Legislative Analysis

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RECREATIONAL VEHICLE FRANCHISE ACT

House Bill 6617
Sponsor: Rep. Joel Sheltrown
Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 11-11-08

A SUMMARY OF HOUSE BILL 6617 AS INTRODUCED 11-7-08

BRIEF SUMMARY: House Bill 6617 would create the "Recreational Vehicle Franchise Act" to regulate the relationship between recreational vehicle manufacturers and dealers in Michigan, with an effective date of July 1, 2009. It is tie-barred to House Bill 6616. Among other things, the bill would:

- Require a signed dealer agreement between a manufacturer and a dealer to sell recreational vehicles in Michigan, except for certain authorized "off premises" sales, such as public vehicle shows, for which a dealer would not need a dealer agreement.
- Require each dealer agreement to specify the dealer's "area of sales responsibility"--a geographic area in which the dealer would have exclusive rights to display and sell a particular line-make (defined in the bill) of recreational vehicles.
- Allow the manufacturer to designate the "area of sales responsibility" but prohibit the manufacturer from changing it during the term of the agreement or from giving another dealer rights to that particular line-make of recreational vehicles, unless the dealer took certain steps to sell competing vehicles, in which case the manufacturer could "revise" the dealer's geographic territory or line-make.
- Prohibit changes to a dealer's "area of sales responsibility" during the first year of a dealer agreement (specifically, for one year from delivery of the first vehicles under the initial dealer agreement).
- Allow three types of "off premises" sales to occur off a dealer's premises, including public vehicle shows.
- Require a dealer to designate a "principal" in the dealer agreement, and allow, but not require, a dealer to designate a family member successor principal.
- Require manufacturers to publish a price list and sell vehicles to dealers according to those prices. Any special rebates, discounts, or programs given to one dealer would have to be given to all similarly-situated dealers.
- Allow manufacturers to increase a dealer's inventory stocking requirements or retail sales targets at renewal but not in excess of market growth.
- Require "good cause" for termination or non-renewal of a dealer agreement by a manufacturer. One subsection of Section 9 sets forth "good cause" factors and another contains a definition of "good cause." For some offenses, a dealer would receive notice of a proposed termination and an opportunity to cure deficiencies; for others, the dealer would receive a shorter notice period and no opportunity to cure. If a dealer is bankrupt, insolvent, or has a made an assignment for the benefit of

creditors, its dealer agreement would be terminated without notice or an opportunity to correct deficiencies.

- Allow, but not require, a manufacturer to repurchase inventory from a dealer whose agreement has been terminated or not renewed. If the manufacturer chooses to buy back inventory, it must pay the prices specified in the bill.
- Allow a *dealer* to terminate an agreement for "good cause" as defined in the bill, after following the bill's notice procedures. The bill also specifies inventory repurchase rules for this situation.
- Allow a dealer to sell the remaining inventory it has in stock that is not repurchased by the manufacturer after its dealer agreement is terminated by either party.
- Specify when and on what grounds a manufacturer could object to a change of ownership with separate rules applying in cases involving a family member taking over as designated principal upon the death, retirement, or incapacity of if the designated principal.
- Specify the obligations of manufacturers and other warrantors with respect to warranty work, give dealers a deadline for submitting claims, and manufacturers a deadline for paying properly submitted claims, and authorize manufacturers and other warrantors to audit dealers' records.
- Specify when manufacturers or other warrantors would have to indemnify dealers and vice versa.
- Specify prohibited acts by both manufacturers and dealers, and specify additional prohibited forms of coercion by manufacturers.
- Set forth procedures for the rejection or repair of vehicles damaged before or during shipping and that allow dealers to reject new vehicles with excessive odometer miles.
- Allow dealers and manufacturers to bring a civil enforcement action in state circuit court for actual damages, injunctive relief or other equitable relief only after attempting to resolve the dispute through mediation. Parties would bear their own mediation costs and split the mediator's costs. In a court action, the court would be required to award costs and attorney's fees to the prevailing party.

DETAILED SUMMARY

Dealer agreement requirement. [§5(1)-(2)] A recreational vehicle manufacturer and a dealer would both have to sign a dealer agreement meeting specified criteria or the manufacturer could not sell recreational vehicles in Michigan to that dealer, and the dealer could not sell recreational vehicles made by that manufacturer (except for certain "off-premises" sales, including public vehicle shows, permitted under Section 5(4), described below).

