

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

**CHAPTER 425**

**S.P. 651 - L.D. 1872**

**An Act to Make Changes to the  
Maine Economic Growth Council**

**Be it enacted by the People of the State of  
Maine as follows:**

**Sec. 1. 10 MRSA §929-A, sub-§3**, as enacted by PL 1993, c. 410, Pt. MMM, §1, is repealed and the following enacted in its place:

**3. Appointments.** Members appointed to the council serve a 3-year term.

See title page for effective date.

**CHAPTER 426**

**H.P. 1010 - L.D. 1402**

**An Act to Establish the Civil  
Violation of Creating a Police  
Standoff**

**Be it enacted by the People of the State of  
Maine as follows:**

**Sec. 1. 25 MRSA c. 405** is enacted to read:

**CHAPTER 405**

**POLICE STANDOFFS**

**§3801. Creating police standoff**

**1. Creating police standoff.** A person commits the civil violation of creating a police standoff if that person:

- A. Is in fact barricaded as a result of the person's own actions;
- B. Is or claims to be armed with a dangerous weapon;
- C. Is instructed by a law enforcement agency, either personally, electronically or in writing, to leave the barricaded structure; and
- D. Fails in fact to leave the barricaded structure within 1/2 hour of receiving the instruction from a law enforcement agency.

**2. Civil violation.** Creating a police standoff is a civil violation. The court may order a person who creates a police standoff to make restitution to each agency that responded to the standoff. Restitution must equal the direct costs incurred in responding to

the standoff or \$500, whichever is greater. If any portion of the restitution remains after each agency has been paid its costs, the remainder must be divided equally among the agencies.

**3. Barricaded; definition.** For purposes of this chapter, "barricaded" means that a person is in a location made inaccessible to law enforcement and others by that person and that person is reasonably believed to have threatened suicide or threatened to inflict or has inflicted serious bodily injury or death on hostages, law enforcement officers or others.

See title page for effective date.

**CHAPTER 427**

**H.P. 880 - L.D. 1197**

**An Act to Regulate Recreational  
Vehicle Manufacturers, Distributors  
and Dealers**

**Be it enacted by the People of the State of  
Maine as follows:**

**Sec. 1. 10 MRSA §1361, sub-§8**, as enacted by PL 1993, c. 195, §1, is amended to read:

**8. Goods.** "Goods" means residential, recreational, agricultural, farm, commercial or business equipment, machinery or appliances that use electricity, gas, wood, a petroleum product or a derivative of a petroleum product, for operation. "Goods" does not include motor vehicles as defined in section 1171, subsection 11 and recreational vehicles as defined in section 1432, subsection 18.

**Sec. 2. 10 MRSA c. 214-A** is enacted to read:

**CHAPTER 214-A**

**RECREATIONAL VEHICLE  
MANUFACTURERS, DISTRIBUTORS AND  
DEALERS**

**§1431. Short title**

This chapter may be known and cited as the "Regulation of Business Practices between Recreational Vehicle Manufacturers, Distributors and Dealers."

**§1432. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Camping trailer.** "Camping trailer" means a trailer constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

**2. Dealer.** "Dealer" means a recreational vehicle dealer to whom a dealer agreement is offered or granted.

**3. Dealer agreement.** "Dealer agreement" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a recreational vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of recreational vehicles or services related to recreational vehicles at wholesale, retail or leasing.

**4. Designated family member.** "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a new recreational vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new recreational vehicle dealership under the terms of the owner's will or who, in the case of an incapacitated owner of a new recreational vehicle dealership, has been appointed by a court as the legal representative of the new recreational vehicle dealer's property.

**5. Distributor branch.** "Distributor branch" means a branch office maintained by a distributor or wholesaler that sells or distributes new or used recreational vehicles to recreational vehicle dealers.

**6. Distributor representative.** "Distributor representative" means a representative employed by a distributor branch, distributor or wholesaler.

**7. Distributor or wholesaler.** "Distributor" or "wholesaler" means any person that sells or distributes new or used recreational vehicles to recreational vehicle dealers or that maintains distributor representatives within this State.

**8. Factory branch.** "Factory branch" means a branch maintained by a manufacturer that manufactures or assembles recreational vehicles for sale to distributors or recreational vehicle dealers or that is maintained for directing and supervising the representatives of the manufacturer.

