



SPONSOR: Rep. Willis & Sen. Ennis;
Reps. Kenton, D. Short, Q. Johnson, B. Short

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 352

AN ACT TO AMEND TITLE 21 AND TITLE 30 OF THE DELAWARE CODE RELATING TO RECREATIONAL VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 21 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through to read:

CHAPTER 84. RECREATIONAL VEHICLE MANUFACTURER-DEALER AGREEMENTS.

§ 8401. Legislative intent.

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

(b) The intent of the Legislature is that the provisions of this chapter be applied to manufacturer-dealer agreements in regard to recreational vehicles, entered into on or after July 1, 2013.

§ 8402. Definitions.

As used in this chapter, the following definitions apply:

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

(2) "Dealer" means a person, firm, corporation, or business entity who is engaged in the business of buying, selling, or exchanging new recreational vehicles.

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

(4) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or 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 recreational vehicle products that:
- 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 recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;
 - d. Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and
 - e. The manufacturer-dealer agreement authorizes a dealer to sell.
- (7) "Manufacturer" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.
- (8) "Manufacturer-dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.
- (9) "New recreational vehicle" means a motorhome, travel trailer, fifth-wheel trailer, or folding camping trailer, which has not been the subject of a retail sale.
- (10) "Proprietary part" means any part manufactured by or for, and sold exclusively by, the manufacturer.
- (11) "Recreational vehicle" means a vehicle which is primarily designed as temporary living quarters for recreational, camping, or travel use, and that either has its own motive power or is towed by another motor vehicle. A "recreational vehicle" may be a motor home, travel trailer, fifth-wheel travel trailer, or folding camping trailer.
- a. "Motor home" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use. A "motor home" must contain at least four of the following permanently installed, independent life-support systems which meet the National Fire Protection Association standard for recreational vehicles:
 - (i) A cooking facility with an on-board fuel source;
 - (ii) A potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection;
 - (iii) A toilet with exterior evacuation;

(iv) A gas or electric refrigerator;

(v) A heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or

(vi) A 110-125 volt electric power supply.

b. "Travel trailer" means a vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use. A "travel trailer" must be of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle.

c. "Fifth-wheel trailer" means a vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use. A "fifth-wheel trailer" must be of such size and weight as to not require a special highway movement permit, and must be designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. "Folding camping trailer" means a vehicle that is mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

(12) "Supplier" means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components.

(13) "Transient customer" means a customer who is temporarily traveling through a dealer's area of sales responsibility.

(14) "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 new recreational vehicle 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 dealer or other person not controlled by a manufacturer.

§ 8403. Written agreements and designated territories.

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

(b) A manufacturer or distributor shall designate the area of sales responsibility exclusively assigned to a dealer in a manufacturer-dealer agreement and may not change the area or contract with another dealer for the sale of the same line-make in the designated area during the duration of the agreement, except as provided for in §6311(b) of this title.

(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 (5) of this section, a recreational vehicle dealer may not sell a new recreational vehicle 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 dealer may not be prohibited from selling a particular line-make after a manufacturer-dealer agreement has been terminated or not renewed under § 8404 of this chapter, if recreational vehicles of the terminated line-make are not returned or required to be returned to the manufacturer. The 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 dealer's inventory.

§ 8404. 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, § 8405 of this chapter 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 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 dealer's penetration in the area of sales responsibility.

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

(3) The adequacy of the 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 dealer's service under recreational vehicle warranties.

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

(7) The 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 dealer with at least 120 days prior written notice of termination, cancellation, or nonrenewal of the manufacturer-dealer agreement if the 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 dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then be entitled to the full 120-day notice period, commencing from the dealer's receipt of the manufacturer's or distributor's original notice to

111 rectify the deficiencies. If the deficiencies are rectified within the 120-day notice period, the manufacturer's or
112 distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies in the
113 prescribed 30-day time period, the termination, cancellation, or nonrenewal takes effect 30 days after the dealer's
114 receipt of the manufacturer's or distributor's original notice.