(**"Manufacturer"** is defined in Section 3(h) of the bill as "a person that manufactures or wholesales recreational vehicles or that distributes or wholesales recreational vehicles to dealers." Under Section 3(b), a **"dealer"** would mean a person that meets the definition of dealer contained in Section 11 of the Motor Vehicle Code, Public Act 300 of 1949,

MCL 257.11,[1] and is a licensed recreational vehicle dealer under the Motor Vehicle Code.)

Area of sales responsibility. [§5(3)] Under Section 3(a), each dealer agreement would have to define an "area of sales responsibility" (designated by the manufacturer) which is a specified geographic territory in which the dealer has the exclusive right to display or sell the manufacturer's *new* recreational vehicles of a particular line-make to the public.

Under Section 3(g) of the bill as introduced, **"line-make"** means a series of recreational vehicle products (1) with a common series trade name or trademark; (2) with décor, features, equipment, size, weight, and price ranges targeted to a particular market segment; (3) with dimensions and interior floor plans that distinguish them from other similar recreational vehicles; (4) that belong to a single, distinct classification of recreational vehicle products with similarly-constructed chassis, frames, and bodies.

Under Section 5(3), the following rules apply to "areas of sales responsibility":

- The *manufacturer* shall designate the "area of sales responsibility" exclusively assigned to the dealer.
- During the term of the agreement, the manufacturer couldn't change the dealer's area of sales responsibility or give another dealer in that geographic area rights to the same line-make unless the dealer begins to sell new or increased amounts of competing vehicles. Specifically, if, while the dealer agreement is in place, the dealer enters into an agreement to sell competing vehicles or to increase a preexisting commitment to sell competing vehicles, the manufacturer could "revise"--in other words, reduce--the dealer's "area of sales responsibility" if the competing sales aren't permitted by the dealer agreement and the manufacturer reasonably believes the sales threaten its market penetration.
- An area of sales responsibility is not subject to a review or change for one year after the date of the first delivery of new recreational vehicles to the dealer under the initial dealer agreement.

Permissible sales outside a dealer's "area of sales responsibility." [§5(4)] A dealer would be allowed to sell recreational vehicles outside its designated geographic area only if it has obtained any separate supplemental licenses to sell the vehicles that may be required

[1] Under MCL 257.11, a "dealer" is a person who in a 12-month period is engaged in the business of (1) purchasing, selling, exchanging, brokering, leasing, or dealing in vehicles of a type required to be titled under the Motor Vehicle Act; or (2) purchasing, selling, exchanging, brokering, or dealing in the salvageable parts of five or more vehicles; or (3) buying five or more vehicles to sell for parts or to process into scrap metal. A dealer is also a person engaged in the actual remanufacturing of engines or transmissions. There is a rebuttable presumption that a person who in a 12-month period buys and sells, exchanges, brokers, leases, or deals in five or more vehicles, or buys and sells, exchanges, brokers, or deals in salvageable parts for five or more vehicles, or buys five or more vehicles to sell vehicle parts or to process into scrap metal is "engaged in the business" of doing so. The term "dealer" excludes a long list of persons, including certain financial institutions and insurers.

under Section 248(1) of the Motor Vehicle Code, and the sales fall into one of three categories of allowed "off-premises" sales:

- Authorized off-premises sales in another dealer's territory. The sales could take place off-premises at a location in another's dealer's territory, so long as the dealer outside that territory has obtained the written permission of the manufacturer in advance of the sale that (1) is signed by both of the dealers and the manufacturer; (2) designates the recreational vehicles to be offered for sale; (3) specifies a time period for the off-premises sale; and (4) affirmatively authorizes the sale of the designated recreational vehicles.
- Off-premises sales not in another dealer's *line-make* territory. The sales could take place off-premises in a location where there is no dealer with a dealer agreement covering that particular line-make.
- Off-premises sales during public vehicle shows. The sales could take place off-premises in conjunction with a public vehicle show that has more than four dealer participants and that is (1) predominantly funded by manufacturers or (2) sponsored by a recreational vehicle trade association.

