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DELAWARE STATE SENATE  
153rd GENERAL ASSEMBLY

SENATE BILL NO. 286  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 87. New Recreational Equipment Manufacturer-Dealer Agreements

§ 8701. Legislative intent.

(a) The intent of the General Assembly is to protect the public health, safety, and welfare of the residents of the State by regulating the relationship among new recreational equipment dealers, manufacturers, distributors, and suppliers; maintaining competition; and providing consumer protection and fair trade.

(b) The intent of the General Assembly is that the provisions of this chapter be applied to manufacturer-dealer agreements in regard to new recreational equipment, entered into on or after July 1, 2014.

§ 8702. Definitions.

As used in this chapter:

(1) "Area of sales responsibility" means the geographical area, agreed to by the new recreational equipment dealer and the manufacturer in the manufacturer-dealer agreement, within which the new recreational equipment dealer has the exclusive right to display or sell the manufacturer's new recreational equipment of a particular line-make to the retail public.

(2) a. "All-terrain vehicle" or "ATV" means a motorized "off-highway vehicle" or "OHV" designed to travel on 4 low-pressure tires, with a seat straddled by the operator and handlebars for steering control. For purposes of this definition, the term "ATV" includes motorized golf carts and go-karts that are not registered for on-road use or that are operated off-road.

b. “ATV” does not include a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law-enforcement purposes, a construction or logging vehicle used in the performance of its common function, an electric personal assistive mobility device, or a registered aircraft.

(3) “Distributor” means a person, firm, corporation, or business entity that purchases new recreational equipment from a manufacturer for resale to new recreational equipment dealers.

(4) “Factory campaign” means an effort on the part of a warrantor to contact new recreational equipment owners or new recreational equipment dealers in order to address a part or equipment issue.

(5) “Family member” means a spouse, child, grandchild, parent, sibling, niece, or nephew, or the spouse thereof.

(6) “Line-make” means a specific series of new recreational equipment that meets all of the following:

a. Are identified by a common series trade name or trademark

b. Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range.

c. Have lengths and interior floor plans that distinguish the new recreational equipment from other new recreational equipment with substantially the same decor, equipment, features, price, and weight.

d. Belong to a single, distinct classification of new recreational equipment types having a substantial degree of commonality in the construction of the chassis, frame, and body.

e. The manufacturer-dealer agreement authorizes a new recreational equipment dealer to sell.

(7) “Manufacturer” means a person, firm, corporation, or business entity that engages in the manufacturing of new recreational equipment.

(8) “Manufacturer-dealer agreement” means a written agreement or contract entered into between a manufacturer and a new recreational equipment dealer that fixes the rights and responsibilities of the parties and pursuant to which the new recreational equipment dealer sells new recreational equipment.

(9) “New recreational equipment” means a motorized vessel, ATV, OHV, SSV, cargo trailer, or vessel trailer which has not been titled.

(10) “New recreational equipment dealer” means a person, firm, corporation, or business entity who is engaged in the business of buying, selling, or exchanging new recreational equipment.

(11) a. “Off-highway vehicle” or “OHV” means a motor driven off-road vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland or other natural terrain. “OHV” includes a multi-wheel drive or low-pressure tire vehicle, an amphibious machine, a ground effect

air-cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind.

b. “OHV” does not include a farm vehicle being used for farming, a vehicle used for military, fire, emergency or law-enforcement purposes, a construction or logging vehicle used in performance of its common function, electric bicycle, electric personal assistive mobility device, or a registered aircraft.

(12) “Proprietary part” means any part manufactured by or for, and sold exclusively by, the manufacturer.

(13) “Side-by-side vehicle” or “SxS” or “SSV” means a utility vehicle with a minimum of 2 seats positioned side-by-side and enclosed within a roll cage structure. A side-by-side vehicle has a minimum of 4 wheels or continuous tracks and is operated by foot controls and a steering wheel. Depending on use and application, a side-by-side vehicle may also be called a utility task vehicle, utility terrain vehicle (UTV), recreational off-highway vehicle (ROV), or multipurpose off-highway utility vehicle (MOHUV).

