

# SENATE BILL NO. 1669

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

7031S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 407.1338, RSMo, and to enact in lieu thereof two new sections relating to recreational vehicles dealers.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 407.1338, RSMo, is repealed and two  
2 new sections enacted in lieu thereof, to be known as sections  
3 407.1321 and 407.1338, to read as follows:

407.1321. 1. A dealer, manufacturer, distributor, or  
2 warrantor injured by another party's violation of sections  
3 407.1320 to 407.1346 may bring a civil action in circuit  
4 court to recover actual damages. The court shall award  
5 attorney's fees and costs to any prevailing party in such  
6 action. Venue for any civil action authorized by this  
7 section shall exclusively be in the county in which the  
8 dealership is located. In an action involving more than one  
9 dealer, venue may be in any county in which a dealer who is  
10 party to the action is located.

11 2. Before bringing suit under this section, the party  
12 bringing suit for an alleged violation shall serve a written  
13 demand for mediation upon the offending party. The  
14 provisions of this subsection do not apply to a proceeding  
15 for injunctive relief.

16 (1) The demand for mediation shall be served upon the  
17 offending party via certified mail at the address stated

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 within the agreement between the parties or, if the address  
19 is not contained in the agreement or the address is no  
20 longer valid, the address on the offending party's license  
21 filed with this state. In the event of a civil action  
22 between two dealers, the demand shall be mailed to the  
23 address on the dealer's license filed with this state.

24 (2) The demand for mediation shall contain a brief  
25 statement of the dispute and the relief sought by the party  
26 filing the demand.

27 (3) Within twenty days after the date a demand for  
28 mediation is served, the parties shall mutually select an  
29 independent mediator and meet with the mediator for the  
30 purpose of attempting to resolve the dispute. The meeting  
31 place shall be in this state in a location selected by the  
32 mediator. The mediator may extend the date of the meeting  
33 for good cause shown by either party or upon stipulation of  
34 both parties.

35 (4) The service of a demand for mediation under this  
36 subsection stays the time for the filing of any complaint,  
37 petition, protest, or other action under sections 407.1320  
38 to 407.1346 until representatives of both parties have met  
39 with a mutually selected mediator for the purpose of  
40 attempting to resolve the dispute. If a complaint,  
41 petition, protest, or action is filed before that meeting,  
42 the court shall enter an order suspending the proceeding or  
43 action until the meeting has occurred and may, upon written  
44 stipulation of all parties to the proceeding or action that  
45 they wish to continue to mediate under this subsection,  
46 enter an order suspending the proceeding or action for as  
47 long a period as the court considers appropriate. A  
48 suspension order issued under this subdivision may be  
49 revoked by the court.

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

53           3. In addition to the remedies provided in this  
54 section and notwithstanding the existence of any additional  
55 remedy at law, a dealer or manufacturer may apply to a  
56 circuit court for the grant, upon a hearing and for cause  
57 shown, of a temporary or permanent injunction, or both,  
58 restraining any person from acting as a dealer,  
59 manufacturer, or distributor without being properly licensed  
60 pursuant to chapter 301, from violating or continuing to  
61 violate any of the provisions of sections 407.1320 to  
62 407.1346, or from failing or refusing to comply with the  
63 requirements of sections 407.1320 to 407.1346. Such  
64 injunction shall be issued without bond. A single act in  
65 violation of any of the provisions of sections 407.1320 to  
66 407.1346 is sufficient to authorize the issuance of an  
67 injunction.

          407.1338. 1. Each warrantor shall specify in writing  
2 to each of its RV dealers, obligations, if any, for  
3 preparation, delivery and warranty service on its products;  
4 shall compensate the dealer for warranty service required of  
5 the dealer by the warrantor; and shall provide the dealer  
6 the schedule of compensation to be paid; and the time  
7 allowances for the performance of such work and service. In  
8 no event shall such schedule of compensation fail to include  
9 reasonable compensation for diagnostic work as well as  
10 warranty labor.