Designation of principal and successor. [§5(5)-(6)] A dealer must name its principal in the dealer agreement and is allowed, but not required, to include a designated family successor to the principal or a succession plan in the agreement. A dealer could change its designations or succession plan by providing written notice to the manufacturer.

(Under Section 3(f), **"family member"** means an individual's spouse; the individual's child, grandchild, sibling, niece or nephew; or the spouse of an individual's child, grandchild, parent, sibling, niece, or nephew.)

Price list; rebates. [§7(1)] Recreational vehicle manufacturers would have to publish their prices, charges, and terms of sale from time to time and sell recreational vehicles to dealers under the prices and terms in effect at the time of the sale. If a manufacturer offers one dealer a rebate, discount, or program on any recreational vehicle, it must offer the same rebate, discount, or program to every "similarly situated" dealer.

Increased inventory or sales requirements at renewal. [§7(3)] At renewal, a manufacturer could increase a dealer's inventory stocking requirements or retail sales targets so long as the increase did not exceed "market growth" in the dealer's area of sales responsibility.

Good cause required for termination or nonrenewal of a dealer agreement by manufacturer. [§9(1)-(2)] A manufacturer could not directly or indirectly terminate or fail to renew a dealer agreement without good cause. The manufacturer would have the burden of showing good cause for terminating or not renewing a dealer agreement.

The following factors would be considered in determining whether good cause existed:

- The extent of the dealer's penetration in the relevant market area.

- The nature and extent of the dealer's investment in its business.
- The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.
- The effect of the proposed action on the community.
- The extent and quality of the dealer's warranty service.
- Whether the dealer follows agreed-upon procedures or standards related to the dealership's overall operation.
- The dealer's performance under the terms of the dealer agreement.

[Note: Section 9 has two separate provisions that concern "good cause" for a manufacturer to terminate a dealer agreement, and it is not clear how these two sections will work together or be interpreted if the bill is enacted. In addition to Section 9(2), Section 9(6) also states that "good cause" includes, but is not limited to, any of the following:

- A dealer or dealer owner's conviction of (or plea of no contest to) a felony.[§9(6)(a)]
- A dealer's abandonment or closing of its business for 10 consecutive business days (unless due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control). [§9(6)(b)]
- A material misrepresentation by a dealer to the manufacturer. [§9(6)(c)]
- A suspension or revocation of the dealer's license, or refusal to renew a dealer's license, by the Secretary of State. [§9(6)(d)]
- A material violation of this act by a dealer that is not cured within 30 days after written notice of the violation. [§9(6)(e)]
- A dealer's insolvency, bankruptcy, or assignment for the benefit of creditors. [§9(6)(f)]

Written notice of termination of nonrenewal. [§9(3)] Unless an exception applies, a manufacturer would have to provide a dealer with written notice of a termination or nonrenewal of a dealer agreement. All of the following provisions apply to the required written notice:

- The notice must be provided at least 90 days before the effective date of the termination or nonrenewal unless an exception allowing a shorter notice period applies.
- The notice must state all of the reasons for the termination or nonrenewal.
- The notice must notify the dealer of its right to provide the manufacturer with a written notification of intent to cure all claimed deficiencies within 30 days and its right to a 30-day period to correct the deficiencies. (It is not clear whether the 30-day period begins to run from the date on the notice from the manufacturer or the date that the dealer *receives* the notice from the manufacturer.) If the dealer corrects all of the deficiencies within the 30-day period, the notice is void, and the manufacturer may not terminate or fail to renew the dealer agreement *for the reasons stated in the notice*. If the dealer does not provide a notification of intent to cure deficiencies within 30 days, the termination or nonrenewal takes effect 90 days after the dealer received the notice.)

- In certain situations, a manufacturer could shorten the 90-day period to 10 days and the dealer would have no opportunity to correct alleged deficiencies. The bill intends that the "offenses" that allow a shorter notice with no opportunity to correct the alleged deficiencies are such things as the commission of felonies, abandonment of a business, material misrepresentations, etc.--everything listed in Section 9(6) except bankruptcy, insolvency, and assignments for the benefit of creditors, which get separate treatment, described in the next bullet point. (An amendment is anticipated that will make the bill refer to the correct section that lists the offenses in question.)
- If a dealer becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, a manufacturer can terminate or not renew the dealer agreement *without notice or opportunity to correct deficiencies*.

