

House Study Bill 176 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON BYRNES)

A BILL FOR

1 An Act relating to the regulation of agreements between
2 manufacturers or distributors, and dealers relating to the
3 sale of recreational vehicles and including applicability
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

RECREATIONAL VEHICLE SALES

Section 1. NEW SECTION. 322E.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Area of sales responsibility"* means the geographical area, agreed to by a dealer and a manufacturer or distributor in a manufacturer and dealer agreement, within which area the dealer has the exclusive right to display and sell the manufacturer's or distributor's new recreational vehicles of a particular line-make to a consumer.
2. *"Consumer"* means a person who is offered or purchases a new recreational vehicle in a retail transaction.
3. *"Dealer"* means any person, firm, corporation, or business entity licensed or required to be licensed as a motor vehicle dealer pursuant to chapter 322 or as a travel trailer dealer pursuant to chapter 322C.
4. *"Distributor"* means any person, firm, corporation, or business entity that purchases new recreational vehicles for resale to a dealer.
5. *"Factory campaign"* means an effort on the part of a warrantor to contact a recreational vehicle owner or dealer in order to address a part or equipment issue.
6. *"Family member"* means a person who is the spouse, child, grandchild, parent, sibling, niece, or nephew of a recreational vehicle owner or the spouse of such a person.
7. *"Fifth-wheel trailer"* means a vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size and weight as to not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism mounted above or forward of the tow vehicle's rear axle.
8. *"Folding camping trailer"* means a vehicle mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold to provide

1 temporary living quarters for recreational, camping, or travel
2 use.

3 9. "*Line-make*" means a specific series of recreational
4 vehicles that include all of the following:

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

7 b. Are targeted to a particular market segment, as
8 determined by the recreational vehicle's decor, features,
9 equipment, size, weight, and price range.

10 c. Have lengths and interior floor plans that distinguish
11 the recreational vehicle from other recreational vehicles
12 with substantially the same decor, features, equipment, size,
13 weight, and price range.

14 d. Belong to a single, distinct classification of
15 recreational vehicle product type having a substantial degree
16 of commonality in the construction of the chassis, frame, and
17 body, and in price range.

18 e. Are authorized for sale by a dealer pursuant to a
19 manufacturer and dealer agreement.

20 10. "*Manufacturer*" means any person, firm, corporation,
21 or business entity that engages in the manufacturing of
22 recreational vehicles.

23 11. "*Manufacturer and dealer agreement*" means a written
24 agreement or contract entered into between a manufacturer
25 or distributor and a dealer that fixes the rights and
26 responsibilities of the parties and pursuant to which the
27 dealer sells new recreational vehicles.

28 12. "*Motor home*" means a motorized vehicle which is either
29 self-propelled or towed by a consumer-owned vehicle, and
30 is primarily designed to provide temporary living quarters
31 for recreational, camping, or travel use. A "*motor home*"
32 contains at least four of the following permanently installed
33 independent life-support systems which meet the national fire
34 protection association standard for recreational vehicles:

35 a. A cooking facility with an on-board fuel source.

1 **b.** A potable water supply system that includes at least
2 a sink, a faucet, and a water tank with an exterior service
3 supply connection.

4 **c.** A toilet with exterior evacuation.

5 **d.** A gas or electric refrigerator.

6 **e.** A heating or air conditioning system with an on-board
7 power or fuel source separate from the vehicle engine.

8 **f.** A one hundred ten to one hundred twenty volt power
9 supply.

10 13. "*Park model recreational vehicle*" means a vehicle that
11 is all of the following:

12 **a.** Designed and marketed primarily not for use as a
13 permanent dwelling but as temporary living quarters for
14 recreational, camping, travel, or seasonal use.

15 **b.** Between three hundred twenty and four hundred square
16 feet in size based on the exterior dimensions of the vehicle
17 measured at the largest horizontal projections when erected on
18 site including all space which has a ceiling height of more
19 than five feet, and any expandable room, slide-out, tip-out,
20 or tag-along unit.

21 **c.** Built on a single chassis and not designed to accept
22 additional structures, add-ons, or other additions that will
23 increase the area as determined in paragraph "*b*" in excess of
24 four hundred square feet.

25 **d.** Built pursuant to a third-party inspection and
26 certification process.

27 **e.** Built to the American national standards institute All9.5
28 park model recreational vehicle standard.

29 14. "*Proprietary part*" means any part manufactured by or for
30 and sold exclusively by a manufacturer.

31 15. "*Recreational vehicle*" means a vehicle which is
32 either self-propelled or towed by a consumer-owned vehicle,
33 primarily designed to provide temporary living quarters for
34 recreational, camping, or travel use that complies with all
35 applicable federal vehicle regulations and does not require a

1 special highway movement permit to legally use the highways.
2 "*Recreational vehicle*" includes a "*motor home*" and a "*travel*
3 *trailer*".

4 16. "*Supplier*" means any person, firm, corporation, or
5 business entity that engages in the manufacture of recreational
6 vehicle parts, accessories, or components.

7 17. "*Transient consumer*" means a consumer who is temporarily
8 traveling through a dealer's area of sales responsibility.

9 18. "*Travel trailer*" means a vehicle, mounted on wheels,
10 designed to provide temporary living quarters for recreational,
11 camping, or travel use of such size and weight as to not
12 require a special highway movement permit when towed by a
13 motorized vehicle. "*Travel trailer*" includes a fifth-wheel
14 travel trailer, folding camping trailer, truck camper, and a
15 park model recreational vehicle, but does not include a vehicle
16 that is so designed as to permit it to be towed exclusively by
17 a motorcycle.