(14) “Supplier” means any person, firm, corporation, or business entity that engages in the manufacturing of new recreational equipment parts, accessories, or components.

(15) “Transient customer” means a customer who is temporarily traveling through a new recreational equipment dealer’s area of sales responsibility.

(16) “Vessel” means any watercraft or artificial contrivance used for transportation on water.

(17) “Warrantor” means any person, firm, corporation, or business entity, including any manufacturer or supplier that provides a written warranty to the consumer in connection with a piece of new recreational equipment, or parts, accessories, or components thereof. The term “warrantor” does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a new recreational equipment dealer or other person not controlled by a manufacturer.

§ 8703. Written agreements and designated territories.

(a) A manufacturer or distributor may not sell any new recreational equipment in this State to or through a new recreational equipment dealer without having first entered into a written and signed manufacturer-dealer agreement with a new recreational equipment dealer.

(b) A manufacturer or distributor must designate the area of sales responsibility exclusively assigned to a new recreational equipment dealer in a manufacturer-dealer agreement and may not change the area or contract with another new recreational equipment dealer for the sale of the same line-make in the designated area during the duration of the agreement.

(c) The area of sales responsibility may not be reviewed or changed without the consent of both parties for 1 year after the execution of the manufacturer-dealer agreement.

(d) Except as provided in subsection (e) of this section, a new recreational equipment dealer may not sell any new recreational equipment in this State without having first entered into a manufacturer-dealer agreement with a manufacturer or distributor which has been signed by both parties.

(e) A new recreational equipment dealer may not be prohibited from selling a particular line-make after a manufacturer-dealer agreement has been terminated or not renewed under § 8704 of this title, if new recreational equipment of the terminated line-make is not returned or required to be returned to the manufacturer. The new recreational equipment dealer may continue to sell all line-makes that were subject to the manufacturer-dealer agreement and are currently in stock until those line-makes are no longer in the new recreational equipment dealer's inventory.

(f) A manufacturer must specify in writing to each of its new recreational equipment dealers licensed in this State the dealer's obligations for predelivery preparation, manufacturer-sponsored maintenance programs, manufacturer extended warranty, certified pre-owned warranty, manufacturer-issued service contracts, parts exchange programs, recall, and warranted service on its products.

(g) A manufacturer must compensate the new recreational equipment dealer for such service required of the dealer by the manufacturer and provide the dealer with a schedule of compensation to be paid such dealer for parts, work, and services in connection therewith, and the time allowance for the performance of such work and service.

§ 8704. Termination, cancellation, nonrenewal, or alteration of a dealership.

(a) A manufacturer or distributor, directly or through any authorized officer, agent, or employee, may not terminate, cancel, or fail to renew a manufacturer-dealer agreement without good cause. If the manufacturer or distributor with good cause terminates, cancels, or fails to renew the manufacturer-dealer agreement, § 8705 of this title does not apply.

(b) A manufacturer or distributor has the burden of showing good cause for terminating, canceling, or failing to renew a manufacturer-dealer agreement with a new recreational equipment dealer. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(1) The extent of the affected new recreational equipment dealer's penetration in the area of sales responsibility.

(2) The nature and extent of the new recreational equipment dealer's investment in its business.

(3) The adequacy of the new recreational equipment dealer's service facilities, equipment, parts, supplies, and personnel.

(4) The effect of the proposed action on the community.

(5) The extent and quality of the new recreational equipment dealer's service under new recreational equipment warranties.

(6) The new recreational equipment dealer's failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

(7) The new recreational equipment dealer's performance under the terms of its manufacturer-dealer agreement.

(c) Except as otherwise provided in this chapter, a manufacturer or distributor shall provide a new recreational equipment dealer with at least 120 days prior written notice of termination, cancellation, or nonrenewal of the manufacturer-dealer agreement if the new recreational equipment dealer is being terminated, cancelled, or nonrenewed for good cause.