**9. Factory representative.** "Factory representative" means a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale of recreational vehicles or for contracting with, supervising, servicing, or instructing or contracting recreational

vehicle dealers or prospective recreational vehicle dealers.

**10. Fifth-wheel trailer.** "Fifth-wheel trailer" means a trailer designed to provide temporary living quarters for recreational, camping or travel use, of such size or weight as not to require special highway movement permits and designed to be towed by a motor vehicle that contains a towing mechanism mounted above or forward of the tow vehicle's rear axle.

**11. Fraud.** "Fraud" includes, in addition to its normal legal connotation, a misrepresentation in any manner, whether intentionally false or due to gross negligence of a material fact, a promise or representation not made honestly and in good faith and an intentional failure to disclose a material fact.

**12. Good faith.** "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined in Title 11, section 2103, subsection (1), paragraph (b).

**13. Manufacturer.** "Manufacturer" means any person, resident or nonresident, that manufactures or assembles new recreational vehicles or imports for distribution through distributors of recreational vehicles, or any person, resident or nonresident, that is controlled by the manufacturer who grants a dealer agreement to a recreational vehicle dealer. "Manufacturer" includes distributor or wholesaler, distributor branch, distributor representative, factory branch and factory representative.

**14. Motor vehicle.** Motor vehicle has the same meaning as defined in Title 29-A, section 101, subsection 42.

**15. New recreational vehicle.** "New recreational vehicle" means a recreational vehicle that has not been previously sold to any person except a distributor or wholesaler or recreational vehicle dealer for resale.

**16. Person.** "Person" means a natural person, corporation, partnership, trust or other entity. In the case of an entity, "person" includes any other entity in which it has a majority interest or effectively controls, as well as the individual officers, directors and other persons in active control of the activities of each such entity.

**17. Recreational vehicle dealer.** "Recreational vehicle dealer" means any person who sells or solicits or advertises the sale of new recreational vehicles. "Recreation vehicle dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court or public officers while performing their duties as those officers.

**18. Recreational vehicle.** "Recreational vehicle" means a vehicle primarily designed as temporary living quarters for recreational, camping, travel or seasonal use that either is mounted on or towed by another vehicle. "Recreational vehicle" includes, but is not limited to, a camping trailer, fifth-wheel trailer, travel trailer and truck camper.

**19. Sale.** "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any recreational vehicle or interest in a recreational vehicle or of any dealer agreement related to a recreational vehicle and any option, subscription or other contract, or solicitation looking to a sale, or any offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any recreational vehicle with or as a bonus on account of the sale of anything is considered a sale of that recreational vehicle.

**20. Trailer.** "Trailer" means a vehicle without motive power and mounted on wheels, designed to carry persons or property and to be drawn by a motor vehicle and not operated on tracks.

**21. Travel trailer.** "Travel trailer" means a trailer designed to provide temporary living quarters for recreational, camping or travel use, of such size or weight as not to require special highway movement permits when towed by a motor vehicle.

**22. Truck camper.** "Truck camper" means a portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor and sides, designed to be loaded onto and unloaded from the bed of a truck.

### **§1433. Application**

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a new recreational vehicle within the State is subject to this chapter.

### **§1434. Prohibited conduct**

The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any:

**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;

**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 recreation 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

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any other commodity;

**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;

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;

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;

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; and

(3) Sales by a manufacturer to any unit of the Federal Government;

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;

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 for selling more recreational vehicle parts and accessories as long as the incentive is offered to all dealers meeting the terms and conditions of that incentive;

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;

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;

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;

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 one year 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;

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;

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;

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;

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;

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;

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;

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 termi-

nation, 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 1251 and 1252;

(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

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 and previous model years 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

**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;

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;

C. To resort to or use any false or misleading advertisement in connection with that dealer's business as a recreational vehicle dealer; or

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.

#### **§1435. Limitations on establishing or relocating dealerships**

A new recreational vehicle dealership may not be established and an existing recreational vehicle dealership may not be relocated, except as follows.