18 19. "*Truck camper*" means a vehicle designed to be placed in
19 the bed of a pickup truck to provide temporary living quarters
20 for recreational, camping, or travel use.

21 20. "*Warrantor*" means any person, firm, corporation, or
22 business entity, including any manufacturer or supplier, that
23 provides a written warranty to a consumer in connection with
24 a new recreational vehicle or a part, accessory, or component
25 of a new recreational vehicle. "*Warrantor*" does not include
26 a dealer, supplier, or other person, firm, corporation, or
27 business entity not controlled by a manufacturer that provides
28 a service contract, mechanical or other insurance, or extended
29 warranties sold for separate consideration to a consumer.

30 **Sec. 2. NEW SECTION. 322E.2 Manufacturer and dealer**
31 **agreements — area of sales responsibility.**

32 1. A manufacturer or distributor shall not sell a new
33 recreational vehicle in this state to or through a dealer
34 without first entering into a written manufacturer and dealer
35 agreement with the dealer that has been signed by both parties.

1 A dealer shall not sell a new recreational vehicle in this
2 state without first entering into a written manufacturer and
3 dealer agreement with a manufacturer or distributor that has
4 been signed by both parties.

5 2. A manufacturer and dealer agreement shall designate the
6 area of sales responsibility exclusively assigned to a dealer
7 by the manufacturer or distributor and the manufacturer or
8 distributor shall not change that area or contract with another
9 dealer for sale of the same line-make in the designated area
10 for the duration of the agreement.

11 3. If, subsequent to entering into a manufacturer and
12 dealer agreement, a dealer enters into an agreement with
13 another manufacturer or distributor to sell recreational
14 vehicles, or enters into an agreement to increase the dealer's
15 preexisting commitment to sell recreational vehicles of another
16 manufacturer or distributor, the manufacturer or distributor
17 may revise the area of sales responsibility designated in the
18 manufacturer and dealer agreement, upon a determination by the
19 manufacturer or distributor that the market penetration of the
20 manufacturer's or distributor's products is jeopardized by the
21 dealer's subsequent agreement to sell or increase the sales of
22 another manufacturer's or distributor's recreational vehicles.

23 4. Except as otherwise provided in subsection 3, the area of
24 sales responsibility designated in a manufacturer and dealer
25 agreement shall not be reviewed or changed until at least one
26 year after execution of the agreement without the consent of
27 both parties to the agreement.

28 **Sec. 3. NEW SECTION. 322E.3 Manufacturer and dealer**
29 **agreements — termination, cancellation, nonrenewal, and**
30 **alteration.**

31 1. *Termination by manufacturer or distributor.* A
32 manufacturer or distributor, directly or through any authorized
33 officer, agent, or employee, may terminate, cancel, or fail to
34 renew a manufacturer and dealer agreement with or without good
35 cause as follows:

1 a. If the manufacturer or distributor terminates, cancels,
2 or fails to renew a manufacturer and dealer agreement without
3 good cause, the manufacturer or distributor shall comply with
4 the provisions of section 322E.4.

5 b. If the manufacturer or distributor terminates, cancels,
6 or fails to renew a manufacturer and dealer agreement with
7 good cause, the manufacturer or distributor is not required to
8 comply with the provisions of section 322E.4.

9 c. The manufacturer or distributor has the burden of showing
10 good cause for terminating, canceling, or failing to renew a
11 manufacturer and dealer agreement. For purposes of determining
12 whether good cause exists for such termination, cancellation,
13 or nonrenewal of the agreement, any of the following factors
14 may be considered:

15 (1) The extent of the affected dealer's penetration in the
16 area of sales responsibility.

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

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

21 (4) The effect of the proposed termination, cancellation,
22 or nonrenewal of the agreement on the community.

23 (5) The extent and quality of the dealer's service under the
24 warranties of the recreational vehicles sold.

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

27 (7) The dealer's performance under the terms of the
28 manufacturer and dealer agreement.

29 d. (1) Except as otherwise provided in this paragraph
30 "d", a manufacturer or distributor shall provide a dealer with
31 at least ninety days' prior written notice of termination,
32 cancellation, or nonrenewal of the manufacturer and dealer
33 agreement if the agreement is being terminated, canceled, or
34 nonrenewed with or without good cause.

35 (2) (a) If the proposed termination, cancellation, or

1 nonrenewal of the agreement is for good cause, the notice shall
2 state all of the reasons for the termination, cancellation, or
3 nonrenewal and shall further state that if, within thirty days
4 following receipt of the notice, the dealer provides to the
5 manufacturer or distributor a written notice of intent to cure
6 all claimed deficiencies, the dealer shall then have ninety
7 days following receipt of the notice to cure the deficiencies.
8 If the dealer fails to provide notice of intent to cure the
9 deficiencies within thirty days following receipt of the
10 notice, the termination, cancellation, or nonrenewal of the
11 agreement for good cause takes effect thirty days following the
12 dealer's receipt of the notice.

13 (b) If the dealer provides notice of intent to cure the
14 deficiencies stated and the deficiencies are cured by the
15 dealer within ninety days following receipt of the notice,
16 the manufacturer's or distributor's notice to the dealer is
17 voided. If the dealer provides notice of intent to cure the
18 deficiencies stated and fails to cure the deficiencies within
19 ninety days following receipt of the notice, the termination,
20 cancellation, or nonrenewal of the agreement for good cause
21 takes effect ninety days following the dealer's receipt of the
22 notice.

23 (c) If the dealer has new and untitled inventory of
24 recreational vehicles on hand at the time the termination,
25 cancellation, or nonrenewal of the agreement takes effect for
26 good cause, the inventory may be sold by the dealer as provided
27 in section 322E.4, subsection 2, paragraph "b".

