

§1434. Prohibited conduct

The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any: [PL 1997, c. 427, §2 (NEW).]

1. Damage to public. Manufacturer or recreational vehicle dealer to engage in any action that is arbitrary, in bad faith or unconscionable and causes damage to any manufacturer or dealer parties or to the public;

[PL 1997, c. 427, §2 (NEW).]

2. Coercion involving deliveries and orders. Manufacturer or officer, agent or other representative of that manufacturer to coerce or attempt to coerce any recreational vehicle dealer:

A. To order or accept delivery of any recreational vehicle, appliances, equipment, parts or accessories for a recreational vehicle or any other commodity or commodities not required by law that the recreational vehicle dealer has not voluntarily ordered, or to order or accept delivery of any recreational vehicle with special features, appliances, accessories or equipment not included in the list price of the recreational vehicle if such price exists, as publicly advertised by the manufacturer; or [RR 2009, c. 2, §17 (COR).]

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any other commodity; [PL 1997, c. 427, §2 (NEW).]

[RR 2009, c. 2, §17 (COR).]

3. Certain interference in dealer's business. Manufacturer or officer, agent or other representative of that manufacturer:

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any recreational vehicle dealer having a dealer agreement or contractual arrangement for the retail sale of new recreational vehicles sold or distributed by that manufacturer any recreational vehicles that are covered by that dealer agreement or contract and specifically publicly advertised by that manufacturer to be available for delivery in a reasonable time, except that the failure to deliver any recreational vehicle is not a violation of this chapter if that failure is due to an act of God or work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer or any of its agents has no control; [PL 1997, c. 427, §2 (NEW).]

B. To coerce or attempt to coerce any recreational vehicle dealer to enter into any agreement with a manufacturer or an officer, agent or other representative of that manufacturer or to do any other act prejudicial to that dealer by threatening to cancel any dealer agreement or any contractual agreement existing between the manufacturer and that dealer. Notice in good faith to any recreational vehicle dealer of that dealer's violation of any terms or provisions of that dealer agreement or contractual agreement or insisting in good faith on the dealer's compliance with the terms or provisions of the dealer agreement or any other contractual agreement does not constitute a violation of this chapter; [PL 1997, c. 427, §2 (NEW).]

C. To resort to or use any false or misleading advertisement in connection with the manufacturer's business as a manufacturer or an officer, agent or other representative of that manufacturer or to force any dealer to participate in any advertising campaign or contest, or to purchase any unnecessary or unreasonable quantities of promotional materials, display devices or display decorations or materials at the expense of the new recreational vehicle dealer; [RR 2009, c. 2, §18 (COR).]

D. To offer to sell or to sell any new recreational vehicle at a lower price than the price offered to any other recreational vehicle dealer for the same model vehicle similarly equipped or to utilize

any device, including but not limited to sales promotion plans or programs, that results in that lower price. This paragraph does not apply to the following:

- (1) Sales to a recreational vehicle dealer for resale to any unit of the Federal Government;
- (2) Any manufacturer or any of its agents offering to sell or selling new recreational vehicles to all recreational vehicle dealers at an equal price;
- (3) Sales by a manufacturer to any unit of the Federal Government; and
- (4) Sales to a recreational vehicle dealer who buys a specified number of new recreational vehicles if the same offer is available to all recreational vehicle dealers; [PL 1997, c. 640, §1 (AMD).]

E. To offer to sell or lease or to sell or lease any new recreational vehicle to any person, except a wholesaler or distributor, at a lower price than the price offered and charged to a recreational vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in that lower price. This paragraph does not apply to the sale or lease by a manufacturer to the Federal Government or any agency of the Federal Government; [PL 1997, c. 427, §2 (NEW).]

F. To offer to sell or to sell parts or accessories to any new recreational vehicle dealer for use in that dealer's own business for the purpose of replacing or repairing the same or a comparable part or accessory at a lower price than the price charged for that part or accessory to any other new recreational vehicle dealer for similar parts or accessories for use in the dealer's own business. This paragraph does not prohibit a manufacturer from offering incentives providing unit discounts based on the number of recreational vehicle parts and accessories sold as long as the incentive is offered to all dealers meeting the same terms and conditions of that incentive; [PL 1997, c. 640, §2 (AMD).]

G. To prevent or attempt to prevent by contract or otherwise any recreational vehicle dealer from changing the capital structure of that person's dealership or the means by or through which the dealer finances the operation of the person's dealership if the dealer at all times meets any reasonable capital standards agreed to between the dealer and the manufacturer and if that change by the dealer does not result in a change in the executive management control of the dealership; [PL 1997, c. 427, §2 (NEW).]