(1) The notice must state all reasons for the proposed termination, cancellation, or nonrenewal and must further state that if, within 30 days following receipt of the notice, the new recreational equipment dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the new recreational equipment dealer will then be entitled to the full 120-day notice period, commencing from the new recreational equipment dealer's receipt of the manufacturer's or distributor's original notice to rectify the deficiencies. If the deficiencies are rectified within the 120-day period, the manufacturer's or distributor's notice is voided. If the new recreational equipment dealer fails to provide the notice of intent to cure the deficiencies in the prescribed 30-day time period, the termination, cancellation, or nonrenewal takes effect 30 days after the new recreational equipment dealer's receipt of the manufacturer's or distributor's original notice.

(2) The notice period may be reduced to 30 days if the manufacturer's or distributor's grounds for termination, cancellation, or nonrenewal are due to any of the following good cause factors:

a. A new recreational equipment dealer being convicted of, or entering a plea of nolo contendere to, a felony.

b. The abandonment or closing of the business operations of the new recreational equipment dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the new recreational equipment dealer has no control.

c. A significant misrepresentation by a new recreational equipment dealer that materially affects the business relationship between the new recreational equipment dealer and the manufacturer or distributor.

d. A suspension or revocation of a new recreational equipment dealer's license, or refusal to renew the new recreational equipment dealer's license, by the Division of Motor Vehicles.

e. A material violation of this chapter which the new recreational equipment dealer does not cure within 30 days after written notice by the manufacturer or distributor.

f. A declaration by a new recreational equipment dealer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(d) A new recreational equipment dealer may terminate, cancel, or not renew its manufacturer-dealer agreement with a manufacturer or distributor with or without good cause by giving 30-days written notice. In the case of a new recreational equipment dealer terminating, cancelling, or failing to renew a manufacturer-dealer agreement for good cause, the notice must state all the reasons for the proposed termination, cancellation, or nonrenewal, and must further state that if, within 30 days following receipt of the notice, the manufacturer or distributor provides to the new recreational equipment dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then be entitled to a 90-day notice period commencing from the manufacturer's receipt of the new recreational equipment dealer's original notice. If the deficiencies are rectified within the 90-day notice period, the new recreational equipment dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the prescribed 30-day time period, the termination, cancellation, or nonrenewal takes effect 30 days after the manufacturer's or distributor's receipt of the new recreational equipment dealer's original notice, unless the parties agree otherwise in writing.

(e) If the new recreational equipment dealer terminates, cancels or fails to renew a manufacturer-dealer agreement without good cause, the provisions of § 8705 of this title do not apply. If the new recreational equipment dealer terminates, cancels, or fails to renew the manufacturer-dealer agreement with good cause, § 8705 of this title applies. The new recreational equipment dealer has the burden of showing good cause. Any of the following items are considered "good cause" for a proposed termination, cancellation, or nonrenewal action by the new recreational equipment dealer:

(1) A manufacturer or distributor being convicted of, or entering a plea of nolo contendere to, a felony.

(2) The business operations of a manufacturer or distributor have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(3) A significant misrepresentation by a manufacturer or distributor that materially affects the business relationship between the manufacturer and the new recreational equipment dealer.

(4) A material violation of this chapter which the manufacturer or distributor does not cure within 30 days after written notice by the new recreational equipment dealer.

(5) A declaration by a manufacturer or distributor of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

§ 8705. Repurchase of inventory.

(a) If a new recreational equipment dealer terminates, cancels, or fails to renew a manufacturer-dealer agreement for good cause as defined in § 8704(e) of this title and the manufacturer fails to cure the claimed deficiencies as provided in § 8704(d) of this title, at the election of the new recreational equipment dealer and within 45 days after termination, cancellation, or nonrenewal, the manufacturer must do all of the following:

(1) Repurchase all new, untitled recreational equipment that was acquired from the manufacturer or distributor within 12 months before the effective date of the notice of termination, cancellation, or nonrenewal that has not been used, except for demonstration purposes, and that has not been altered or damaged, at 100% of the net invoice cost, including transportation, less applicable rebates and discounts to the new recreational equipment dealer. If any of the equipment repurchased pursuant to this paragraph is damaged, but does not trigger a consumer disclosure requirement, the amount due the new recreational equipment dealer must be reduced by the cost to repair the equipment. Damage prior to delivery to the new recreational equipment dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision.