28 e. Notwithstanding paragraph "d", the notice period for
29 termination, cancellation, or nonrenewal of a manufacturer
30 and dealer agreement for good cause may be reduced to thirty
31 days if the grounds for such termination, cancellation, or
32 nonrenewal are due to any of the following factors:

33 (1) The dealer or one of the dealer's owners has been
34 convicted of or has entered a plea of nolo contendere to a
35 felony.

1 (2) The dealer has abandoned or closed the dealer's business
2 operations for ten consecutive business days, unless the
3 closing is due to an act of God, a strike, a labor difficulty,
4 or other cause over which the dealer has no control.

5 (3) The dealer has made a significant misrepresentation
6 that materially affects the business relationship of the
7 manufacturer or distributor and the dealer.

8 (4) The dealer's license has been suspended, revoked,
9 denied, or not renewed.

10 (5) The dealer has committed a material violation of this
11 chapter which is not cured within thirty days after receipt of
12 written notice of the violation.

13 *f.* Notwithstanding paragraphs "d" and "e", the manufacturer
14 and dealer agreement may be terminated, canceled, or nonrenewed
15 for good cause at any time if the reason for the termination,
16 cancellation, or nonrenewal is the dealer's insolvency, the
17 dealer's declaration of an assignment for the benefit of
18 creditors, or the dealer's declaration of bankruptcy.

19 2. *Termination by dealer.* A dealer may terminate, cancel,
20 or fail to renew a manufacturer and dealer agreement with or
21 without good cause as follows:

22 *a.* If the dealer terminates, cancels, or fails to renew
23 a manufacturer and dealer agreement without good cause, the
24 dealer shall comply with the provisions of section 322E.4.

25 *b.* If the dealer terminates, cancels, or fails to renew a
26 manufacturer and dealer agreement with good cause, the dealer
27 is not required to comply with the provisions of section
28 322E.4.

29 *c.* (1) Except as otherwise provided in this paragraph "c",
30 a dealer shall provide a manufacturer or distributor with at
31 least ninety days' notice of termination, cancellation, or
32 nonrenewal of the manufacturer and dealer agreement if the
33 agreement is being terminated, canceled, or nonrenewed with or
34 without good cause.

35 (2) (a) If the termination, cancellation, or nonrenewal

1 of the agreement is for good cause, the dealer has the burden
2 of showing good cause and the notice shall state all of
3 the reasons for the proposed termination, cancellation, or
4 nonrenewal. The notice shall further state that if, within
5 thirty days following receipt of the notice, the manufacturer
6 or distributor provides to the dealer a written notice of
7 intent to cure all claimed deficiencies, the manufacturer or
8 distributor shall then have ninety days following receipt of
9 the notice to cure the deficiencies. If the manufacturer or
10 distributor fails to provide notice of intent to cure the
11 deficiencies to the dealer within thirty days following receipt
12 of the notice, the termination, cancellation, or nonrenewal of
13 the agreement for good cause takes effect thirty days following
14 the manufacturer's or distributor's receipt of the notice.

15 (b) If the deficiencies stated in the notice are cured by
16 the manufacturer or distributor within ninety days following
17 receipt of the notice, the dealer's notice to the manufacturer
18 or distributor is voided. If the manufacturer or distributor
19 provides notice of intent to cure the deficiencies stated and
20 fails to cure the deficiencies within ninety days following
21 receipt of the notice, the termination, cancellation, or
22 nonrenewal of the agreement for good cause takes effect ninety
23 days following the manufacturer's or distributor's receipt of
24 the notice.

25 d. Notwithstanding paragraph "c", the notice period for
26 termination, cancellation, or nonrenewal of a manufacturer and
27 dealer agreement by a dealer may be reduced to thirty days if
28 there is good cause for such termination, cancellation, or
29 nonrenewal due to any of the following factors:

30 (1) The manufacturer or distributor has been convicted of or
31 has entered a plea of nolo contendere to a felony.

32 (2) The business operations of the manufacturer or
33 distributor have been abandoned or closed for ten consecutive
34 business days, unless the closing is due to an act of God,
35 a strike, a labor difficulty, or other cause over which the

1 manufacturer or distributor has no control.

2 (3) The manufacturer or distributor has made a significant
3 misrepresentation that materially affects the business
4 relationship of the manufacturer or distributor and the dealer.

5 (4) The manufacturer or distributor has committed a
6 material violation of this chapter which is not cured within
7 thirty days after receipt of written notice of the violation.

8 (5) The manufacturer or distributor has declared bankruptcy
9 or insolvency, or an assignment for the benefit of creditors or
10 bankruptcy has occurred.

11 Sec. 4. NEW SECTION. **322E.4 Repurchase or sale of**
12 **inventory.**

13 1. If the manufacturer and dealer agreement is terminated,
14 canceled, or not renewed by the manufacturer or distributor
15 without good cause as provided in section 322E.3, subsection
16 1, or if the dealer terminates, cancels, or does not renew
17 the manufacturer and dealer agreement with good cause as
18 provided in section 322E.3, subsection 2, and the manufacturer
19 or distributor fails to provide notice of intent to cure the
20 claimed deficiencies or fails to cure the claimed deficiencies
21 as provided in section 322E.3, subsection 2, the manufacturer
22 or distributor shall, at the dealer's option, and within
23 forty-five days after termination, cancellation, or nonrenewal
24 of the agreement, repurchase all of the following:

25 a. (1) All new, untitled recreational vehicles that
26 were acquired from the manufacturer or distributor within
27 twelve months prior to the effective date of the notice of
28 termination, cancellation, or nonrenewal of the agreement, that
29 have not been used except for demonstration purposes, and that
30 have not been altered or damaged, at one hundred percent of the
31 net invoice cost, including transportation, less applicable
32 rebates and discounts to the dealer.