H. To prevent or attempt to prevent by contract or otherwise any recreational vehicle dealer or any officer, partner or stockholder of any recreational vehicle dealer from selling or transferring any part of the interest of those persons to any other person or party. A dealer, officer, partner or stockholder may not sell, transfer or assign the rights under the dealer agreement or power of management or control without the consent of the manufacturer. The manufacturer may not unreasonably withhold that consent; [PL 1997, c. 427, §2 (NEW).]

I. To obtain money, goods, services, anything of value or any other benefit from any other person with whom the recreational vehicle dealer does business, on account of or in relation to a transaction between the recreational vehicle dealer and the other person, unless that benefit is promptly accounted for and transmitted to the recreational vehicle dealer; [PL 1997, c. 427, §2 (NEW).]

J. To compete with a recreational vehicle dealer operating under an agreement or dealer agreement from the manufacturer in a relevant market area that has been determined exclusively by equitable principles. A manufacturer is not considered to be competing when operating a dealership either temporarily for a reasonable period not to exceed 2 years or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; [PL 2009, c. 562, §17 (AMD).]

K. To require a recreational vehicle dealer to assent to a release assignment, novation, waiver or estoppel that relieves any person from liability imposed by this chapter; [PL 1997, c. 427, §2 (NEW).]

L. To require any new recreational vehicle dealer to refrain from participation in the management of, investment in or the acquisition of any other line of new recreational vehicle or related product; [PL 1997, c. 427, §2 (NEW).]

M. To require any new recreational vehicle dealer to change the location of the new recreational vehicle dealership or during the course of the agreement to make any substantial alterations to the dealership premises if the change or alteration is unreasonable; [PL 1997, c. 427, §2 (NEW).]

N. To cancel, terminate, fail to renew or refuse to continue any dealer agreement with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph Q;
- (2) Acted in good faith as defined in section 1432, subsection 12; and
- (3) Good cause for the cancellation, termination, nonrenewal or noncontinuance; [PL 1997, c. 427, §2 (NEW).]

O. To cancel, terminate, fail to renew or refuse to continue any dealer agreement with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or the terms or provisions of any waiver unless good cause exists. Good cause exists for the purposes of a termination, cancellation, nonrenewal or noncontinuance when:

- (1) There is a failure by the new recreational vehicle dealer to comply with a provision of the dealer agreement that is both reasonable and of material significance to the contractual relationship as long as compliance on the part of the new recreational vehicle dealer is reasonably possible and the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph Q;
- (2) The failure by the new recreational vehicle dealer, described in subparagraph (1), relates to the performance of the new recreational vehicle dealer in sales or service, then good cause is defined as the failure of the new recreational vehicle dealer to effectively carry out the performance provisions of the dealer agreement if:
 - (a) The new recreational vehicle dealer was apprised by the manufacturer in writing of that failure, the notification stated that notice was provided of failure of performance pursuant to this section and the new recreational vehicle dealer was afforded a reasonable opportunity for a period of not less than 6 months to exert good faith efforts to carry out the performance provisions;
 - (b) The failure continued within the period that began not more than 180 days before the date of notification of termination, cancellation or nonrenewal was given pursuant to paragraph Q; and
 - (c) The new recreational vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to that dealer;
- (3) The dealer and the manufacturer or distributor agree not to renew the dealer agreement; or
- (4) The manufacturer discontinues production or distribution of the recreational vehicle product in this State and, in the case of termination or cancellation, discontinues advertising that product within this State; [PL 1997, c. 427, §2 (NEW).]

P. To cancel, terminate, fail to renew or refuse to continue any contractual relationship with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or dealer agreement or the terms or provisions of any waiver, based on any of the following conditions, which do not constitute good cause:

- (1) The change of ownership of the new recreational vehicle dealer's dealership. This subparagraph does not authorize any change in ownership that has the effect of the sale of rights under the dealer agreement without the manufacturer's or distributor's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor;
- (2) The fact that the new recreational vehicle dealer unreasonably refused to purchase or accept delivery of any new recreational vehicle, parts, accessories or any other commodity or services not ordered by the new recreational vehicle dealer, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories required to perform campaign, recall or warranty work and that this provision is not intended to modify or supersede any requirement of the dealer agreement that dealers market a representative line of those recreational vehicles that the manufacturer is publicly advertising;
- (3) The fact that the new recreational vehicle dealer owns, has an investment in, participates in the management of, or holds a license for, the sale of another make or line of new recreational vehicle or that the new recreational vehicle dealer has established another make or line of new recreational vehicle in the same dealership facilities as those of the manufacturer as long as the new recreational vehicle dealer maintains a reasonable line of credit for each make or line of new recreational vehicle and that the new recreational vehicle dealer remains in substantial compliance with reasonable facilities requirements of the manufacturer;
- (4) The fact that the new recreational vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new recreational vehicle dealer's designated family member. The manufacturer shall give effect to that change in the ownership in the dealership. This subparagraph does not authorize any changes in ownership that have the effect of the sale of the dealership without the manufacturer's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer; or
- (5) The manufacturer has the burden of proof under paragraph N for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the dealer agreements termination, cancellation, nonrenewal or noncontinuance; [PL 1997, c. 427, §2 (NEW).]

