

## CHAPTER 330

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**PROFESSIONS AND OCCUPATIONS**

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## SENATE BILL 18-219

BY SENATOR(S) Tate, Kagan, Kefalas, Williams A.;  
also REPRESENTATIVE(S) Kraft-Tharp, Arndt, Catlin, Exum, Gray, Hooton, Liston, Melton, Michaelson Jenet, Pabon, Reyher,  
Van Winkle.

**AN ACT****CONCERNING THE RATES A MOTOR VEHICLE DEALER CHARGES A MOTOR VEHICLE MANUFACTURER  
FOR WORK PERFORMED BY THE DEALER IN ACCORDANCE WITH A WARRANTY OBLIGATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 12-6-114 as follows:

**12-6-114. Filing of written warranties.** Each licensed manufacturer shall file with the director all written warranties and changes in written warranties that the manufacturer makes on any motor vehicle or parts thereof. Each licensed manufacturer shall file with the director a copy of the delivery and preparation obligations of its dealers. ~~and~~ These warranties and obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. ~~Any mechanical, body, or parts defects arising from any express or implied warranties of the manufacturer constitute the manufacturer's product or warranty liability, and the manufacturer shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's product or warranty defects.~~

**SECTION 2.** In Colorado Revised Statutes, **add** 12-6-132.5 as follows:

**12-6-132.5. Fulfillment and compensation for warranty and recall obligations - definitions.** (1) AS USED IN THIS SECTION:

(a) "MANUFACTURER" INCLUDES A MANUFACTURER, A DISTRIBUTOR, AND A MANUFACTURER REPRESENTATIVE.

(b) "NONWARRANTY REPAIR" MEANS A DIAGNOSIS, REPAIR, LABOR, OR PART FOR WHICH PAYMENT WAS MADE BY A PERSON OTHER THAN A MANUFACTURER AND

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THAT WAS NOT A WARRANTY OBLIGATION. "NONWARRANTY REPAIR" ALSO MEANS CUSTOMER-PAY REPAIRS, LABOR, OR PARTS.

(c) "PART" MEANS AN ACCESSORY, A PART, OR A COMPONENT USED TO REPAIR A MOTOR VEHICLE. "PART" INCLUDES ENGINE AND TRANSMISSION PARTS AND ALL MOTOR VEHICLE ASSEMBLIES.

(d) "REPAIR" MEANS DIAGNOSING, WORK, AND LABOR PERFORMED BY A MOTOR VEHICLE DEALER FOR WHICH THE MOTOR VEHICLE DEALER IS MAKING A CLAIM FOR COMPENSATION.

(e) "RETAIL LABOR RATE" MEANS THE RATE FOR LABOR CALCULATED BY THE MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS REQUIRED TO PAY A MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(f) "RETAIL PARTS MARKUP PERCENTAGE" MEANS THE PERCENTAGE MARKUP ON PARTS CALCULATED BY THE MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS REQUIRED TO PAY A MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(g) "WARRANTY OBLIGATION" MEANS DIAGNOSING AND REPAIRING A MOTOR VEHICLE IN ACCORDANCE WITH ANY WARRANTY, RECALL, OR CERTIFIED PREOWNED WARRANTY, UNDER WHICH A MANUFACTURER MAKES A REPAIR COMMITMENT TO A CONSUMER OR MOTOR VEHICLE DEALER.

(2) AT A MOTOR VEHICLE DEALER'S REQUEST, A MANUFACTURER SHALL TIMELY COMPENSATE THE MOTOR VEHICLE DEALER AT THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FOR ALL LABOR PERFORMED AND PARTS USED BY THE MOTOR VEHICLE DEALER FOR COVERED REPAIRS PERFORMED IN ACCORDANCE WITH THE WARRANTY OBLIGATION, IF THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE ARE REASONABLE CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION THAT CONCERN THE RETAIL LABOR RATE AND PARTS MARKUP PERCENTAGE.

(3)(a) A MOTOR VEHICLE DEALER MAY ESTABLISH THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE BY SUBMITTING TO THE MANUFACTURER EITHER OF THE FOLLOWING AS DECIDED BY THE MOTOR VEHICLE DEALER:

(I) ONE HUNDRED SEQUENTIAL REPAIR ORDERS CONTAINING NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER WITH A WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME OF SUBMISSION; OR

(II) ALL REPAIR ORDERS FOR NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER WITH WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME OF SUBMISSION FOR A PERIOD OF NINETY CONSECUTIVE DAYS.