33 (2) In the event that any of the recreational vehicles
34 repurchased pursuant to this paragraph "a" are damaged, but
35 do not trigger a consumer disclosure requirement, the amount

1 due to the dealer shall be reduced by the cost to repair the
2 vehicle. Damage incurred prior to delivery to the dealer that
3 was disclosed at the time of delivery does not disqualify
4 repurchase pursuant to this paragraph "a".

5 *b.* All undamaged accessories and proprietary parts sold
6 to the dealer for resale within twelve months prior to the
7 effective date of termination, cancellation, or nonrenewal
8 of the agreement, if accompanied by the original invoice, at
9 one hundred five percent of the original net price paid to the
10 manufacturer or distributor, to compensate the dealer for the
11 cost of handling, packing, and shipping the parts for return to
12 the manufacturer or distributor.

13 *c.* All properly functioning diagnostic equipment, special
14 tools, current signage, or other equipment and machinery
15 that was purchased by the dealer upon the request of the
16 manufacturer or distributor within five years prior to the
17 effective date of the termination, cancellation, or nonrenewal
18 of the agreement, and that can no longer be used in the normal
19 course of the dealer's ongoing business.

20 2. *a.* A dealer is not prohibited from selling the remaining
21 inventory of a particular line-make that is in stock after
22 a dealer and manufacturer agreement has been terminated,
23 canceled, or nonrenewed by a manufacturer or distributor
24 without good cause as provided in section 322E.3, subsection 1.

25 *b.* If recreational vehicles of a particular line-make
26 are not returned or required to be returned by the dealer to
27 the manufacturer or distributor pursuant to the terminated,
28 canceled, or nonrenewed manufacturer and dealer agreement, the
29 dealer may continue to sell all line-makes that were subject to
30 the agreement and are currently in stock until those line-makes
31 are no longer in the dealer's inventory.

32 Sec. 5. NEW SECTION. 322E.5 Transfer of ownership — family
33 succession — objections.

34 1. *a.* If a dealer desires to make a change in ownership
35 of a dealership by sale of the business assets, a stock

1 transfer, or otherwise, the dealer shall give the manufacturer
2 or distributor that is a party to a manufacturer and dealer
3 agreement written notice of the proposed change at least
4 fifteen business days before the change is effective, including
5 all supporting documentation as may be reasonably required by
6 the manufacturer or distributor to determine whether to make an
7 objection to the sale, transfer, or other change in ownership.
8 In the absence of a breach by the dealer of the manufacturer
9 and dealer agreement or a violation of this chapter, the
10 manufacturer or distributor shall not object to the proposed
11 change in ownership unless the objection to the prospective
12 transferee is due to any of the following factors:

13 (1) The transferee has previously been a party to a
14 manufacturer and dealer agreement with the manufacturer or
15 distributor that was terminated, canceled, or nonrenewed by the
16 manufacturer or distributor for good cause.

17 (2) The transferee has been convicted of a felony or any
18 crime of fraud, deceit, or moral turpitude.

19 (3) The transferee lacks any license required by law.

20 (4) The transferee does not have an active line of credit
21 sufficient to purchase the manufacturer's or distributor's
22 products.

23 (5) The transferee has undergone bankruptcy, insolvency,
24 a general assignment for the benefit of creditors, or the
25 appointment of a receiver, trustee, or conservator to take
26 possession of the transferee's business or property within the
27 previous ten years.

28 *b.* If a manufacturer or distributor objects to a proposed
29 change in ownership of a dealership, the manufacturer or
30 distributor shall give written notice of its reasons for the
31 objection to the dealer within ten business days after receipt
32 of the dealer's notification and supporting documentation of
33 the proposed change. The manufacturer or distributor has
34 the burden of proof to show that its objection complies with
35 the requirements of this subsection. If the manufacturer or

1 distributor does not give the dealer timely notice of its
2 objection, the proposed change in ownership of the dealership
3 shall be deemed approved.

4 2. a. It is unlawful for a manufacturer or distributor to
5 fail to provide a dealer with the opportunity to designate,
6 in writing, a family member as a successor to ownership of
7 the dealership in the event of the death, incapacity, or
8 retirement of the dealer. If a dealer desires to designate
9 a family member as a successor to a dealership, the dealer
10 shall give the manufacturer or distributor that is a party
11 to the manufacturer and dealer agreement with the dealer
12 written notice of the proposed designation or modification of
13 a previous designation at least fifteen business days before
14 the designation or proposed modification of a designation is
15 effective, including all supporting documentation as may be
16 reasonably required by the manufacturer or distributor to
17 determine whether to make an objection to the succession plan.
18 In the absence of a breach by the dealer of the manufacturer
19 and dealer agreement or a violation of this chapter, the
20 manufacturer or distributor shall not object to the designated
21 successor unless the objection is due to any of the following
22 factors:

23 (1) The designated successor has previously been a party to
24 a manufacturer and dealer agreement with the manufacturer or
25 distributor that was terminated, canceled, or nonrenewed by the
26 manufacturer or distributor for good cause.

27 (2) The designated successor has been convicted of a felony
28 or any crime of fraud, deceit, or moral turpitude.

29 (3) The designated successor lacks any license required by
30 law at the time of succession.

31 (4) The designated successor does not have an active
32 line of credit sufficient to purchase the manufacturer's or
33 distributor's products at the time of succession.

34 (5) The designated successor has undergone bankruptcy,
35 insolvency, a general assignment for the benefit of creditors,

1 or the appointment of a receiver, trustee, or conservator to
2 take possession of the designated successor's business or
3 property within the previous ten years.