(2) Repurchase all undamaged accessories and proprietary parts sold to a new recreational equipment dealer for resale within the 12 months prior to termination, cancellation, or nonrenewal, if accompanied by the original invoice, at 105% of the original net price paid to the manufacturer or distributor to compensate the new recreational equipment dealer for handling, packing, and shipping the parts.

(3) Repurchase any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100% of the new recreational equipment dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if the items were purchased by the new recreational equipment dealer within 5 years before termination, cancellation, or nonrenewal upon the manufacturer's or distributor's request, and can no longer be used in the normal course of the new recreational equipment dealer's ongoing business.

(4) Compensate the dealer for any transporting, handling, packing, storing, and loading of any returned parts, tools, and equipment.

(b) The manufacturer or distributor must pay the new recreational equipment dealer within 30 days of receipt of the items returned pursuant to this section.

§ 8706. Transfer of dealership; family succession.

(a) If a new recreational equipment dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the new recreational equipment dealer shall give the manufacturer or distributor written notice at least 15 business days before the closing, along with all supporting documentation that may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made. In the absence of a breach by the selling new recreational equipment dealer of its manufacturer-dealer agreement or a provision of this chapter, the manufacturer or distributor may not object to the proposed change in ownership unless any of the following apply to the prospective transferee:

(1) Has previously been terminated by the manufacturer for breach of its manufacturer-dealer agreement.

(2) Has been convicted of a felony or any crime of fraud, deceit, or moral turpitude.

(3) Lacks a license required by law.

(4) Does not have an active line of credit sufficient to purchase a manufacturer's or distributor's product.

(5) In the last 10 years, has undergone bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property.

(b) If the manufacturer or distributor objects to a proposed change of ownership pursuant to subsection (a) of this section, the manufacturer or distributor shall give written notice of its reasons to the new recreational equipment dealer within 10 business days after receipt of the new recreational equipment dealer's notification and all supporting documentation. The manufacturer or distributor has the burden of proof with regard to its objection. If the manufacturer or distributor does not give timely notice of its objection, the change of ownership is deemed approved.

(c) It is unlawful for a manufacturer or distributor to fail to provide a new recreational equipment dealer with an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the new recreational equipment dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired new recreational equipment dealer, unless the manufacturer or distributor has provided to the new recreational equipment dealer written notice of its objections within 10 days after receipt of the new recreational equipment dealer's modification of the new recreational equipment dealer's succession plan. In the absence of a breach of the manufacturer-dealer agreement, the manufacturer or distributor may object to the succession only if one of the following applies:

(1) Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude.

(2) Bankruptcy or insolvency of the successor during the past 10 years.

(3) Prior termination by the manufacturer or distributor of the successor for breach of a manufacturer-dealer agreement.

(4) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's or distributor's product.

(5) The lack of a license for the successor required by law.

(d) A manufacturer or distributor has the burden of proof regarding its objection under subsection (c) of this section. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's or distributor's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer-dealer agreement.

§ 8707. Warranty obligations; sales incentives.

(a) A warrantor must do all of the following:

(1) Specify in writing to each of its new recreational equipment dealers all new recreational equipment dealer obligations, if any, for preparation, delivery, and warranty service on its products.

(2) Compensate the new recreational equipment dealer for performing warranty service required of the new recreational equipment dealer by the warrantor.

(3) Provide the new recreational equipment dealer with a schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation must include reasonable compensation for diagnostic work as well as for warranty labor.