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

117 a. A dealer being convicted of, or entering a plea of *nolo contendere* to, a felony;

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

121 c. A significant misrepresentation by a dealer that materially affects the business
122 relationship between the dealer and the manufacturer or distributor;

123 d. A suspension or revocation of a dealer's license, or refusal to renew the dealer's license,
124 by the Division of Motor Vehicles;

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

127 f. A declaration by a dealer of bankruptcy, insolvency, or the occurrence of an assignment
128 for the benefit of creditors or bankruptcy;

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

139 (e) If a dealer terminates, cancels or fails to renew a manufacturer-dealer agreement without good cause, the
140 provisions of § 8405 of this chapter do not apply. If the dealer terminates, cancels, or fails to renew the manufacturer-

dealer agreement with good cause, § 8405 of this chapter applies. The 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 a 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 dealer.

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

§ 8405. Repurchase of inventory.

(a) If a dealer terminates, cancels, or fails to renew a manufacturer-dealer agreement for good cause as defined in § 8404(e) of this chapter and the manufacturer fails to cure the claimed deficiencies as provided in § 8404(d) of this chapter, at the election of the dealer and within 45 days after termination, cancellation, or nonrenewal, the manufacturer shall, repurchase:

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

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

(3) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100 percent of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if the items were purchased by the 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 dealer's ongoing business.

(b) The manufacturer or distributor shall pay the dealer within 30 days after receipt of the items returned pursuant to this section.

§ 8406. Transfer of dealership; family succession.

(a) If a dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the 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 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 the prospective transferee:

(1) Has previously been terminated by the manufacturer for breach of its 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; or

(5) Has undergone in the last 10 years 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 dealer within 10 business days after receipt of the 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 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 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 dealer, unless the manufacturer or distributor has provided to the dealer written notice of its objections within 10 days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the manufacturer-dealer agreement, the manufacturer or distributor may object to the succession for the following reasons only:

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

§ 8407. Warranty obligations.

(a) A warrantor shall:

- (1) Specify in writing to each of its dealers all dealer obligations, if any, for preparation, delivery, and warranty service on its products;
- (2) Compensate the dealer for performing warranty service required of the dealer by the warrantor;
and
- (3) Provide the 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 dealer, and the actual retail labor rate being charged by the dealers in the community in which the dealer is doing business. The compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor, as long as such rates are reasonable.

(c) A warrantor shall reimburse a dealer for warranty parts at actual wholesale cost plus a minimum 30-percent handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(d) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, and 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 dealer shall submit warranty claims within 30 days after completing work.

(f) A dealer shall immediately notify a warrantor, verbally or in writing, if the dealer is unable to perform any warranty repairs within 10 days of receipt of verbal or written complaints from a consumer.

(g) A warrantor shall disapprove warranty claims in writing within 30 days after the work is completed and submitted by the 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.

(h) It is a violation of this chapter for a warrantor to:

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

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

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

(5) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

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

(i) It is a violation of this chapter for a dealer to:

(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 vehicle 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 vehicle;

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

(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; or,

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

§ 8408. 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 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 dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a recreational vehicle. A dealer may be denied indemnification if the dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the dealer is obligated to perform warranty service. A dealer shall provide to a warrantor a copy of any pending law suit in which allegations are made that are covered by the provisions of this subsection within 10 days after receiving such suit.

(2) A 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 dealer. A warrantor shall provide to a dealer a copy of any pending law suit or similar proceeding in which allegations are made that come within this the provisions of subsection within 10 days after receiving such suit.

§ 8409. Inspection and rejection by the dealer.

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

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

(2) Shall reject the vehicle 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 ten days after receipt of notification, or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle reverts to the manufacturer or distributor.

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

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

(e) A recreational vehicle that has, at the time of delivery to a dealer, an unreasonable amount of miles on its odometer as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor. In no instance may a dealer deem an amount less than the distance between the dealer and the manufacturer's factory or a distributor's point of distribution, plus 100 miles, as unreasonable.

§ 8410. Coercion of dealer prohibited.

(a) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(1) Purchase a product that the dealer did not order;

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

(3) Enter into an agreement that requires the 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, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer-dealer agreement without good cause; or threatening to withhold product lines that the 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.

§ 8411. Mediation

(a) A 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 attorney's fees and costs to the prevailing

319 party in such an action. Venue for any civil action authorized by this section is in the county in which the dealer's business
320 is located. In an action involving more than one dealer, venue may be in any county in which any dealer that is a party to
321 the action is located.

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

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

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

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

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

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

343 (c) In addition to the remedies provided in this section and notwithstanding the existence of any additional
344 remedy at law, a manufacturer, distributor, warrantor, or dealer may make application to a court of competent jurisdiction
345 for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person
346 from acting as a dealer without being properly licensed, from violating or continuing to violate any of the provisions of this
347 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.