4 *b.* It is unlawful for a manufacturer or distributor to
5 prevent or refuse to honor the succession of a designated
6 family member to ownership of a dealership when the dealer
7 is deceased, incapacitated, or has retired, unless the
8 manufacturer or distributor has provided to the dealer written
9 notice of the manufacturer's or distributor's objections to
10 the succession within ten days after receipt of the dealer's
11 designation of a successor or modification of the dealer's
12 succession plan. If a manufacturer or distributor objects
13 to the proposed succession of a designated family member of
14 the dealer to the dealership, the manufacturer or distributor
15 shall give written notice of its reasons for the objection
16 to the dealer within ten business days after receipt of the
17 dealer's notification and supporting documentation of the
18 proposed succession or modification of the succession plan.
19 The manufacturer or distributor has the burden of proof to
20 show that the objection complies with the requirements of
21 this subsection. If the manufacturer or distributor does not
22 give the dealer timely notice of its objection, the proposed
23 succession plan for ownership of the dealership shall be
24 deemed approved. However, a family member of the dealer may
25 not succeed to ownership of the dealership if the succession
26 involves, without the manufacturer's or distributor's consent,
27 a relocation of the dealership or alteration of the terms and
28 conditions of the manufacturer and dealer agreement.

29 Sec. 6. NEW SECTION. 322E.6 **Warranty obligations.**

30 1. A warrantor shall do all of the following:

31 *a.* Specify in writing to each dealer what obligations
32 the dealer has, if any, for preparation and delivery of, and
33 warranty services on, the warrantor's products.

34 *b.* Compensate the dealer for warranty services required of
35 the dealer by the warrantor.

1 c. Provide the dealer with a schedule of compensation and
2 time allowances for the performance of warranty services. The
3 schedule of compensation shall include reasonable compensation
4 for diagnostic services performed as well as warranty services.

5 2. Time allowances for the diagnosis and performance of
6 warranty services shall be reasonable for the service to
7 be performed. In determining what constitutes reasonable
8 compensation under this section, the principle factors to be
9 given consideration are the actual wage rates being paid by the
10 dealer and the actual retail wage rates being charged by other
11 dealers in the community in which the dealer is doing business.
12 The compensation of a dealer for warranty services shall not be
13 less than the lowest actual retail wage rates charged by the
14 dealer for like nonwarranty services as long as such actual
15 wage rates are reasonable.

16 3. A warrantor shall reimburse a dealer for any warranty
17 part, accessory, or complete component at actual wholesale cost
18 plus a minimum of a thirty percent handling charge, up to a
19 maximum of one hundred fifty dollars and the cost, if any, of
20 freight to return such part, component, or accessory to the
21 warrantor.

22 4. Warranty audits of dealer records may be conducted by a
23 warrantor on a reasonable basis, and dealer claims for warranty
24 compensation shall not be denied except for cause, such as
25 performance of nonwarranty repairs, material noncompliance with
26 the warrantor's published policies and procedures, lack of
27 material documentation, fraud, or misrepresentation.

28 5. A dealer shall submit claims for compensation for the
29 performance of warranty services to the warrantor within
30 forty-five days after completion of the warranty services.

31 6. A dealer shall immediately notify a warrantor verbally
32 or in writing if the dealer is unable to perform diagnostic
33 services and warranty services within ten days of receipt of a
34 verbal or written complaint from a consumer.

35 7. A warrantor shall disapprove a claim submitted by

1 a dealer for compensation for the performance of warranty
2 services, in writing, within forty-five days after submission
3 of the claim in the manner and form prescribed by the
4 warrantor. A claim not specifically disapproved as required
5 by this subsection shall be deemed approved and shall be paid
6 within sixty days of submission of the claim.

7 8. A warrantor shall not do any of the following:

8 a. Fail to perform any of the warrantor's obligations with
9 respect to its warranted products.

10 b. Fail to include, in written notices of a factory campaign
11 to recreational vehicle owners and dealers, the expected date
12 by which necessary parts and equipment, including tires and
13 chassis or chassis parts, will be available to dealers to
14 perform the factory campaign work. The warrantor may ship
15 parts to a dealer to effect factory campaign work, and, if such
16 parts are in excess of the dealer's requirements, the dealer
17 may return unused parts to the warrantor for credit after
18 completion of the factory campaign.

19 c. Fail to compensate the warrantor's dealers for authorized
20 repairs effected by the dealer on merchandise damaged in
21 manufacture or in transit to the dealer by a carrier designated
22 by the warrantor, factory branch, distributor, or distributor
23 branch.

24 d. Fail to compensate the warrantor's dealers in accordance
25 with the schedule of compensation provided to the dealer
26 pursuant to this section if the warranty services for which
27 compensation is claimed are performed in a timely and competent
28 manner as required in this section.

29 e. Intentionally misrepresent in any way to consumers that
30 warranties with respect to the manufacture, performance, or
31 design of recreational vehicles are made by the dealer as
32 warrantor or co-warrantor.

33 f. Require the warrantor's dealers to make warranties to a
34 consumer that are in any manner related to the manufacture of
35 the recreational vehicle.

1 9. A dealer shall not do any of the following:

2 a. Fail to perform predelivery inspection functions in a
3 competent and timely manner, as specified by the warrantor.

4 b. Fail to perform warranty services authorized by the
5 warrantor in a competent and timely manner on any transient
6 consumer's recreational vehicle of a line-make sold or serviced
7 by that dealer.

8 c. Fail to accurately document the time spent completing
9 each repair, the total number of repair attempts conducted on
10 a single unit, and the number of repair attempts for the same
11 repair conducted on a single recreational vehicle.