(b) A MANUFACTURER SHALL NOT DISQUALIFY A REPAIR ORDER UNDER THIS SUBSECTION (3) BECAUSE THE REPAIR ORDER CONTAINS BOTH WARRANTY AND

NONWARRANTY REPAIRS, BUT ONLY NONWARRANTY REPAIRS ARE USED IN THE CALCULATION OF THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE.

(c) A MOTOR VEHICLE DEALER MAY SUBMIT ONE SET OF REPAIR ORDERS FOR THE PURPOSE OF CALCULATING BOTH ITS RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE OR MAY SUBMIT SEPARATE SETS OF REPAIR ORDERS FOR PURPOSES OF CALCULATING ONLY ITS RETAIL LABOR RATE OR FOR PURPOSES OF CALCULATING ONLY ITS RETAIL PARTS MARKUP PERCENTAGE. IF THE RATES FROM THE CALCULATION ARE TEN PERCENT HIGHER OR LOWER THAN THE CURRENT RATES, THE MANUFACTURER MAY REQUEST ADDITIONAL REPAIR ORDERS FOR THE NINETY DAYS BEFORE OR AFTER THE SUBMITTED REPAIR ORDERS FOR PURPOSES OF ALTERATION.

(d) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE RETAIL LABOR RATE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE MANUFACTURER.

(e) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE RETAIL PARTS MARKUP PERCENTAGE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE MANUFACTURER.

(4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION, TO CALCULATE THE RETAIL LABOR RATE, THE MOTOR VEHICLE DEALER MUST DIVIDE THE MOTOR VEHICLE DEALER'S TOTAL NONWARRANTY LABOR SALES GENERATED FROM THE NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE TOTAL NUMBER OF LABOR HOURS THAT GENERATED THOSE TOTAL LABOR SALES.

(b) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION, TO CALCULATE THE RETAIL PARTS MARKUP PERCENTAGE, THE MOTOR VEHICLE DEALER MUST DIVIDE THE MOTOR VEHICLE DEALER'S TOTAL PARTS SALES GENERATED FROM NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE AMOUNT OF THE MOTOR VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS, SUBTRACTING ONE FROM THIS AMOUNT, AND THEN MULTIPLYING THE AMOUNT BY ONE HUNDRED.

(c) THE CALCULATION OF THE RETAIL LABOR RATE IN SUBSECTION (4)(a) OF THIS SECTION AND OF THE RETAIL PARTS MARKUP PERCENTAGE IN SUBSECTION (4)(b) OF THIS SECTION DO NOT INCLUDE PARTS USED OR LABOR PERFORMED:

(1) FOR MANUFACTURER OR MOTOR VEHICLE DEALER SPECIAL EVENTS, ONE-TIME SPECIALS, EXPRESS SERVICE, AND QUOTED-PRICE PROMOTIONAL DISCOUNTS, BUT THIS EXCLUSION FROM THE CALCULATION DOES NOT INCLUDE BROADLY APPLICABLE DISCOUNTS OFFERED BY THE DEALER, SUCH AS PERCENTAGE-OFF COUPONS, THAT APPLY TO REPAIRS AND PARTS;

(II) FOR PARTS SOLD AT WHOLESALE;

(III) FOR ROUTINE MAINTENANCE, INCLUDING REPLACEMENT FLUIDS, FILTERS, BATTERIES, BULBS, NUTS, BOLTS, FASTENERS, TIRES, AND BELTS;

(IV) THAT DO NOT HAVE INDIVIDUAL PART NUMBERS;

(V) FOR THE REPAIRS OF A MOTOR VEHICLE OWNED BY THE MOTOR VEHICLE DEALER, AN AFFILIATE OF THE MOTOR VEHICLE DEALER, OR AN EMPLOYEE OF EITHER THE MOTOR VEHICLE DEALER OR THE AFFILIATE;

(VI) FOR MOTOR VEHICLE DEALER RECONDITIONING;

(VII) FOR WINDOW TINT, PROTECTIVE FILM, MASKING PRODUCTS, OR WINDOW REPLACEMENT LABOR;

(VIII) FOR MANUFACTURER APPROVED AND REIMBURSED GOODWILL REPAIRS OR REPLACEMENTS;

(IX) FOR EMISSION INSPECTIONS REQUIRED BY LAW;

(X) FOR SAFETY INSPECTIONS REQUIRED BY LAW;

(XI) FOR WHICH A VOLUME DISCOUNT WAS NEGOTIATED WITH A THIRD-PARTY PAYER, INCLUDING GOVERNMENT AGENCIES, INSURANCE CARRIERS, AND FLEET OPERATORS, BUT NOT INCLUDING THIRD-PARTY WARRANTY COMPANIES OR SERVICE CONTRACT COMPANIES.