**1. Notification.** If a manufacturer seeks to enter into a dealer agreement establishing an additional new recreational vehicle dealership or relocating an existing new recreational vehicle dealership, within or into a relevant market area where the same line make is already represented, the manufacturer shall notify, in writing, each new recreational vehicle dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area is a radius of 15 miles around an existing dealership in the following cities: Augusta, Auburn, Bangor, Biddeford, Brewer, Falmouth, Lewiston, Portland, Saco, South Portland, Waterville and Westbrook. The relevant market area is a radius of 30 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, a new recreational vehicle dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishment or relocation of the new recreational vehicle dealership. When a complaint is filed, the manufacturer may not establish or relocate the proposed new recreational vehicle dealership until a hearing has been held on the merits of establishing or relocating that recreational vehicle dealership, and that dealership may not be established or relocated if the court has determined that there is good cause for not permitting the new recreational vehicle dealership. For the purposes of this section, the reopening in a relevant market area of a new recreational vehicle dealership that has not been in operation for one year or more is considered the establishment of an additional new recreational vehicle dealership.

**2. Good cause.** In determining whether good cause has been established for not entering into a new dealer agreement or relocating an additional dealer for the same line make, the court shall take into consid-

eration the existing circumstances, including, but not limited to:

A. The permanency of the investment of both the existing and proposed new recreational vehicle dealers;

B. The effect on the retail new recreational vehicle business and the public in the relevant market area;

C. Whether it is injurious or beneficial to the public for an additional new recreational vehicle dealer to be established;

D. Whether the new recreational vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the recreational vehicles of the line make in that market area that includes the adequacy of recreational vehicle sales and service facilities, equipment, supply of recreational vehicle parts and qualified service personnel;

E. Whether the establishment of an additional new recreational vehicle dealership would increase competition and be in the public interest; and

F. The effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.

#### **§1436. Transportation damages**

##### **1. Liability of new dealer after acceptance.**

Notwithstanding the terms, provisions or conditions of any agreement or dealer agreement, the new recreational vehicle dealer is solely liable for damages to new recreational vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

**2. Liability of manufacturer.** Notwithstanding the terms, provisions or conditions of any agreement or dealer agreement, the manufacturer is liable for all damages to recreational vehicles before delivery to a carrier or transporter.

**3. Additional liability of dealer.** The new recreational vehicle dealer is liable for damages to new recreational vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer is liable for carrier-related new recreational vehicle damage, as long as the new recreational vehicle dealer annotates the bill of lading or other carrier document indicating damages observed at the time of delivery to the new recreational vehicle dealer and promptly notifies the

manufacturer of any concealed damage discovered after delivery.

#### **§1437. Survivorship**

**1. Right of family member.** The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. Any designated family member of a deceased or incapacitated new recreational vehicle dealer who has been designated as successor to that dealer in writing to the manufacturer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement or distribution agreement if the designated family member gives the manufacturer of new recreational vehicles a written notice of the intention to succeed to the dealership within 120 days of the dealer's death or incapacity. The designated family member may not succeed the dealer if there exists good cause for refusal to honor the succession on the part of the manufacturer.

B. The manufacturer may request and the designated family member shall provide, upon the request, on forms provided for that purpose by the manufacturer, personal and financial data that is reasonably necessary to determine whether the succession may be honored.

**2. Refusal to honor; notice required.** The refusal to honor the right of the designated family member to succeed in dealer ownership is governed by the following provisions.

A. If a manufacturer, distributor, factory branch, factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member of a deceased or incapacitated new recreational vehicle dealer under the existing dealer agreement, the manufacturer, within 60 days of receipt of the information requested in subsection 1, paragraph B, may serve upon the designated family member notice of its refusal to honor the succession or its intent to discontinue the existing dealer agreement with the dealership. A discontinuance may not take place sooner than 90 days from the date the notice is served.

B. The notice must state the specific grounds for the refusal to honor the succession and of the intent to discontinue the existing dealer agreement with the dealership no sooner than 90 days from the date the notice is served.

C. If notice of refusal and discontinuance is not served upon the designated family member in a

timely manner, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this section.

**3. Written designation of succession unaffected.** This section does not preclude a new recreational vehicle dealer from designating any person, by written instrument filed with the manufacturer, as that dealer's successor.

**§1438. Delivery and preparation obligations; product liability and implied warranty complaints**

A manufacturer shall specify to the dealer the delivery and preparation obligations of its recreational vehicle dealers prior to delivery of new recreational vehicles to retail buyers. The delivery and preparation obligations of its recreational vehicle dealers and a schedule of the compensation to be paid to its recreational vehicle dealers for the work and services the dealers are required to perform in connection with the delivery and preparation are the dealer's only responsibility for product liability between that dealer and that manufacturer. The compensation stated in the schedule must be reasonable.