12 d. Fail to notify the warrantor within ten days of a second
13 repair attempt on a recreational vehicle which impairs the use,
14 value, or safety of the vehicle.

15 e. Fail to maintain written records, including a consumer's
16 signature, regarding the amount of time a unit is stored for
17 the consumer's convenience during a repair.

18 f. Make fraudulent warranty claims or misrepresent the terms
19 of any warranty.

20 Sec. 7. NEW SECTION. 322E.7 Indemnification.

21 1. a. Notwithstanding the terms of a manufacturer and
22 dealer agreement, a warrantor shall indemnify and hold harmless
23 the warrantor's dealer against any losses or damages to the
24 extent that the losses or damages are caused by the negligence
25 or willful misconduct of the warrantor.

26 b. A dealer shall not be denied indemnification for failure
27 to discover, disclose, or remedy a defect in the design or
28 manufacturing of a new recreational vehicle. A dealer may
29 be denied indemnification if the dealer fails to remedy a
30 known and announced defect in accordance with the written
31 instructions of the warrantor for whom the dealer is obligated
32 to perform warranty services.

33 c. A dealer shall provide to the warrantor a copy of any
34 pending lawsuit in which allegations are made that are covered
35 by the provisions of this subsection within ten days after

1 receiving notice of such lawsuit.

2 *d.* Notwithstanding any provision to the contrary, this
3 subsection continues to apply even after a new recreational
4 vehicle is titled.

5 2. *a.* Notwithstanding the terms of a manufacturer and
6 dealer agreement, a dealer shall indemnify and hold harmless
7 the dealer's warrantor against any losses or damages to the
8 extent that the losses or damages are caused by the negligence
9 or willful misconduct of the dealer.

10 *b.* A warrantor shall provide to the dealer a copy of any
11 pending lawsuit in which allegations are made that are covered
12 by the provisions of this subsection within ten days after
13 receiving notice of such lawsuit.

14 *c.* Notwithstanding any provision to the contrary, this
15 subsection continues to apply even after a new recreational
16 vehicle is titled.

17 Sec. 8. NEW SECTION. 322E.8 **Inspection and rejection by**
18 **dealer.**

19 1. Whenever a new recreational vehicle is damaged prior
20 to transit or is damaged in transit to the dealer and the
21 carrier or means of transportation has been selected by the
22 manufacturer or distributor, the dealer shall notify the
23 manufacturer or distributor of the damage within the time frame
24 specified in the manufacturer and dealer agreement and shall do
25 either of the following:

26 *a.* Request from the manufacturer or distributor
27 authorization to replace the components, parts, or accessories
28 damaged or otherwise repair the vehicle.

29 *b.* Reject the vehicle within the time frame set forth in
30 subsection 4.

31 2. If the manufacturer or distributor refuses to authorize
32 repair of the damage within ten days after receipt of
33 notification, or if the dealer rejects the new recreational
34 vehicle because of damage, ownership of the vehicle shall
35 revert to the manufacturer or distributor.

1 3. The dealer shall exercise due care when in custody of a
2 damaged new recreational vehicle, but the dealer shall have no
3 other obligations, financial or otherwise, with respect to that
4 vehicle.

5 4. The time frame for inspection and rejection of a damaged
6 new recreational vehicle by a dealer shall be included in the
7 manufacturer and dealer agreement and shall not be less than
8 two business days after the physical delivery of the vehicle
9 to the dealer.

10 5. Any new recreational vehicle that has, at the time of
11 delivery to the dealer, an unreasonable amount of miles on the
12 vehicle's odometer, as determined by the dealer, may be subject
13 to rejection by the dealer and ownership of the vehicle shall
14 revert to the manufacturer or distributor. In no instance
15 shall a dealer deem an amount less than the distance between
16 the dealer and the manufacturer's factory or between the dealer
17 and the distributor's point of distribution, plus one hundred
18 miles, as an unreasonable amount of miles.

19 **Sec. 9. NEW SECTION. 322E.9 Civil actions — mediation.**

20 1. A dealer, manufacturer, distributor, or warrantor
21 injured by another party's violation of this chapter may bring
22 a civil action in district court to recover actual damages
23 resulting from such violation. The court shall award attorney
24 fees and costs to the prevailing party in such an action.
25 Venue for a civil action authorized by this section shall be
26 exclusively in the county in which the dealer's business is
27 located. In an action involving more than one dealer, venue
28 may be in any county in which any dealer that is a party to the
29 action is located.

30 2. Prior to bringing suit under this section, the party
31 alleging a violation of this chapter shall serve a written
32 demand for mediation upon the alleged offending party.

33 a. The demand for mediation shall be served upon the alleged
34 offending party via certified mail at the address stated in the
35 manufacturer and dealer agreement between the parties.

1 *b.* The demand for mediation shall contain a brief statement
2 of the dispute or violation alleged and relief sought by the
3 party filing the demand.

4 *c.* Within twenty days after service of a demand for
5 mediation, the parties shall mutually select an independent
6 certified mediator and shall meet with that mediator for
7 the purpose of attempting to resolve the dispute or alleged
8 violation. The meeting place for the mediation shall be
9 in this state at a location selected by the mediator. The
10 mediator may extend the date for the meeting for good cause
11 shown by either party or upon stipulation of both parties.

12 *d.* The service of a demand for mediation under this
13 section shall toll the time for the filing of any complaint,
14 petition, protest, or other action under this chapter until
15 representatives of both parties have met with the mutually
16 selected mediator for the purpose of attempting to resolve
17 the dispute or alleged violation. If a complaint, petition,
18 protest, or other action has been filed before that meeting,
19 the court shall enter an order suspending any proceeding or
20 action on such complaint, petition, protest, or other action
21 until the mediation meeting has occurred and may, upon written
22 stipulation of all parties to the proceeding or action that
23 they wish to continue mediation under this section, enter an
24 order suspending the proceeding or action for as long a period
25 of time as the court considers appropriate.