Section 2. Amend Chapter 63, Title 21, Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 6301. Definitions.

As used in this chapter:

(1) "Consignment" is means when a vehicle owner enters into an agreement with a dealer for the sale of a vehicle without a transfer of ownership to the dealer.

(2) "Dealer" or "~~Motor~~ Vehicle Dealer" includes:

a. A person, corporation, partnership, proprietorship or any other legal entity who is in the business of buying, selling or exchanging during any 12-month period 5 or more vehicles; and/or

b. Any person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12 month period.

(3) "Dealer" or "~~Motor~~ Vehicle Dealer" shall not include:

a. A receiver, trustee, personal representative, or other person appointed by or acting under the authority of any court of competent jurisdiction;

b. A public official who sells or disposes of vehicles in the performance of the official's duties;

c. Any financial institution chartered or authorized to do business in Delaware, including its subsidiaries or affiliates, which receives title to a ~~motor~~ vehicle in the normal course of its business by reason of a lease, foreclosure, repossession, judicial sale or voluntary conveyance or reconveyance of the ~~motor~~-vehicle as a result of any lease of the ~~motor~~ vehicle or any extension of credit secured by the ~~motor~~ vehicle or the enforcement of any lien on the ~~motor~~ vehicle;

d. A licensed auctioneer acting on behalf of a seller, secured party or owner if title does not pass to the auctioneer and if the auction is not for the purpose of avoiding this chapter;

e. An insurance company authorized to do business in Delaware that sells or disposes of vehicles under a contract with its insured in the regular course of business;

f. Either a manufacturer or distributor who sells or distributes vehicles to licensed dealers or a person employed by a manufacturer or distributor to promote the sale of the vehicles of the manufacturer or distributor, if that manufacturer, distributor or person does not sell vehicles to retail buyers;

g. A nonprofit educational foundation organized to promote instructional effectiveness and educational achievement.

(4) "Department" ~~shall~~ means the Department of Transportation, Division of Motor Vehicles.

(5) "Director" ~~shall~~ means the Director of the Division of Motor Vehicles or the Director's authorized or delegated representative.

(6) "Division" ~~shall~~ means the Division of Motor Vehicles.

(7) "Franchised ~~Motor V~~ vehicle dealer" means a dealer in new vehicles that has a franchise agreement with a manufacturer or distributor of vehicles or, in the case of a recreational vehicle dealer, has a manufacturer-dealer agreement with a manufacturer or distributor to sell a particular line-make of recreation vehicle. As used in this section, the term, "line-make" is defined in § 8402(6) of this title.

(8) "Vehicle" means motor vehicles, trailers, recreational vehicles, mobile homes, and any other device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by animal power, human power, off-highway vehicles, special mobile equipment and farm equipment.

(9) "Wholesale ~~D~~ dealer" means a dealer who may sell vehicles only to another dealer or licensed auto auction.

§ 6302. License requirements.

(a) Department approval. -- No person, corporation, partnership, proprietorship or any other legal entity shall carry on or conduct the business of buying, selling or dealing in new or used vehicles unless issued a dealers license by the Department.

(b) Application -- Application for a dealers license shall be made upon the form prescribed by the Department and shall contain the name and address of the applicant. When the applicant is a partnership the name and address of each partner shall appear on the application. When the application is a corporation, the names of the principal officers of the corporation, the state in which incorporated, the place or places where the business is to be conducted and such other information as may be required by the Department shall appear on the application. Every such application shall contain a certification by the applicant that the information provided is true and accurate to the best of the applicant's knowledge.

(c) Resident requirements. -- The owner of a dealership must have been issued a Delaware drivers license and established residency in Delaware at least 90 days prior to the time of application. Franchised and new vehicle dealers are exempted from this requirement.

(d) Fee. -- No fee for a license is charged by the Department. However, all dealerships must obtain a yearly dealer business license from the Department of Finance, Division of Revenue. Wholesale dealers shall also obtain an additional wholesale license pursuant to § 6307 of this title. The business license(s) must be kept at the business location and be available for inspection by the Department.

§ 6303. Location requirements; ~~and~~ records.