In any action or claim brought against the recreational vehicle dealer on a product liability complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer its reasonable costs and attorney's fees incurred in defending the claim or action.

In any action or claim brought against the recreational vehicle dealer on a breach of implied warranty complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer the dealer's reasonable costs and attorney's fees incurred in defending the claim or action. In any implied warranty action, a dealer has the rights of a buyer under Title 11, section 2-607, subsection (5).

The court shall consider the recreational vehicle dealer's share in the responsibility for the damages in awarding costs and attorney's fees.

**§1439. Warranty**

**1. Parts or labor; satisfaction of warranty.** If a manufacturer requires or permits a recreational vehicle dealer to perform labor or provide parts in satisfaction of a warranty created by the manufacturer, the manufacturer shall properly and promptly fulfill its warranty obligations and:

A. Reimburse the dealer for any parts provided to satisfy the warranty at the dealer's cost of those parts plus a markup of 20%; and

B. Reimburse the dealer for any labor performed at the retail rate customarily charged by that dealer for the same labor when not performed in satisfaction of a warranty as long as the dealer's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer.

**2. Claim.** Any claim made by a dealer for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 30 days of its approval. All the claims must be either approved or disapproved within 30 days of their receipt. When any claim is disapproved, the dealer that submitted the claim must be notified in writing of the claim's disapproval within that 30-day period with the specific reasons for its disapproval.

**3. Audits.** The manufacturer is permitted to audit claims within a 2-year period from the date the claim was paid or credit issued by the manufacturer and to charge back any false or unsubstantiated claims. If there is evidence of fraud, this subsection does not limit the right of the manufacturer to audit for longer periods and charge back for any fraudulent claim.

**4. Restrictions prohibited.** A manufacturer may not, by agreement, by restriction upon reimbursement or otherwise, restrict the nature or extent of labor performed or parts provided if the restriction impairs the dealer's ability to satisfy a warranty created by the manufacturer by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

**5. Costs; fees.** In any claim that is disapproved by the manufacturer and in which the dealer brings legal action to collect the disapproved claim and is successful in the action, the court shall award the dealer the cost of the action together with reasonable attorney's fees. If the manufacturer is successful in the action, the court shall award the manufacturer the cost of the action together with reasonable attorney's fees, but not to exceed the amount expended by the dealer in bringing the action. Reasonable attorney's fees are determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of, or sought by, the dealer.

**6. Motor homes.** For the purposes of this section only, a manufacturer of motor homes, as defined in Title 29-A, section 101, subsection 40, shall reimburse a dealer of motor homes for parts of systems, appliances, furnishings, accessories and fixtures of a motor home that are designed, used and maintained primarily for nonvehicular residential purposes.

**§1440. Mediation and arbitration of manufacturer; dealer disputes**

**1. Mediation.** Neither a dealer nor a manufacturer may bring an action in a court of competent jurisdiction based on an alleged violation of this chapter unless the dealer or manufacturer first serves a demand for mediation upon the other before bringing the action.

**2. Demand for mediation.** A demand for mediation must be in writing and served on the other party by certified mail at an address designated within the sales agreement. The demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand. Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

**3. Effect of demand.** The service of a demand for mediation under subsection 1 stays the time for the filing of any action under this chapter until the representatives of both parties have met with a mutually selected mediator for the purpose of resolving the dispute. If an action is filed before the meeting, the court shall enter an order suspending the action until the meeting has occurred and, upon written stipulation of all parties to the action that the parties wish to continue to mediate under this subsection, may enter an order suspending the action for as long as the court considers appropriate. A suspension order may be revoked upon motion of any party or upon motion of the court.

**4. Arbitration.** If a dispute arises under this chapter, the dealer may voluntarily agree to submit that dispute to binding or nonbinding arbitration. An arbitration proceeding must be voluntary, initiated by serving a written request for arbitration on the other party and conducted under the provisions of the Maine Uniform Arbitration Act.

**5. Civil liability immunity.** A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of powers and duties under this section. Every act or omission is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

**§1441. Unreasonable restrictions**

It is unlawful directly or indirectly to impose unreasonable restrictions on the recreational vehicle dealer relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, right of first refusal to purchase, option to purchase,

compliance with subjective standards or assertion of legal or equitable rights.