26 *e.* Each party to the mediation shall bear their own costs
27 for attorney fees and shall divide equally among them the cost
28 of the mediator.

29 3. In addition to the remedies provided in this section,
30 and notwithstanding the existence of any additional remedy at
31 law, a manufacturer, distributor, warrantor, or dealer may
32 apply to the district court for the grant, upon a hearing and
33 for cause shown, of a temporary or permanent injunction, or
34 both, restraining any person from acting as a dealer without
35 being properly licensed, from violating or continuing to

1 violate any of the provisions of this chapter, or from failing
2 or refusing to comply with the requirements of this chapter.
3 Such injunction shall be issued without bond. A single act in
4 violation of the provisions of this chapter shall be sufficient
5 cause to authorize the issuance of an injunction pursuant to
6 this subsection.

7 DIVISION II

8 COORDINATING AMENDMENTS

9 Sec. 10. Section 321.1, subsection 36C, paragraphs b and c,
10 Code 2015, are amended to read as follows:

11 *b. "Travel trailer"* means a vehicle without motive power
12 used, manufactured, or constructed to permit its use as a
13 conveyance upon the public streets and highways and designed
14 to permit its use as a place of human habitation by one or more
15 persons. The vehicle may be up to eight feet six inches in
16 width and its overall length shall not exceed ~~forty~~ forty-five
17 feet. The vehicle shall be customarily or ordinarily used for
18 vacation or recreational purposes and not used as a place of
19 permanent habitation. If the vehicle is used in this state as
20 a place of human habitation for more than ninety consecutive
21 days in one location it shall be classed as a manufactured or
22 mobile home regardless of the size limitations provided in this
23 paragraph.

24 *c. "Fifth-wheel travel trailer"* means a type of travel
25 trailer which is towed by a pickup by a connecting device known
26 as a fifth wheel. However, this type of travel trailer may
27 have an overall length which shall not exceed ~~forty~~ forty-five
28 feet.

29 Sec. 11. Section 322.2, subsection 13, Code 2015, is amended
30 to read as follows:

31 13. *"Motor vehicle"* means any self-propelled vehicle subject
32 to registration under chapter 321, including a motor home as
33 defined in section 322E.1.

34 Sec. 12. Section 322.3, subsection 1, Code 2015, is amended
35 to read as follows:

1 1. A person shall not engage in this state in the business
2 of selling at retail new motor vehicles of any make or
3 represent or advertise that the person is engaged or intends
4 to engage in such business in this state unless the person
5 is authorized to do so by a contract in writing with the
6 manufacturer or distributor of such make of new motor vehicles
7 and unless the department has licensed the person as a motor
8 vehicle dealer in this state in motor vehicles of such make
9 and has issued to the person a license in writing as provided
10 in this chapter. A person shall not engage in this state in
11 the business of selling at retail new motor vehicles that are
12 recreational vehicles as defined in section 322E.1, unless the
13 person is authorized to do so by a manufacturer and dealer
14 agreement as provided in chapter 322E.

15 Sec. 13. Section 322A.1, subsection 8, Code 2015, is amended
16 to read as follows:

17 8. "*Motor vehicle*" means "*motor vehicles*" as defined in
18 chapter 321 which are subject to registration pursuant to the
19 provisions thereof, except those motor vehicles defined as
20 recreational vehicles in section 322E.1.

21 Sec. 14. Section 322C.2, subsection 4, Code 2015, is amended
22 by striking the subsection and inserting in lieu thereof the
23 following:

24 4. "*Fifth-wheel trailer*" means the same as defined in
25 section 322E.1.

26 Sec. 15. Section 322C.2, Code 2015, is amended by adding the
27 following new subsections:

28 NEW SUBSECTION. 4A. "*Folding camping trailer*" means the
29 same as defined in section 322E.1.

30 NEW SUBSECTION. 6A. "*Park model recreational vehicle*" means
31 the same as defined in section 322E.1.

32 Sec. 16. Section 322C.2, subsection 10, Code 2015, is
33 amended by striking the subsection and inserting in lieu
34 thereof the following:

35 10. "*Travel trailer*" means the same as defined in section

1 322E.1.

2 Sec. 17. Section 322C.3, subsection 1, Code 2015, is amended
3 to read as follows:

4 1. A person shall not engage in this state in the business
5 of selling at retail new travel trailers of any make, or
6 represent or advertise that the person is engaged or intends
7 to engage in such business in this state, unless the person is
8 authorized by a contract in writing between that person and the
9 manufacturer or distributor of that make of new travel trailers
10 to sell the trailers in this state as provided in chapter 322E,
11 and unless the department has issued to the person a license as
12 a travel trailer dealer for the same make of travel trailer.

13 Sec. 18. Section 322C.3, subsections 5 and 7, Code 2015, are
14 amended by striking the subsections.

15 DIVISION III

16 APPLICABILITY

17 Sec. 19. APPLICABILITY. The provisions of this Act apply
18 to manufacturer and dealer agreements that are entered into or
19 renewed on or after July 1, 2016.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill regulates agreements between manufacturers or
24 distributors, and dealers relating to the sale of recreational
25 vehicles and includes coordinating amendments and applicability
26 provisions.