(b) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration are the actual wage rates being paid by the new recreational equipment dealer and the actual retail labor rate being charged by the new recreational equipment dealers in the community in which the new recreational equipment dealer is doing business. The compensation of a new recreational equipment dealer for warranty labor may not be less than the retail labor rates actually charged by the new recreational equipment dealer for like nonwarranty labor, as long as such rates are reasonable.

(c) With respect to parts reimbursement, reasonable compensation may not be less than the rate charged by the dealer for like services to nonwarranty customers for nonwarranty parts and service, and may not be less than actual wholesale cost plus a minimum 40% handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(d) Warranty audits of new recreational equipment dealer records may be conducted by the warrantor on a reasonable basis, and new recreational equipment dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(e) A new recreational equipment dealer must submit warranty claims within 180 days after completing work.

(f) A new recreational equipment dealer must immediately notify a warrantor, verbally or in writing, if the new recreational equipment dealer is unable to perform any warranty repairs within 180 days of receipt of verbal or written complaints from a consumer.

(g) (1) A warrantor must disapprove warranty claims in writing within 30 days after the work is completed and submitted by the new recreational equipment dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within 30 days are construed to be approved and must be paid within 45 days after the work is completed and the claim submitted.

(2) All claims made by new recreational equipment dealers pursuant to this section for compensation for labor and parts must be paid within 30 days following their approval. A warrantor retains the right to audit those claims and to charge back the dealer for claims due to fraud, work done unnecessarily, or work not properly performed for a period of 180 days following payment.

(3) Within 30 days of receiving the warrantor's notice of denial of the dealer's parts or labor submission pursuant to this subsection, a new recreational equipment dealer may file with the Public Service Commission a protest to the warrantor's denial. If a protest is filed, the warrantor has the burden of proof to establish that the dealer's submission did not meet the respective submission requirements contained within this section. If a dealer prevails in a protest filed under this section, the dealer's increased parts or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the warrantor's denial.

(h) It is a violation of this chapter for a warrantor to do any of the following:

(1) Fail to perform any of its warranty obligations with respect to its warranted products.

(2) Fail to include, in written notices of factory campaigns to new recreational equipment owners and new recreational equipment dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to new recreational equipment dealers to perform the campaign work. A warrantor may ship parts to a new recreational equipment dealer to effect the campaign work, and, if the parts are in excess of the new recreational equipment dealer's requirements, the new recreational equipment dealer may return unused parts to the warrantor for credit after completion of the campaign.

(3) Fail to compensate any of its new recreational equipment dealers for authorized repairs effected by the new recreational equipment dealer of merchandise damaged in manufacture or transit to the new recreational equipment dealer, if the carrier is selected by the warrantor, factory branch, distributor, or distributor branch.

(4) Fail to compensate any of its new recreational equipment dealers in accordance with the schedule of compensation provided to the new recreational equipment dealer pursuant to this section, if performed in a timely and competent manner.

(5) Intentionally misrepresent in any way to purchasers of new recreational equipment that warranties with respect to the manufacture, performance, or design of the equipment are made by the new recreational equipment dealer as warrantor or cowarrantor.

(6) Require a new recreational equipment dealer to make warranties to customers in any manner related to the manufacture of the new recreational equipment.

(i) It is a violation of this chapter for a new recreational equipment dealer to do any of the following:

(1) Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner.

(2) Fail to perform warranty service work authorized by the warrantor in a competent and timely manner on any transient customer's equipment of the same line-make.

(3) Fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the number of repair attempts for the same repair conducted on a single piece of equipment.

(4) Fail to notify the warrantor within 10 days of a second repair attempt which impairs the use, value, or safety of the equipment.

(5) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair.

(6) Make fraudulent warranty claims or misrepresent the terms of a warranty.

(j) A schedule of compensation for services identified in paragraph (a)(1) of this section must include reasonable compensation for diagnostic work, parts, repair service, and labor. With respect to manufacturer-sponsored maintenance programs, manufacturer extended warranty, certified pre-owned warranty, manufacturer-issued service contracts, parts exchange programs, recall and warranty parts, and labor reimbursement, reasonable compensation may not be less than the rate charged by the dealer for like services to nonwarranty customers for nonwarranty parts, services, and repairs. If a manufacturer furnishes a part or a component to a dealer at no cost or a reduced cost to use in performing repairs under a

recall, campaign service action, or warranty repair, the manufacturer must compensate the dealer for the part or component in the same manner as warranty parts compensation under paragraph (a)(1) of this section, less the dealer cost for the part or component as listed in the manufacturer's price schedule.