Q. To cancel, terminate, fail to renew or refuse to continue any dealership relationship with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or dealer agreement or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new recreational vehicle dealer as follows:

- (1) Notification must be in writing and delivered personally or by certified mail to the new recreational vehicle dealer and contain:
 - (a) A statement of intent to terminate the dealer agreement, cancel the dealer agreement, not continue the dealer agreement or not to renew the dealer agreement;
 - (b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and
 - (c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

- (2) Notification may not be less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal; or
- (3) Notification may not be less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:
 - (a) Insolvency of the new recreational vehicle dealer or filing of any petition by or against the new recreational vehicle dealer under any bankruptcy or receivership law;
 - (b) The business operations outlined by the dealer agreement have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, a strike or labor difficulty;
 - (c) Conviction of or plea of nolo contendere of a recreational vehicle dealer or one of its principal owners of any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of 60 days or more is imposed under Title 17-A, sections 1603 and 1604;
 - (d) Revocation of the recreational vehicle dealer's license pursuant to Title 29-A, section 903; or
 - (e) A determination that there was a material fraudulent misrepresentation by the dealer to the manufacturer, distributor or wholesaler; or [PL 2019, c. 113, Pt. C, §6 (AMD).]

R. To cancel, terminate, fail to renew or refuse to continue any dealer agreement with a licensed new recreational vehicle dealer without providing fair and reasonable compensation to the licensed new recreational vehicle dealer for:

- (1) All unsold and unaltered new model recreational vehicle inventory of the current model year and the previous model year purchased from the manufacturer;
- (2) Unused supplies and parts purchased from the manufacturer or its approved sources;
- (3) Equipment and furnishings purchased from the manufacturer or its approved sources;
- (4) Special tools purchased from the manufacturer or its approved sources; and
- (5) Facilities, if the involuntary termination, cancellation, noncontinuance or nonrenewal is due to a failure of performance of the new recreational vehicle dealer in sales or service and:
 - (a) The new recreational vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new recreational vehicle dealer a sum equivalent to the prorated portion of rent attributable to the manufacturer's terminated line for the unexpired term of the lease or one year's rent, whichever is less; or
 - (b) The new recreational vehicle dealer owns the facilities, the manufacturer shall pay the new recreational vehicle dealer a sum equivalent to the prorated portion of the reasonable rental value of the facilities attributable to the manufacturer's terminated line for one year.

The fair and reasonable compensation for the items listed in subparagraphs (1) to (5) may not be less than the acquisition price and must be paid by the manufacturer within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal.

In lieu of any injunctive relief or any other damages, if the manufacturer fails to prove there was good cause for the termination, cancellation, noncontinuance or nonrenewal or if the manufacturer fails to prove that it acted in good faith, the manufacturer shall pay the new recreational vehicle dealer fair and reasonable compensation for the attributable value of the dealership as an ongoing business to the manufacturer's terminated line; and [PL 1997, c. 640, §3 (AMD).]

[PL 2019, c. 113, Pt. C, §6 (AMD).]

4. Dealer violations. Recreational vehicle dealer:

A. To require a purchaser of a new recreational vehicle, as a condition of sale and delivery of the new recreational vehicle, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. The requirements of this paragraph must be conveyed by the recreational vehicle dealer to the purchaser prior to the consummation of the purchase; [PL 1997, c. 427, §2 (NEW).]

B. To represent and sell as a new recreational vehicle any recreational vehicle that has been used and operated for demonstration purposes or is otherwise a used recreational vehicle; [PL 1997, c. 427, §2 (NEW).]

C. To resort to or use any false or misleading advertisement in connection with that dealer's business as a recreational vehicle dealer; or [PL 1997, c. 427, §2 (NEW).]

D. To fail to disclose conspicuously in writing the recreational vehicle dealer's policy relating to the return of a deposit received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears. [PL 1997, c. 427, §2 (NEW).]

[PL 1997, c. 427, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 427, §2 (NEW). PL 1997, c. 640, §§1-3 (AMD). RR 2009, c. 2, §§17, 18 (COR). PL 2009, c. 562, §17 (AMD). PL 2019, c. 113, Pt. C, §6 (AMD).

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