27 DIVISION I. New Code chapter 322E regulates manufacturer
28 and dealer agreements fixing the rights and responsibilities of
29 each party pertaining to the sale of new recreational vehicles
30 in the state. A "recreational vehicle" is a vehicle that is
31 either self-propelled or towed by a consumer-owned tow vehicle
32 and is primarily designed to provide temporary living quarters
33 for recreational, camping, or travel use. A "recreational
34 vehicle" includes a "motor home" which is a motorized vehicle,
35 and a "travel trailer" such as a fifth-wheel trailer, folding

1 camping trailer, truck camper, or a park model recreational
2 vehicle, which is nonmotorized and towable.

3 A manufacturer or distributor, and a dealer are required
4 to enter into a written manufacturer and dealer agreement
5 before selling new recreational vehicles in the state. The
6 agreement must designate the dealer's exclusive area of sales
7 responsibility. A manufacturer or distributor, or a dealer
8 may terminate, cancel, or fail to renew the agreement with or
9 without cause and the bill specifies notification requirements,
10 what factors may be considered in determining whether good
11 cause exists, and requirements concerning repurchase or sale of
12 remaining inventory of recreational vehicles and outstanding
13 financial obligations between the parties to the agreement.
14 The party that terminates, cancels, or fails to renew the
15 agreement for good cause has the burden of showing cause.

16 The bill requires that a dealer that desires to make a change
17 in ownership of the dealership give notice to the manufacturer
18 or distributor of the proposed change. The manufacturer or
19 distributor is not allowed to object to the proposal unless the
20 objection is due to factors specified in the bill concerning
21 the proposed transferee. The manufacturer must make a written
22 objection and has the burden of proving that the objection
23 complies with the bill's requirements.

24 A manufacturer or distributor is prohibited from failing to
25 provide a dealer with the opportunity to designate a family
26 member as a successor to the dealership in the event of the
27 dealer's death, incapacity, or retirement so long as the
28 dealer gives written notice of the designation before it takes
29 effect. The manufacturer or distributor cannot object to the
30 designation unless the dealer is in breach of the manufacturer
31 and dealer agreement or in violation of the provisions of new
32 Code chapter 322E or the objection is due to other specified
33 factors. A manufacturer or distributor is prohibited from
34 refusing to honor the succession of the designated family
35 member unless the manufacturer or distributor has provided the

1 dealer with written notice of an objection to the dealer's
2 designation after receiving notice of the designation.

3 In regards to warranty obligations on new recreational
4 vehicles, the bill requires the warrantor, that person
5 providing a written warranty on the vehicles, to specify the
6 dealer's obligations for preparation, delivery, and warranty
7 services on the warrantor's products and how the dealer will
8 be compensated for provision of those services. The bill
9 specifies the warrantor's and dealer's obligations to each
10 other concerning warranties.

11 The bill provides that both the warrantor and the dealer have
12 duties to indemnify and hold each other harmless to the extent
13 that losses or damages are caused by the negligence or willful
14 misconduct of the other. These duties continue even after a
15 new recreational vehicle is titled.

16 The bill specifies the rights and obligations of a dealer and
17 a manufacturer or distributor when a new recreational vehicle
18 is damaged in transit. The bill specifies a time frame for a
19 dealer to inspect a delivered vehicle and to either reject or
20 request to repair the damaged vehicle.

21 A dealer, manufacturer, distributor, or warrantor injured
22 by another party's violation of the provisions of new Code
23 chapter 322E may bring a civil action in district court to
24 recover actual damages and the prevailing party in the action
25 is entitled to attorney fees and costs. However, prior to
26 bringing suit, the party alleging the violation is required
27 to serve a demand for mediation upon the alleged offending
28 party. The parties must mutually select and share the cost of
29 retaining an independent mediator to attempt to resolve the
30 dispute or alleged violation. Service of the mediation demand
31 tolls the time for filing any other proceeding or action and
32 the district court is required to suspend any proceeding or
33 action until the mediation meeting occurs. In addition to any
34 other remedy, either party may apply to the district court for
35 a temporary or permanent injunction.

1 DIVISION II. Division II of the bill includes coordinating
2 amendments.

3 Code chapter 321 (motor vehicles and law of the road) is
4 amended to provide that travel trailers and fifth-wheel travel
5 trailers shall not exceed 45 feet, instead of 40 feet in
6 length.

7 Code chapter 322 (motor vehicle manufacturers, distributors,
8 wholesalers, and dealers) is amended to provide that "motor
9 vehicle" includes a "motor home" as defined in new Code chapter
10 322E. Code section 322.3(1) is amended to prohibit a person
11 from selling a motor vehicle that also meets the definition
12 of a "recreational vehicle" pursuant to new Code chapter
13 322E, unless the person is authorized to do so pursuant to a
14 manufacturer and dealer agreement that meets the requirements
15 of new Code chapter 322E.

16 Code chapter 322A (motor vehicle franchisors) is amended
17 to provide that Code chapter 322A does not apply to a motor
18 vehicle that is defined as a "recreational vehicle" pursuant to
19 new Code chapter 322E.

20 Code chapter 322C (travel trailer dealers, manufacturers,
21 and distributors) is amended to include definitions of
22 recreational vehicles that are consistent with the definitions
23 in new Code chapter 322E. Code section 322C.3(1) is amended
24 to provide that the required manufacturer or distributor and
25 dealer agreement must be made in accordance with the provisions
26 of new Code chapter 322E. Code section 322C.3 is amended to
27 strike two provisions concerning manufacturers or distributors,
28 and dealers of travel trailers that are inconsistent with
29 provisions contained in new Code chapter 322E.

30 DIVISION III. The provisions of the bill apply to
31 manufacturer and dealer agreements pertaining to the sale of
32 new recreational vehicles that are entered into or renewed on
33 or after July 1, 2016.