(a) Except as provided in § 6311(b), no dealers license shall be issued to any vehicle dealer unless the dealership has an established place of business in Delaware that is; owned, rented, or leased by the dealership and which:

(1) Satisfies all local zoning requirements. Zoning approval shall be submitted to the Division when the application is submitted;

(2) Has sales and office space devoted to the dealership and has adequate display space for 5 or more vehicles, and, in the case of a new recreational vehicle dealer, has a service facility;

(3) Has a telephone installed in the office and listed in the business name;

(4) Has adequate liability insurance as required by § 2118 of this title;

(5) Has a sign on the premises measuring at least 24 x 36 inches which lists the dealership's approved name.

(b) The dealership office shall maintain and have adequate file cabinets to maintain records required by the Department. All dealer records regarding purchases, sales, transfers of ownership, collection of vehicle document fees, titling, registration fees, odometer disclosure statements, temporary license plates and records of dealer registration plates assigned to the dealer shall be maintained on the premises of the licensed location. All records shall be maintained for a minimum of 5 years. The Director may, on written request by a dealer, permit records to be maintained at a location other than the premises of the licensed location for good cause shown.

(c) Every dealer shall have in its possession a certificate of title assigned to the dealership or other documentary evidence of the dealer's right to the possession of, and for, every ~~motor~~ vehicle in the dealership's possession or on the dealership premises.

(d) During business hours, the records of the dealership shall be open to inspection by Department officials, any police officer or any duly authorized investigator at the Department of Justice while discharging their official duties.

§ 6304. Expiration and renewal of license.

Each license issued under this title shall expire at midnight on December 31st of the period for which it was issued and may be renewed upon application to the Department prior to its expiration. Dealers who have not sold a minimum of 5 vehicles between January 1st and December 31st of each year shall be denied license renewal. The Director of the Division of Motor Vehicles may, on written request by a dealer, permit renewal of a dealers license for dealers selling less than 5 vehicles for good cause shown in writing to the Department.

§ 6305. Bill of sale.

Every ~~motor~~ vehicle dealer shall complete, in duplicate, a bill of sale for each sale or exchange of a ~~motor~~ vehicle. The original shall be retained for a period of 5 years. A duplicate copy shall be delivered to the purchaser at the time of sale or exchange. The bill of sale shall be signed by both buyer and seller. A bill of sale shall include the following:

- (1) The name and address of the person to whom the vehicle was sold or traded;
- (2) The date of the sale or trade;
- (3) The name and address of the ~~motor~~ vehicle dealer selling or trading the vehicle;
- (4) The make, model, year, vehicle identification number and body style of the vehicle;
- (5) The sale price of the vehicle;
- (6) The amount of any deposit made by the buyer;
- (7) A description of any Delaware titled vehicle used as a trade-in and the amount credited the buyer for the trade-in;
- (8) The amount of the document fee, title fee, registration fee or any other fee for which the buyer is responsible and the dealer has collected; each fee shall be individually listed and identified; and
- (9) The amount of any balance due at settlement.

§ 6306. Consignment vehicles contract.

(a) Any ~~motor~~ vehicle dealer offering a vehicle for sale on consignment shall have in their possession a consignment contract for the vehicle, executed and signed by the dealer and the consignor. The consignment contract shall include the following:

- (1) The complete name and address of the owner(s);
- (2) The name, address and dealer identification number of the selling dealer;
- (3) A complete description of the vehicle on consignment, including the make, model, year, vehicle identification number and body style;
- (4) The beginning and termination dates of the contract;
- (5) The percentage or the net amount the owner is to receive, if the vehicle is sold;
- (6) A disclosure of all unsatisfied liens on the vehicle and the location of the certificate of title to the vehicle.

(b) Any dealer offering a vehicle for sale on consignment shall inform any prospective customer that the vehicle is on consignment. Dealer license plates shall not be used to demonstrate a vehicle on consignment. The owners license plate may be used if liability insurance coverage is in effect in the amount prescribed by Delaware law.

§ 6307. Wholesale Dealers.

(a) A wholesale dealer who is licensed by the Division is authorized to do the following:

- (1) Buy a vehicle from another dealer, a licensed auto auction or retail seller;
- (2) Sell a vehicle to, or exchange vehicles only with another dealer or through a licensed auto auction;

(3) A wholesale dealer may operate from a private residence and is not required to comply with §§ 6303(a)(2) and (5) of this title.