Repurchase of inventory after termination of a dealer agreement by a manufacturer. [§9(4)-(5)] If a manufacturer terminates or does not renew a dealer agreement, the manufacturer may, at its option, repurchase any of the following from the dealer at the price specified in the bill. The dealer must promptly arrange for the return of any items the manufacturer wishes to repurchase, at the manufacturer's expense, and the manufacturer must pay the dealer the items within 30 days after their receipt:

- *New, untitled, unused, unaltered, and undamaged recreational vehicles from the previous 12 months*: 100 percent of the net invoice cost, including transportation, less applicable rebates and discounts.
- *Current and undamaged accessories and proprietary parts from the previous 12 months accompanied by the original invoice*: 105 percent of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the parts the accessories and parts. ("Proprietary part" means a "recreational vehicle part manufactured by or for and sold exclusively by a manufacturer.")
- *Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery purchased by the dealer at the manufacturer's request in the past five years that can't be used in the normal course of the dealer's ongoing business:* 100 percent of the dealer's net cost, plus freight, designation, delivery, and distribution charges and sales taxes.

Definition of good cause for termination of a dealer agreement by a manufacturer. [§9(6)(a)-(f)] As noted above, Section 9 contains two separate provisions describing good causes or good factors for a manufacturer to terminate a dealer's agreement. Here, in Section 9(6), the bill states says that as used in [Section 9], "good cause" includes, but is not limited to the following on the part of a dealer: conviction of a felony (or pleading no contest to the felony); abandoning or closing the business for the specified number of days; making a material misrepresentation to the manufacturer; losing its license from Secretary of State; making a material violation of the act that is not cured within 30 days; and insolvency, bankruptcy, or making an assignment for the benefit of creditors.

Termination of an agreement by a *dealer*. [§11(1)] A *dealer* would also need "good cause" to terminate a dealer agreement and provide 90 days' written notice to the manufacturer before the effective date of the termination. (There is no mention of

nonrenewal in this section in contrast to Section 9 pertaining to termination by manufacturers.)

Good cause for termination by a dealer. [§11(2)] The following rules apply when a *dealer* terminates a dealer agreement:

- The written termination notice must contain all reasons for the proposed termination.
- The written termination notice must advise the manufacturer of its right to provide the dealer written notification of intent to cure deficiencies within 30 days after it receives the dealer's notice, and its right to then correct them within 90 days of the notice. [Note: By contrast, dealers have only 30 days to correct alleged deficiencies.]
- If the manufacturer corrects all of the alleged deficiencies within the 90-day period, the notice is void, and the dealer may not terminate or fail to renew the dealer agreement for the reasons stated in the notice. If the manufacturer does not provide a notification of intent to cure deficiencies within 30 days, the termination or nonrenewal takes effect *30 days* after the dealer received the notice. [In contrast, under Section 9, if a *dealer* does not provide notification of intent to cure within 30 days, the termination is effective within 90 days.]
- The dealer has the burden of showing good cause.
- Each of the following is considered good cause for termination of an agreement by a dealer: (1) a manufacturer's conviction of, or a plea of no contest to, a felony; (2) abandonment or closing of the business operations of the manufacturer for 10 consecutive business days unless due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control; (3) a material misrepresentation to the dealer by the manufacturer that affects the business relationship between the dealer and manufacturer; (4) a material violation of the act by the manufacturer that is not cured within 30 days after written notice of the violation by the dealer to the manufacturer; (4) the manufacturer's insolvency, bankruptcy, or assignment for the benefit of creditors.

Repurchase of inventory after termination by a dealer. [§11(d)-(e)] If a manufacturer fails to cure any claimed deficiencies under subdivision (b), the dealer may require that the manufacturer repurchase specified inventory from the dealer at the price specified in the bill. The dealer would have to promptly arrange for the return of all the items that the manufacturer must repurchase and the manufacturer would have to pay the dealer for them within 30 days after receipt.

Sales of remaining inventory that is not repurchased. [§13] The Department of State [Secretary of State] could not prohibit a dealer from selling a particular line-make after a dealer agreement has been terminated or not renewed under Section 9 or 11. The dealer could continue to sell all the remaining recreational vehicles of the line-make covered by the dealer agreement that it has in stock that are not repurchased by the manufacturer.