(5) (a) NOTWITHSTANDING ANY MANUFACTURER REQUIREMENT, POLICY, PROCEDURE, GUIDELINE, OR STANDARD, A MOTOR VEHICLE DEALER MAY SUBMIT TO THE MANUFACTURER THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AS EACH IS CALCULATED IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

(b) A MOTOR VEHICLE DEALER MAY REQUEST IN WRITING, NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR LABOR AT THE RETAIL LABOR RATE FOR WARRANTY OBLIGATIONS.

(c) A MOTOR VEHICLE DEALER MAY REQUEST IN WRITING, NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR PARTS AT THE RETAIL PARTS MARKUP PERCENTAGE FOR WARRANTY OBLIGATIONS.

(d) (I) A MANUFACTURER MAY CONDUCT A PERIODIC REVIEW OF A MOTOR VEHICLE DEALER'S SERVICE RECORDS TO VERIFY THE CONTINUING ACCURACY OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE PROPOSED BY OR IN EFFECT FOR THE DEALER.

(II) A MANUFACTURER SHALL NOT CONDUCT A PERIODIC REVIEW MORE THAN ONCE PER CALENDAR YEAR. THIS PERIODIC REVIEW IS NOT AN AUDIT IN ACCORDANCE WITH SECTION 12-6-126.

(6)(a)(I) IF THE SUBMITTED CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IS MATERIALLY INACCURATE OR IS SUBSTANTIALLY DIFFERENT THAN THE RATE OF OR PERCENTAGE OF OTHER SIMILARLY SITUATED SAME LINE-MAKE DEALERS WITHIN THE STATE, A MANUFACTURER MAY CONTEST THE MOTOR VEHICLE DEALER'S SUBMITTED CALCULATIONS OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE BY DELIVERING A NOTICE TO THE MOTOR VEHICLE DEALER WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE SUBMISSION IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FROM THE MOTOR VEHICLE DEALER. TO COMPLY WITH THIS SUBSECTION (6), THE NOTICE MUST:

(A) INCLUDE AN EXPLANATION OF THE REASONS THAT THE MANUFACTURER BELIEVES THE CALCULATION IS SUBJECT TO CONTEST;

(B) PROVIDE EVIDENCE SUBSTANTIATING THE MANUFACTURER'S POSITION; AND

(C) PROPOSE AN ADJUSTMENT OF THE CONTESTED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

(II) UPON THE DISCOVERY OF NEW RELEVANT INFORMATION BY THE MANUFACTURER, THE MANUFACTURER MAY MODIFY THE GROUNDS FOR CONTESTING THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AFTER DELIVERING THE NOTICE TO THE MOTOR VEHICLE DEALER UNDER THIS SUBSECTION (6), BUT THE MODIFICATION DOES NOT CHANGE THE TIMING REQUIREMENTS IN THIS SECTION.

(b) IF THE MANUFACTURER DOES NOT TIMELY CONTEST THE MOTOR VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH THIS SUBSECTION (6), THE UNCONTESTED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE BECOMES EFFECTIVE FORTY-FIVE DAYS AFTER THE MANUFACTURER HAS RECEIVED THE SUBMISSION FROM THE MOTOR VEHICLE DEALER, AND THEREAFTER, THE MANUFACTURER SHALL USE THE MOTOR VEHICLE DEALER'S INCREASED RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE IN CALCULATING COMPENSATION FOR WARRANTY OBLIGATIONS UNTIL A SUBSEQUENT CALCULATION OF THE MOTOR VEHICLE DEALER'S RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IS ESTABLISHED IN ACCORDANCE WITH THIS SECTION.