(1) For the purposes of this section, the dealer's rate charged to nonwarranty customers for parts and labor are established by the dealer submitting to the warrantor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering like repairs made no more than 180 days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation takes effect within 30 days after the initial submission to the warrantor and is presumed to be fair and reasonable.

(2) Within 30 days following receipt of the declared schedule of compensation from the dealer, the warrantor may make reasonable requests for additional information supporting the declared schedule of compensation. The 30-day time frame in which the warrantor must make the schedule of compensation effective commences following receipt from the dealer of any reasonably requested supporting information. No warrantor may require a recreational equipment dealer to establish a schedule of compensation by requiring supportive information that is unduly burdensome or time consuming to provide, including part-by-part or transaction-by-transaction calculations. The dealer may not request a change in the schedule of compensation more than once every 9 months.

(k) A warrantor may not take or threaten to take adverse action against a dealer who seeks to obtain compensation pursuant to this section, including by creating or implementing an obstacle or process that is inconsistent with the warrantor's obligations to the dealer under this section.

(l) Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may only be conducted for a period of 180 days following the date of the termination of the sales incentives program, service incentives program, rebate program, or other form of incentive compensation program. These limitations do not apply fraudulent claims.

#### § 8708. Indemnification.

Notwithstanding the terms of any manufacturer-dealer agreement, it is a violation of this chapter for:

(1) A warrantor to fail to indemnify and hold harmless its new recreational equipment dealer against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the warrantor. A new recreational equipment dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of new recreational equipment. A new recreational equipment dealer may be denied indemnification if the new recreational equipment dealer fails to remedy a known and announced defect

in accordance with the written instructions of a warrantor for whom the new recreational equipment dealer is obligated to perform warranty service. A new recreational equipment dealer shall provide to a warrantor a copy of any pending lawsuit in which allegations are made that are covered by the provisions of this paragraph within 10 days after receiving such suit. Notwithstanding anything to the contrary, this paragraph continues to apply even after the new recreational equipment is titled.

(2) A new recreational equipment dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the new recreational equipment dealer. A warrantor shall provide to a new recreational equipment dealer a copy of any pending lawsuit or similar proceeding in which allegations are made that come within the provisions of this paragraph within 10 days after receiving such suit. Notwithstanding anything to the contrary, this paragraph continues to apply even after the new recreational equipment is titled.

§ 8709. Inspection and rejection by the dealer.

(a) If a piece of new recreational equipment is damaged prior to transit to a new recreational equipment dealer or is damaged in transit to the new recreational equipment dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the new recreational equipment dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer-dealer agreement and must do one of the following:

(1) Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or to otherwise correct the damage.

(2) Reject the equipment within the timeframe set forth in subsection (d) of this section.

(b) If a manufacturer or distributor refuses or fails to authorize repair of damage pursuant to subsection (a) of this section within 10 days after receipt of notification, or if the new recreational equipment dealer rejects the new recreational equipment because of damage, ownership of the new recreational equipment reverts to the manufacturer or distributor.

(c) A new recreational equipment dealer shall exercise due care while the damaged new recreational equipment in the new recreational equipment dealer's custody, but the new recreational equipment dealer has no other obligations, financial or otherwise, with respect to the equipment.

(d) The timeframe for inspection and rejection of a new recreational equipment by a new recreational equipment dealer must be part of the manufacturer-dealer agreement and may not be less than 2 business days after the physical delivery of the equipment.