Change of ownership of a dealer. [§15(1)] The following provisions would apply to transactions that will result in the change of ownership of a dealer such as an assets sale

or stock transfer (except for situations involving the retirement, death, or incapacity of a designated principal of a dealer which are dealt with in Section 15(2).

- The dealer must provide at least 90 days' written notice to the manufacturer before the proposed closing that includes complete copies of all documentation of the proposed transaction and any other documentation reasonably requested by the manufacturer in order to determine if it will object to the transaction.
- If the dealer is not in breach of its dealer agreement or in violation of the act at the time it provides its notice of a change of ownership transaction, the manufacturer could not object to the transfer unless the transferee (1) was previously party to a dealer agreement terminated by the manufacturer; (2) was previously convicted of a felony or any crime of fraud, deceit, or moral turpitude; (3) does not have any license required to be a dealer in Michigan; (4) does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer under the terms of the dealer agreement; (5) in the preceding ten years was bankrupt or insolvent; made an assignment for the benefit of creditors; or had a receiver, trustee, or conservator appointed for the transferee's business or property.
- If the manufacturer objects to the proposed transaction, the manufacturer would have to give written notice of its objection, including its reasons, to the dealer within 30 days after receiving the dealer's 90-day notice. If the manufacturer does not give notice of its objection within the 30-day period, the proposed transaction is considered approved by the manufacturer.
- The manufacturer has the burden of demonstrating its objection to the proposed transaction.

Death, incapacity, or retirement of a dealer principal. [§15(2)] The following provisions apply where the change of ownership is due to the death, incapacity, or retirement of a dealer's designated principal:

- The manufacturer must provide the dealer an opportunity to designate, in writing, a family member as a successor to the dealer in the event of the death, incapacity, or retirement of the dealer's designated principal. [Note: Section 5(5)-(6) allows successor designations and plans to be included in the dealer agreement.]
- The manufacturer can't prevent or refuse to honor the succession to a dealership by a family member of the dealer unless the manufacturer has provided written objections to the proposed succession plan within 30 days after receiving the dealer's succession plan or any subsequent modification.
- Unless the dealer is in breach of the dealer agreement, the manufacturer can't object to a family member becoming the dealer's new principal unless the family member (1) was previously convicted of a felony, or any crime (felony or not) of fraud, deceit, or moral turpitude; (2) in the preceding 10 years was bankrupt insolvent, or made an assignment for the benefit of creditors; (3) was previously party to a dealer agreement terminated by the manufacturer; (4) does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer under the terms of the dealer agreement; (5) does not have any license required to be a recreational vehicle dealer in Michigan.

- The manufacturer has the burden of proof when objecting to a family member as successor to a deceased, incapacitated, or retired designated principal.
- The manufacturer's consent is required if a family member's succession as designated principal would involve the relocation of the business or an alteration of the terms and conditions of the dealer agreement.

Warrantor obligations. [§17(1)] A warrantor (generally speaking, a manufacturer providing a warranty on its products) has all the following obligations to the each dealer that sells or leases its warranted products.

(Section 3(o) defines a **"warrantor"** as a manufacturer or any other person that provides a consumer warranty in connection with a new recreational vehicle or its parts, accessories, or components but does not include persons that provide service contracts, mechanical or other insurance, or extended warranties when sold for separate consideration by a dealer or other person not controlled by a manufacturer.)

- To specify in writing the dealer's obligations, if any, for preparation, delivery, and warranty service on its products.
- To compensate the dealer for warranty service required of the dealer by the warrantor.
- To provide the dealer with a schedule of compensation for warranty work, including time allowances. The compensation schedule must (1) provide reasonable compensation for diagnostic work and warranty labor; (2) time allowances for diagnosis and warranty labor must be reasonable for the work to be performed; (3) compensation for warranty labor can't be lower than the lowest retail labor rate the dealer charges for similar nonwarranty work if those rates are consistent with the dealer's actual wages and the actual labor rates it charges in the community
- To reimburse the dealer for warranty parts at actual wholesale cost, plus a minimum 30 percent handling charge and any freight costs to return warranty parts to the warrantor.
- To deny dealer claims for warranty compensation only for cause. Cause to deny a claim would include, but not be limited to, performance of nonwarranty repair; material noncompliance with published policies; material failure to document a claim; fraud; or misrepresentation.