(b) A wholesale dealer may not:

(1) Sell or exchange vehicles with a retail buyer; and

(2) Buy, sell or exchange new vehicles; and

(3) Sell vehicles on consignment.

§ 6308. Auctions.

(a) Each person who conducts auctions of vehicles shall keep a record of each of the following:

(1) The name and address of the consignor or seller;

(2) The date on which the vehicle was consigned;

(3) The year, make, model and vehicle identification number of each vehicle consigned;

(4) The title number and State where the vehicle was last registered;

(5) The odometer mileage reading at the time of consignment, except for folding camping trailers, travel trailers, and fifth-wheel trailers;

(6) The name and address of the person to whom the vehicle was sold;

(7) The buyer's driver's license number and state which issued the license;

(8) The selling price; and

(9) The date of sale.

(b) During business hours, auction records shall be open for inspection by Division of Motor Vehicle officials, any police officer or any duly authorized investigator at the Department of Justice while discharging their official duties.

(c) Auction sales must be performed at the approved auction location.

(d) All records required by this section shall be maintained for 5 years after the sale of the vehicle to which such records apply.

(e) Auctions are authorized to issue 30-day temporary license plates under § 2130 of this title to allow vehicles to be removed from the auction lot. The temporary plates shall only be issued to individuals with a valid driver's license. The auction shall witness and record proof of any legally required liability insurance on a vehicle prior to the issuance of the temporary license plate.

§ 6309. Prohibited acts.

(a) A dealer, its agent or an employee of a dealer may not permit any individual to road test a motor vehicle if they know the individual does not have a valid driver's license.

(b) A dealer or an agent or employee of a dealer may not commit any fraud in the execution of, or any material alteration of, a contract, power of attorney or other document incident to a sale or exchange of a vehicle.

(c) A dealer or an agent or employee of a dealer may not willfully fail to comply with the terms of a warranty or guarantee. A Federal Trade Commission Buyers Guide will be properly completed and displayed on all used vehicles. Buyer(s) will be provided a copy of the Guide prior to completion of the sale.

(d) A dealer or agent of a dealer must disclose to a buyer if the vehicle title has been branded "reconstructed", "flood damaged", "salvage" or was a "taxi". The buyer(s) shall acknowledge the disclosure as described in this paragraph by signing a disclosure statement which has been approved by the Division of Motor Vehicles and is provided by the dealership. A copy of the disclosure statement shall be provided to the Delaware Division of Motor Vehicles with the title application. In the absence of any disclosure statement, the contract may be rescinded at any time by the buyer and the dealer shall provide a full and complete refund to the buyer of all purchase moneys, including interest paid, plus all fees paid. Disclosure shall not prevent any person from otherwise bringing any action under any law for a failure to disclose material information concerning the condition or prior use of any vehicle.

§ 6310. Acts of officers, directors, partners, and sales persons.

If a licensee is a partnership or corporation, it shall be sufficient cause for the denial or suspension of a license if any officer, director or trustee of the partnership or corporation, or any member in the case of a partnership, has committed any act or omitted any duty which would be cause for denial or suspending a license issued to him or her as an individual under this chapter. Each licensee shall be responsible for all acts of any of their salespersons while acting as their agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds, profits or advantages accruing from those acts.

§ 6311. License requirements.

(a) In the event any dealer intends to change a licensed location, the dealer shall provide the Division of Motor Vehicles advance written notice. A successful inspection of the new location shall be required prior to approval of a change of location by the dealer. All requirements of § 6303 of this title shall be completed prior to final approval.

(b) Notwithstanding anything herein to the contrary, a recreational vehicle dealer may sell and display new and used recreational vehicles at trade or public retail vehicle shows, rallies, or exhibitions, including those in enclosed malls, for up to 14 days per event, provided that:

(1) Delaware recreational vehicle dealers outside of their "area of sales responsibility," as the term is defined in § 8402(1) of this title, do not exhibit, sell, or offer for sale the same line-make of recreational vehicle as a Delaware dealer whose area of sales responsibility encompasses the location of the recreational vehicle trade

show or public retail vehicle show, or rally or exhibition, where the term "line-make" has the same meaning as defined in § 8402(6) of this title; and without the written permission of the dealer whose area of responsibility encompasses the show, rally, or exhibition site;

(2) An out-of-state recreational vehicle dealer, without an established place of business in Delaware, must meet all of the following conditions:

(i) The dealer must be from a state contiguous to Delaware that permits Delaware dealers to participate in recreational vehicle trade shows, or public retail vehicle shows, or rallies, or exhibitions, including those in enclosed malls, in the dealer's state under conditions substantially equivalent to those imposed on out-of-state dealers by Delaware;

(ii) The dealer must be in compliance with the laws of the dealer's state of residence;

(iii) The recreational vehicle trade show or public retail vehicle show, or rally, or exhibition in which the dealer is participating must have a minimum of three (3) participating dealers, the majority of which are from Delaware;

(iv) The dealer may not exhibit, sell, or offer for sale the same line-make of recreational vehicle as a Delaware dealer who is participating in the same recreational vehicle trade show or public retail vehicle show, rally, or exhibition without the Delaware dealer's written permission, where the term "line-make" has the same meaning as defined in § 8402(6) of this title; and

(v) The dealer must secure a temporary license from the Division of Motor Vehicles, with an effective time period of not more than 14 days, authorizing the dealer's participation in the recreational vehicle trade show, or public retail vehicle show, or rally or exhibition. The dealer will be limited to one temporary license per calendar year.

§ 6312. Issuance of dealer license.

~~The Department, u~~ Upon receiving an dealer license application for approval, and ~~when~~ satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states, the Department shall approve the application and issue a dealer license. ~~The approval shall~~ A license entitles ~~the a~~ dealer to carry on and conduct the business of a dealer during the calendar year in which ~~approval~~ the license is issued. Franchised new vehicle dealers must provide the Division a copy of the franchise agreement, or, in the case of a recreational vehicle dealer, a manufacturer-dealer agreement, prior to being licensed as a new vehicle dealer.

§ 6313. Grounds for denying renewal of dealer license; ~~or~~ suspension or revocation of license.

A dealer license applied for or issued pursuant to this chapter may be denied, suspended, or revoked for any one of the following reasons:

(1) Material misstatement or omission on the application for a dealer license.

(2) Failure to maintain an established place of business, business phone or Division of Revenue Dealer Business License.

(3) Failure to comply subsequent to receipt from the Division of a cease and desist order; or a written warning or arrest; or failure to comply with this title and Title 30.

(4) Conviction of the dealership of any fraudulent or criminal act in violation of Title 11 in connection with the business of selling vehicles.

(5) Failure to maintain a service facility, if the licensee is a dealer of new recreational vehicles. Recreational vehicle dealers with multiple locations in Delaware may maintain a service facility at one location to satisfy this requirement.

§ 6314. Suspension and hearing notices.

(a) No license issued under this title shall be suspended, revoked or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee against whom the same is directed. The written notice of complaint shall be sent to the licensee by certified mail, return receipt requested, addressed to the last known address as shown on the license or dealership application or other record of information in possession of the Division. The written notice shall inform the licensee of the following:

(1) This Division's intention to suspend, revoke or deny renewal of the dealership license.

(2) The nature of the complaint and the law or regulation allegedly violated by the dealership.

(3) The notice shall cite the law or regulation giving the Division authority to act.

(4) The notice shall inform the dealer of its right to request a hearing to dispute the complaint. The hearing must be requested within 10 days from earlier of the dates that the dealer received the certified letter or the Division received the return receipt on the certified letter.

(5) The notice shall inform the dealer of its right to present evidence, to be represented by counsel and to appear personally or by other representative at the hearing.

(b) The Division shall inform a dealer requesting a hearing of the date, time and place the hearing shall be held. The notification shall be provided by certified mail, return receipt requested, and shall give at least 20 days prior notice to all parties involved, unless waived by the dealer. The notice shall inform the parties of the Division's obligation to reach its decision based upon the evidence received.

(c) The Division Director or designated representative may order a temporary emergency dealer license suspension. Any suspension issued under this subsection shall be exempt from the provisions required in subsections (a) and (b) of this section, except as provided herein.

The following guidelines shall apply for this temporary suspension.

(1) If a dealer has 5 outstanding violations of §§ 2306(e) and/or 2509 of this title for not submitting a buyer's vehicle title application to the Division within the required 30 days from the date of sale; and

(2) A dealer has been provided 5 days written notice by the Division to submit the required paperwork but has failed to comply, then the Division will place a temporary emergency dealer license suspension notice on or near the entrance of the dealer's place of business to notify potential buyers that the dealer's license is temporarily suspended.