(e) Any new recreational equipment that has, at the time of delivery to a new recreational equipment dealer, an unreasonable amount of miles or hours on its odometer or meter as determined by the new recreational equipment dealer,

may be subject to rejection by the new recreational equipment dealer and reversion of the equipment to the manufacturer or distributor. In no instance may a new recreational equipment dealer deem an amount less than the distance between the new recreational equipment dealer and the manufacturer's factory or a distributor's point of distribution, plus 100 miles, as unreasonable.

§ 8710. Coercion of new recreational equipment dealer prohibited.

(a) A manufacturer or distributor may not coerce or attempt to coerce a new recreational equipment dealer to do any of the following:

(1) Purchase a product that the new recreational equipment dealer did not order.

(2) Enter into an agreement with the manufacturer or distributor.

(3) Enter into an agreement that requires the new recreational equipment dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this chapter.

(b) As used in this section, the term "coerce" includes threatening to terminate, cancel, or not renew a manufacturer-dealer agreement without good cause; or threatening to withhold product lines that the new recreational equipment dealer is entitled to purchase pursuant to the manufacturer-dealer agreement; or threatening to delay product delivery as an inducement to amending the manufacturer-dealer agreement.

§ 8711. Mediation.

(a) A new recreational equipment dealer, manufacturer, distributor, or warrantor injured by another party's violation of this chapter may bring a civil action to recover actual damages. The court may award reasonable attorneys' fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section is in the county in which the new recreational equipment dealer's business is located. In an action involving more than 1 new recreational equipment dealer, venue may be in any county in which any new recreational equipment dealer that is a party to the action is located.

(b) Prior to bringing suit under this chapter, the plaintiff must serve upon the offending party a written demand for mediation. Mediation must take place in accordance with this section; Chapter 77 of Title 6 does not apply.

(1) In the case of a manufacturer, distributor, or new recreational equipment dealer, a demand for mediation must be served upon the other party via certified mail at the address stated within the manufacturer-dealer agreement between the parties. In the case of a different warrantor, the notice must be sent via certified mail to the address identified in the warrantor's warranty, with a copy to the manufacturer or distributor.

(2) A demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand.

(3) Within 20 days after the date on which a demand for mediation is served, the parties must mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place must be in this State in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation by both parties.

(4) The service of a demand for mediation under this section tolls the time for the filing of a complaint, petition, protest, or other action under this chapter until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before meeting with the mediator, the court shall enter an order suspending the proceeding or action until mediation has occurred, and, upon written stipulation by all parties to the proceeding or action that they wish to continue to mediate under this section, the court shall enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(5) The parties to the mediation shall bear their own costs for attorneys' fees and divide equally the cost of the mediator.

(c) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a manufacturer, distributor, warrantor, or new recreational equipment dealer may make application to a court of competent jurisdiction for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a new recreational equipment dealer without being properly licensed, from violating or continuing to violate any of the provisions of this chapter, or from failing or refusing to comply with the requirements of this chapter. An injunction must be issued without bond. A single act in violation of the provisions of this chapter is sufficient for a court to authorize the issuance of an injunction.

§ 8712. Regulations.

The Division of Motor Vehicles has the authority to promulgate and adopt rules and regulations necessary to carry out the provisions of this chapter.

§ 8713. Association standing.

(a) In order to prevent injury or harm to all or a substantial number of its members or to the franchise distribution system of new recreational equipment within this State, any association that has as members at least 4 recreational equipment dealers, substantially all of whom are new recreational equipment dealers located within the State, and that represents the collective interests of its members, has standing to file a petition or a civil action against a manufacturer regulated under this chapter to enforce the provisions of this chapter in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Any such association also has standing to

intervene as a party in an action against a manufacturer regulated under this chapter previously filed by an individual member or members of the association to enforce the provisions of this chapter. This section does not authorize an association to file a petition, civil action, or administrative proceeding, or to intervene in any civil action or administrative proceeding, with or against the State or any of its agencies.

(b) An action brought pursuant to this section may seek a determination of whether 1 or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this chapter, or for the determination of any rights created or defined by this chapter, so long as the association alleges an injury to the collective interest of its members cognizable under this section.