Audits. [§17(2)] A warrantor could audit the records of a dealer that sells or leases its warranted products on a reasonable basis.

Deadline for submission of warranty claims. [§17(3)] A dealer would have to submit warranty claims within 45 days after completing the work.

Dealer's inability to perform warranty repairs; other arrangements. [§17(4)] A dealer would have to immediately notify the warrantor (orally or in writing) as soon as is reasonably possible, but not later than 10 business days after the recreational vehicle was brought in for repair, if unable to perform the warranty work. The warrantor would have to make arrangements for another dealer or repair facility to do the work within 10 business days after receiving the dealer's notification.

30-day approval of properly submitted warranty claims. [§17(5)] A warrantor would have to approve or disapprove a warranty claim in writing within 30 days after the date the dealer submits the claim, if the claim is submitted in the manner and form prescribed by the warrantor. [If the dealer submits the claim in the wrong manner and form, there appears to be no deadline for approval or disapproval.] If a properly submitted claim is not specifically disapproved in writing by a warrantor within the 30-day period, the claim is considered approved and it must be paid within 45 days after the dealer submitted it.

Prohibited acts by warrantors. [§19(1)] A warrantor is prohibited from:

- Failing to perform all of its warranty obligations on its warranted products.
- Failing to include the expected date by which necessary parts and equipment (including tires and chassis or chassis parts if needed) will be available to dealers in any written notice to recreational vehicle owners and dealers of a factory campaign. (Section 3(e) of the bill defines a "factory campaign" as an effort by a warrantor to contact recreational vehicle owners and dealers in order to address a problem or defective part or equipment.)
- Failing to provide sufficient parts to the dealer to perform the campaign work. If a dealer is given more parts than needed for the campaign, the dealer could return unused parts for credit after completion of the campaign.
- Failing to compensate a dealer for authorized repairs of warranted products damaged during the manufacturing process, or damaged in transit to the dealer (if the warrantor selected the carrier), subject to Section 23.
- Failing to compensate a dealer for authorized warranty service in accordance with the applicable compensation schedule if the warranty service is performed in a timely and competent manner.
- Intentionally misrepresenting in any way to a purchaser of a warranted product that any warranty concerning the manufacture, performance, or design of the warranted product is made by the dealer either as a warrantor or co-warrantor.
- Require a dealer to make warranties to customers in any manner related to the manufacture of the warranted product.

Indemnification of dealers. [§19(10)] A warrantor would have to indemnify the dealer for payments or costs connected with a claim or cause of action asserted against the dealer, to the extent that the payments or costs are based on the warrantor's negligence or intentional conduct. The warrantor's obligation to indemnify under this subsection cannot be limited in an agreement with the dealer. The dealer must provide the warrantor with copies of any claim or complaint in which an allegation based on the warrantor's negligence or intentional conduct is made against the dealer within 10 days after receiving it.

Prohibited acts by dealers. [§21(1)] A dealer is prohibited from doing any of the following:

- Failing to perform a predelivery inspection of products, if required, in a competent and timely manner. (**"Products"** in this section means new recreational vehicles, or parts, accessories, or components of new recreational vehicles.)
- Failing to perform authorized warranty service work on a recreational vehicle of a line-make that the dealer is authorized to sell for a transient customer, as defined in Section 3(n) of the bill, in a competent and timely manner without good cause.
- Making a fraudulent warrant claim.
- Misrepresenting the terms of any warranty.

Indemnification of warrantors. [§21(3)] A dealer would have to indemnify a warrantor for payments or costs in connection with a claim or cause of action asserted against the warrantor, to the extent that the payment or costs are based on the dealer's negligence or intentional conduct.

Recreational vehicles damaged before or during shipping. [§23(1)] The following provisions apply if a new recreational vehicle is damaged before shipping or during shipping (if the manufacturer selected the carrier or means of transportation).