**§1442. Covered under written or oral agreements**

**1. Agreements subject to this chapter.** Written or oral agreements between a manufacturer and a recreational vehicle dealer, including, but not limited to, the dealer agreement offering, the dealer agreement, sales agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other agreements in which the manufacturer has any direct or indirect interest are subject to this chapter. Any agreement renewed or continued beyond its term after the effective date of this chapter is subject to this chapter.

**2. Copy of agreement or amendments.** Before any new selling agreement or any amendment between the parties becomes effective, the manufacturer or officer, agent or other representative of the manufacturer, 90 days prior to the effective date of the agreement or amendment, shall forward a copy of the agreement or amendment to the dealer.

**§1443. Dealership interest; vested rights**

Notwithstanding any other provision of law, it is unlawful for the manufacturer, wholesaler or distributor, without due cause, to fail to renew a dealer agreement on terms then equally available to all its recreational vehicle dealers, to terminate a dealer agreement or to restrict the transfer of right under a dealer agreement unless the dealer receives fair and reasonable compensation for the value of the business.

**§1444. Dealer's right to associate**

Any dealer has the right of free association with other dealers for any lawful purpose.

**§1445. Discounts and other inducements**

In connection with a sale of a recreational vehicle or vehicles to the State or to any political subdivision of the State, a manufacturer may not offer discounts, refunds or any other similar type of inducement to a dealer without making the same offer or offers to all its dealers within the relevant market area. If inducements are made, the manufacturer shall give simultaneous notice of those inducements to all of its dealers within the relevant market area.

**§1446. Public policy**

A contract or part of a contract or practice under a contract in violation of any provision of this chapter is against public policy and is void and unenforceable. An existing contract or part of a contract or practice in

violation of any provision of this chapter is against public policy and is void and unenforceable to the extent that it is in conflict with this chapter.

#### **§1447. Civil remedies**

Any recreational vehicle dealer who has been damaged by reason of a violation of a provision of this chapter may bring an action to enjoin that violation and to recover any damages arising from that violation of any part of this chapter. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the federal antitrust laws, the Federal Trade Commission Act or under the Maine Revised Statutes is prima facie evidence against that person subject to the conditions set forth in the federal antitrust laws, 15 United States Code, Section 16.

#### **§1448. Statute of limitation**

Actions arising out of any provision of this chapter must be commenced within 4 years after the cause of action accrues. If a person liable under this chapter conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of the cause of action by the person so entitled is excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States or any of its agencies under the antitrust laws, the Federal Trade Commission Act or any other federal Act or the laws of the State related to antitrust laws or to franchising, that action may be commenced within one year after the final disposition of the civil, criminal or administrative proceeding.

#### **§1449. Construction**

In construing this chapter the courts may be guided by the interpretations of the Federal Trade Commission Act, 15 United States Code, Section 45.

If any provision of this chapter is declared unconstitutional or the applicability of this chapter to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability of this chapter to persons and circumstances is not affected.

#### **§1450. Jurisdiction**

A person who violates any provisions of this chapter is subject to the jurisdiction of the courts of this State upon service of process in accordance with Title 14, chapter 203 and consistent with the maximum limits of due process as decided by the United States Supreme Court.

#### **§1450-A. Penalty**

A person who violates this chapter is guilty of a Class E crime.

See title page for effective date.

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## CHAPTER 428

H.P. 1099 - L.D. 1542

### An Act Concerning Time-out Areas

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 20-A MRSA §4502, sub-§5, ¶K,** as enacted by PL 1983, c. 859, Pt. A, §§20 and 25, is amended to read:

K. School improvement; ~~and~~

**Sec. 2. 20-A MRSA §4502, sub-§5, ¶L,** as amended by PL 1989, c. 415, §11, is further amended to read:

L. Prepare and implement an ~~on going~~ ongoing school improvement process and annually update a written school improvement plan, including a fully developed staff development plan for identifying at-risk students in kindergarten ~~through to~~ grade 12, including, but not limited to, truants and dropouts; and the development of appropriate alternative programs to meet their needs; ~~and~~

**Sec. 3. 20-A MRSA §4502, sub-§5, ¶M** is enacted to read:

M. The use of time-out areas, administered in accordance with standards adopted by the department and with this paragraph. The use of a time-out area is subject to the following:

(1) The time-out area must be well ventilated and sufficiently lighted. The time-out area may not be locked; and

(2) The time-out area must be designed to ensure the safety of the student so that the student is supervised by a professional staff member in the room or can be observed from outside of the time-out area and can