERY TO
16 THE ULTIMATE PURCHASER THAT IS NOT THE RESULT OF A LATENT OR HIDDEN
17 DEFECT OR IS NOT REASONABLY OBSERVABLE AT THE TIME IT ACCEPTS THE
18 WATERCRAFT. A NEW WATERCRAFT DEALER ACCEPTS A NEW WATERCRAFT WHEN
19 IT SIGNS A DELIVERY RECEIPT FOR THE WATERCRAFT. A PROVISION IN A
20 DEALER AGREEMENT THAT IS CONTRARY TO THIS SUBSECTION IS
21 UNENFORCEABLE BY A MANUFACTURER.

22 (2) THE MANUFACTURER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO A
23 NEW WATERCRAFT THAT OCCURS BEFORE DELIVERY TO THE CARRIER OR
24 TRANSPORTER. A PROVISION IN A DEALER AGREEMENT THAT IS CONTRARY TO
25 THIS SUBSECTION IS UNENFORCEABLE BY A MANUFACTURER.

26 (3) A NEW WATERCRAFT DEALER IS RESPONSIBLE FOR DAMAGE TO A NEW
27 WATERCRAFT THAT OCCURS WHILE THE NEW WATERCRAFT IS IN THE

1 POSSESSION OF THE CARRIER OR TRANSPORTER ONLY IF THE DEALER SELECTS
2 THE METHOD OF TRANSPORTATION, MODE OF TRANSPORTATION, AND THE
3 CARRIER OR TRANSPORTER. IF NOT, THE MANUFACTURER IS RESPONSIBLE FOR
4 DAMAGE TO THE NEW WATERCRAFT.

5 (4) A NEW WATERCRAFT DEALER MAY REFUSE TO ACCEPT A DAMAGED NEW
6 WATERCRAFT BY PROVIDING WRITTEN NOTICE TO THE MANUFACTURER WITHIN
7 10 BUSINESS DAYS AFTER THE WATERCRAFT IS DELIVERED TO THE DEALER.
8 IF A NEW WATERCRAFT DEALER REFUSES TO ACCEPT A NEW WATERCRAFT, THE
9 MANUFACTURER SHALL CREDIT THE DEALER'S ACCOUNT FOR THE INVOICE COST
10 TO THE DEALER, PLUS FREIGHT AND INTEREST, WITHIN 10 BUSINESS DAYS
11 AFTER RECEIPT OF THE NOTICE FROM THE DEALER.

12 SEC. 7D. (1) A MANUFACTURER SHALL INDEMNIFY A NEW WATERCRAFT
13 DEALER FOR A JUDGMENT FOR DAMAGES OR SETTLEMENT AGREED TO IN
14 WRITING BY THE MANUFACTURER, AND FOR THE COURT COSTS AND REASONABLE
15 ATTORNEY FEES OF THE NEW WATERCRAFT DEALER, IF THE COMPLAINT,
16 CLAIM, OR ACTION IS BASED SOLELY ON A DEFECT OR DEFECTS OCCURRING
17 IN THE MANUFACTURE, CONSTRUCTION, ASSEMBLY, OR DESIGN OF A NEW
18 WATERCRAFT OR PARTS OR ACCESSORIES OTHER THAN OUTBOARD MOTORS AND
19 TRAILERS, THE SELECTION BY THE MANUFACTURER OF PARTS OR COMPONENTS
20 FOR THE WATERCRAFT, ANY DAMAGE TO THE NEW WATERCRAFT, PARTS, OR
21 ACCESSORIES OCCURRING IN TRANSIT TO THE DEALER IF THE CARRIER OR
22 TRANSPORTER IS DESIGNATED BY THE MANUFACTURER, OR ANOTHER FUNCTION
23 OR ACTION OF THE MANUFACTURER THAT IS BEYOND THE CONTROL OF THE
24 DEALER. IF THE COMPLAINT, CLAIM, OR ACTION CONTAINS INDEPENDENT
25 ALLEGATIONS AGAINST THE DEALER, THE MANUFACTURER SHALL PAY ONLY
26 THAT PORTION OF THE COSTS, FEES, AND JUDGMENT OR SETTLEMENT THAT IS
27 DIRECTLY RELATED TO THE MANUFACTURE, ASSEMBLY, OR DESIGN OF THE

1 WATERCRAFT, PARTS OR ACCESSORIES, OR OTHER FUNCTIONS OF THE
2 MANUFACTURER BEYOND THE CONTROL OF THE DEALER.

3 (2) A MANUFACTURER IS NOT REQUIRED TO INDEMNIFY A NEW
4 WATERCRAFT DEALER UNDER SUBSECTION (1) IF THE DEALER HAS NOT GIVEN
5 REASONABLE NOTICE IN WRITING OF THE COMPLAINT, CLAIM, OR ACTION TO
6 THE MANUFACTURER.

7 (3) AN INDEMNIFICATION PROVISION IN A DEALER AGREEMENT THAT IS
8 CONTRARY TO THIS SECTION IS UNENFORCEABLE BY A MANUFACTURER.

9 SEC. 7E. (1) IF A MANUFACTURER TERMINATES, CANCELS, FAILS TO
10 RENEW, OR DISCONTINUES A DEALER AGREEMENT WITHOUT GOOD CAUSE UNDER
11 SECTION 4A, A NEW WATERCRAFT DEALER MAY BRING AN ACTION AGAINST THE
12 MANUFACTURER TO RECOVER ACTUAL DAMAGES REASONABLY INCURRED AS A
13 RESULT OF THE TERMINATION, CANCELLATION, NONRENEWAL, OR
14 DISCONTINUANCE.

15 (2) A MANUFACTURER THAT VIOLATES THIS ACT IS RESPONSIBLE FOR
16 ALL DAMAGES SUSTAINED BY A NEW WATERCRAFT DEALER AS A RESULT OF THE
17 VIOLATION AND FOR COURT COSTS AND REASONABLE ATTORNEY FEES INCURRED
18 BY THE DEALER. A NEW WATERCRAFT DEALER THAT VIOLATES THIS ACT IS
19 RESPONSIBLE FOR ALL DAMAGES SUSTAINED BY A MANUFACTURER AS A RESULT
20 OF THE VIOLATION AND FOR COURT COSTS AND REASONABLE ATTORNEY FEES
21 INCURRED BY THE MANUFACTURER.

22 (3) A MANUFACTURER OR NEW WATERCRAFT DEALER MAY BRING AN
23 ACTION FOR DECLARATORY JUDGMENT FOR DETERMINATION OF ANY
24 CONTROVERSY ARISING UNDER THIS ACT.

25 (4) A MANUFACTURER OR NEW WATERCRAFT DEALER MAY APPLY TO THE
26 CIRCUIT COURT AND OBTAIN APPROPRIATE INJUNCTIVE RELIEF AGAINST
27 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A

1 DEALER AGREEMENT OR ANY OTHER VIOLATION OF THIS ACT. THE COURT MAY
2 GRANT INJUNCTIVE RELIEF OR A TEMPORARY RESTRAINING ORDER WITHOUT
3 BOND.

4 SEC. 7F. A PROVISION IN A DEALER AGREEMENT THAT IS CONTRARY TO
5 THIS ACT IS UNENFORCEABLE BY A MANUFACTURER.

6 SEC. 8. (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. This amendatory act takes effect 30 days
18 after the date it is enacted.