(3) Unauthorized removal of the notice or failure to comply with the temporary emergency dealer license suspension order may result in the immediate permanent suspension of the dealer's license, after notice and an opportunity for a hearing under subsections (a) and (b) of this section.

(4) The temporary emergency dealer license suspension will be lifted by the Division when the required vehicle title applications and payments are submitted to the division.

(5) A dealer who fails to submit the required vehicle title applications and payments within 10 days after receiving a temporary emergency dealer license suspension may have its dealer license permanently suspended, after notice and an opportunity for a hearing under subsections (a) and (b) of this section.

§ 6315. Hearings.

(a) If the Division refuses an application for a license, denies a renewal of a license or proposes the suspension or revocation of a dealer's license, the Division shall provide a hearing when requested under § 6314 of this title. At the hearing the licensee shall have the right to be heard personally, by counsel or by its agent. The Director may initiate investigations, appoint a hearing officer and subpoena witnesses. After the hearing, the Director, upon receiving a decision from the hearing officer upholding the Division's position, may suspend or revoke a dealer's license, deny a renewal or refuse to approve an application. The Director shall consider prior to any suspension, revocation, denial of renewal or refusal to approve an application:

(1) The nature of the violation(s) and the dealer's willingness to make restitution to all parties harmed by dealership actions.

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

The Director shall provide written notice to all parties involved of the decision by certified mail, return receipt requested. The decision is appealable to the Superior Court. Any appeal must be filed within 30 days of the earlier of the receipt of the decision by the dealer or the date of receipt of the return receipt by the Division.

(b) Should a dealer fail to maintain an established place of business, the Division may cancel the license without a hearing after notification of the intent to cancel has been sent by certified mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within 20 days from the date the notices were sent.

§ 6316. Return of license, dealer number plates, temporary license plates, and dealer reassignment forms.

If the Division suspends, revokes or denies the renewal of the license of any dealer licensed under this chapter, the dealer immediately shall return the license, dealer number plates, temporary license plates and dealer reassignment forms belonging to the dealer. The Division may grant the licensee up to 30 days to dispose of vehicles belonging to the dealer.

§ 6317. Cease and desist orders and injunctive relief.

In addition to the legal remedies provided for in this chapter, the Division of Motor Vehicles is authorized to issue cease and desist orders to any person, corporation, partnership, proprietorship or other legal entity who violates this chapter. The Division is also authorized to file a complaint for injunctive relief with the Court of Chancery upon notice that a cease and desist order is violated. The Chancery Court is authorized to award attorney fees and costs to the Division if a preliminary or permanent injunction is granted by the court. Nothing herein shall prevent the Attorney General from seeking any other civil remedy or criminal sanction for any conduct constituting a violation of this chapter.

§ 6318. Penalties.

(a) Whoever violates any provision of this chapter shall be guilty of an unclassified misdemeanor and shall be fined not less than \$50 nor more than \$575.

(b) Subsection (a) of this section shall not apply to violations for which penalties are prescribed elsewhere in this title.

Section 3. Amend Chapter 30, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 3005. ~~Motor v~~ Vehicle dealer license fee.

(a) Every ~~motor~~ vehicle dealer, including recreational vehicle dealers, shall pay an annual license fee of \$100 to the Department of Finance; ~~provided however, that no dealer license fee shall be applicable for out-of-state new recreational dealers at industry-wide public vehicle shows or exhibitions at enclosed malls in this State when such out-of-state new recreational dealers participate as exhibitors with permission of the licensed manufacturer; and further provided, that:~~

644 (1) ~~Reciprocity is granted to such recreational dealers of this State; and~~
645 (2) ~~Providing that any participating out-of-state new recreational dealer is duly licensed and authorized by the~~
646 ~~state of residence to sell new recreational vehicles.~~

647 Section 4. Severability. If any provision of this Act or the application thereof to any person or circumstance is
648 held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the
649 invalid provision or application and, to this end, the provisions of this Act are declared severable.

650 Section 5. Effective date. This act takes effect on July 1, 2013.

SYNOPSIS

This bill establishes requirements and definitions for recreational vehicle manufacturer-dealer agreements. It also removes the exception to the \$100 license fee for out-of-state recreational vehicle dealers at shows or exhibitions at enclosed malls. Finally, it updates the current Sale of Motor Vehicles laws to incorporate a new Recreational Vehicle Franchise law.