11           2. Time allowances for the diagnosis and performance  
12 of warranty labor shall be reasonable for the work to be  
13 performed. In the determination of what constitutes  
14 reasonable compensation under this section, the principal

15 factors to be given consideration shall be the actual wage  
16 rates being paid by the dealer, and the actual retail labor  
17 rate being charged by the dealers in the community in which  
18 the dealer is doing business. In no event shall such  
19 compensation of a dealer for warranty labor be less than the  
20 lowest retail labor rates actually charged by the dealer for  
21 like nonwarranty labor as long as such rates are reasonable.

22       3. **(1)** The warrantor shall reimburse the dealer for  
23 warranty parts at actual wholesale cost, plus a minimum  
24 thirty-percent handling charge and the cost, if any, of  
25 freight to return warranty parts to the warrantor.

26       **(2) The warrantor shall supply parts and components**  
27 **for warranty service in such quantities and within such**  
28 **reasonable time as will enable the dealer to perform such**  
29 **service without undue delay.**

30       **(3) If a warrantor fails to ship parts or components**  
31 **necessary for warranty service within ten days of a dealer's**  
32 **order, the dealer may obtain substantially equivalent parts**  
33 **or components from other sources and shall, within thirty**  
34 **days, be reimbursed by the warrantor at one hundred percent**  
35 **of the cost paid by the dealer for any parts obtained from**  
36 **another source.**

37       4. Warranty audits of dealer records may be conducted  
38 by the warrantor on a reasonable basis, and dealer claims  
39 for warranty compensation shall not be denied except for  
40 cause, such as performance of nonwarranty repairs, material  
41 noncompliance with warrantors' published policies and  
42 procedures, lack of material documentation, fraud, or  
43 misrepresentation.

44       5. The dealer must submit warranty claims within  
45 thirty days of completing work.

46           6. The dealer must notify the warrantor verbally or in  
47 writing if the RV dealer is unable to perform material or  
48 repetitive warranty repairs as soon as reasonably possible.

49           7. The warrantor must disapprove warranty claims in  
50 writing within thirty days of the date of submission by the  
51 dealer in the manner and form prescribed by the warrantor.  
52 Claims not specifically disapproved in writing within thirty  
53 days shall be construed to be approved and shall be paid  
54 within forty-five days.

55           8. It is a violation of this chapter for any warrantor  
56 to:

57           (1) Fail to perform any of its warranty obligations  
58 with respect to its warranted product;

59           (2) Fail to include in written notices of factory  
60 campaigns to vehicle owners and dealers the expected date by  
61 which necessary parts and equipment, including tires and  
62 chassis or chassis parts, will be available to dealers to  
63 perform the campaign work. The manufacturer may ship parts  
64 in quantity to the dealer to effect such campaign work, and  
65 if such parts are in excess of the dealer's requirements,  
66 the dealer may return unused parts to the manufacturer for  
67 credit after completion of the campaign;

68           (3) Fail to compensate any of its RV dealers for  
69 authorized repairs effected by such dealer of merchandise  
70 damaged in manufacture or transit to the dealer, if the  
71 carrier is designated by the manufacturer, factory branch,  
72 distributor or distributor branch;

73           (4) Fail to compensate its RV dealers for authorized  
74 warranty service in accordance with the schedule of  
75 compensation provided the dealer pursuant to this section,  
76 if performed in a timely and competent manner;

77           (5) Intentionally misrepresent in any way to  
78 purchasers of RVs that warranties with respect to the  
79 manufacture, performance or design of the vehicle are made  
80 by the dealer either as warrantor or cowarrantor; [or]

81           (6) Require the dealer to make warranties to customers  
82 in any manner related to the manufacture of the RV; or

83           **(7) Fail to compensate its dealers for less than**  
84 **seventy-five percent of a dealership's employee time spent**  
85 **in traveling to and from mobile or other warranty repair**  
86 **work performed away from the dealership location, provided**  
87 **the dealership documents such travel time and submits a**  
88 **claim to the warrantor within thirty days of completing the**  
89 **work.**

90           9. It is a violation of this chapter for any RV dealer  
91 to:

92           (1) Fail to perform "predelivery inspection" (PDI)  
93 functions, if required, in a competent and timely manner;

94           (2) Fail to perform warranty service work, authorized  
95 by the warrantor, in a reasonably timely and competent  
96 manner on any transient customer's vehicle whether sold by  
97 that dealer or not;

98           (3) Misrepresent the terms of any warranty.

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