- The dealer has to notify the manufacturer of the damage within the time period specified in the dealer agreement and either (1) request authorization to correct the damage or (2) reject the recreational vehicle within the specified time period.
- If the dealer rejects the vehicle, or the manufacturer refuses or fails to authorize repairs within ten days after receiving the dealer's repair authorization request, ownership of the vehicle reverts to the manufacturer.
- Other than exercising due care when it the damaged recreational vehicle is in its custody, the dealer has no other financial or other obligation with respect to the vehicle. [Although, as noted above, the dealer has an obligation to timely notify the manufacturer of any damage.]
- A dealer agreement must include a time period for inspecting and rejecting damaged recreational vehicles of at least two days after the physical delivery of the recreational vehicle to the dealer.

New recreational vehicles with unreasonable odometer miles. [§23(2)] If a new recreational vehicle has an unreasonable number of miles on its odometer at delivery, the dealer may reject it and ownership of the vehicle would revert to the manufacturer. The total number of miles cannot be considered "unreasonable" if the total is less than the sum of the distance between the dealer and the manufacturer's factory or distribution point plus 100 miles.

Manufacturer coercion. [§25] The following types of coercion or attempts at coercion by recreational vehicle manufacturers are prohibited. (Under the bill, the term "coerce" includes, but is not be limited to, threats to (1) terminate or not renew a dealer agreement without good cause; (2) withhold line-makes or other product lines to which the dealer is entitled under the dealer agreement; or (3) to delay delivery of vehicles to induce the dealer to agree to amendments to the dealer agreement.)

- Coercing or attempting to coerce a dealer to purchase a product or service that the dealer did not order.
- Coercing or attempting to coerce a dealer to enter into any agreement with a manufacturer.
- Coercing or attempting to coerce a dealer to enter into an agreement with the manufacturer or any other person that requires the dealer to submit disputes to binding arbitration or waive any rights or responsibilities under the bill.

Civil enforcement; loser pay; venue. [§27(1)-(2)] The act would be enforced through civil actions with recovery limited to actual damages:

- A dealer, manufacturer, or warrantor injured by a violation of the act could bring a civil action in circuit court to recover its actual damages. (A recreational vehicle owner injured by a manufacturer's failure to include the date by which necessary parts would be available during a campaign to correct problems or defects in the campaign notice to the owner would not be authorized to sue.)
- The court would be required to award attorney's fees and costs to the prevailing party in the action.
- If the civil action involved one dealer, the proper venue for bringing the suit would be the county in which the dealer's business is located. In actions involving more than one dealer, any county in which any of the dealer businesses is located would be a proper venue.

Mediation. [§27(3)-(6)] Before bringing a civil action, the party alleging a violation would have to serve a written demand for mediation on the offending party. The mediation demand would have to include a brief statement of the dispute and relief sought. The mediation demand would have to be made by certified mail to one of the following addresses:

- In an action between a dealer and a manufacturer, the address stated in the dealer agreement between the parties.
- In an action between a dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties.
- In an action between two dealers, the address of the offending dealer in Secretary of State records.

The bill sets forth the following procedures for mediation:

- Within 20 days after service of the mediation demand, the parties would mutually select an independent mediator approved by the Secretary of State, and meet with the mediator to attempt to resolve the dispute at a Michigan location selected by the mediator. The mediator could extend the date of the meeting from the 20-day limit for good cause shown by a party or by agreement of the parties.
- The service of a mediation demand would toll the time for filing any other complaint, petition, protest, or other action under the bill until both parties have met with the mediator. If a complaint or other action is filed before the mediation, the court has to

suspend that proceeding until the mediation meeting has occurred. If all parties to the action so stipulate, the court could suspend the proceeding for as long as the court considers appropriate. The court can modify, extend, or revoke a suspension order if appropriate.

- Each party to mediation would bear its own attorney fees and split the mediator's costs equally.

Injunctive relief. [§29] In addition to any other available remedy under this act or other law, a manufacturer, warrantor, or dealer could apply to a circuit court for temporary or permanent injunctive relief, or other equitable relief, after a hearing and for cause shown, to restrain a person from doing any of the following things. The court could not require the party seeking equitable relief to post a bond.

- Acting as a dealer without a license.
- Violating or continuing to violate the act. A single violation of the act is a sufficient for an order of equitable relief.
- Failing or refusing to comply with any requirement of the act.

FISCAL IMPACT:

House Bill 6617 would have no fiscal impact on the State of Michigan or local units of government.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Viola Bay Wild

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.