(c)(I) IF THE MANUFACTURER TIMELY CONTESTS THE MOTOR VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AND THE MANUFACTURER AND MOTOR VEHICLE DEALER ARE UNABLE TO RESOLVE THE DISAGREEMENT, THE MOTOR VEHICLE DEALER MAY SEEK A DETERMINATION BY FILING A COMPLAINT WITH A COURT OF COMPETENT JURISDICTION OR THE EXECUTIVE DIRECTOR NO LATER THAN SIXTY DAYS AFTER THE NEW MOTOR VEHICLE DEALER RECEIVES THE MANUFACTURER'S CHALLENGE TO THE DETERMINED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

(II) IN A COURT PROCEEDING, THE COURT SHALL DETERMINE, IN ACCORDANCE WITH THIS SECTION, THE PROPER RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

(III) ANY RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE ESTABLISHED THROUGH THE PROCEEDING APPLIES RETROACTIVELY TO CALCULATE

REIMBURSEMENT FOR ANY LABOR AND PART BEGINNING THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

(IV) IF THE MANUFACTURER CONTESTS THE MOTOR VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL CONTINUE TO REIMBURSE THE MOTOR VEHICLE DEALER FOR WARRANTY OBLIGATION REPAIRS AT THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE AS BOTH EXISTED BEFORE THE MOTOR VEHICLE DEALER SUBMITTED A REQUEST FOR AN INCREASE UNDER SUBSECTION (5) OF THIS SECTION. WHEN THE MANUFACTURER AND MOTOR VEHICLE DEALER AGREE ON THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL PAY ANY DIFFERENCE BETWEEN THE AMOUNT THE MANUFACTURER COMPENSATED THE DEALER AND THE AMOUNT AGREED TO BY THE MOTOR VEHICLE DEALER AND MANUFACTURER AS OF THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

(d) IN THE COURT PROCEEDING, THE COURT SHALL AWARD THE PREVAILING PARTY REASONABLE ATTORNEY FEES AND COSTS. IF THE MOTOR VEHICLE DEALER PREVAILS, THE COURT SHALL AWARD AS DAMAGES THE FULL AMOUNT OF REIMBURSEMENT THAT SHOULD HAVE BEEN PAID TO THE MOTOR VEHICLE DEALER.

(7) WHEN CALCULATING THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER:

(a) SHALL NOT ESTABLISH AN UNREASONABLE FLAT-RATE TIME, NOR ESTABLISH UNREASONABLE FLAT-RATE LABOR TIMES FOR NEW LINE-MAKES THAT ARE INCONSISTENT WITH THE EXISTING RATES;

(b) SHALL, IF THE MANUFACTURER FURNISHES A PART TO A MOTOR VEHICLE DEALER AT NO COST FOR USE IN PERFORMING A REPAIR UNDER A WARRANTY OBLIGATION, COMPENSATE THE MOTOR VEHICLE DEALER FOR THE AUTHORIZED REPAIR PART BY PAYING THE DEALER AN AMOUNT EQUAL TO THE RETAIL PARTS MARKUP PERCENTAGE MULTIPLIED BY THE COST THE DEALER WOULD HAVE PAID FOR THE AUTHORIZED PART AS LISTED IN THE MANUFACTURER'S PRICE SCHEDULE;

(c) SHALL NOT ESTABLISH A DIFFERENT PART NUMBER FOR REPAIRS MADE IN ACCORDANCE WITH A WARRANTY OBLIGATION THAN THE PART NUMBER ESTABLISHED FOR NONWARRANTY REPAIRS SOLELY TO PROVIDE A LOWER COMPENSATION TO A MOTOR VEHICLE DEALER;

(d) SHALL NOT RECOVER OR ATTEMPT TO RECOVER, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, ANY OF ITS COSTS FROM THE MOTOR VEHICLE DEALER FOR COMPENSATING THE MOTOR VEHICLE DEALER UNDER THIS SECTION;

(e) SHALL NOT, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, ASSESS PENALTIES OR SURCHARGES TO THE MOTOR VEHICLE DEALER, LIMIT ALLOCATION OF MOTOR VEHICLES OR PARTS TO THE MOTOR VEHICLE DEALER, OR TAKE ANY ADVERSE ACTION BASED ON THE MOTOR VEHICLE DEALER'S EXERCISE OF THE DEALER'S RIGHTS UNDER THIS SECTION;

(f) SHALL NOT REQUIRE FROM A MOTOR VEHICLE ANY INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO OBTAIN, INCLUDING ANY PART-BY-PART OR TRANSACTION-BY-TRANSACTION CALCULATIONS.

(8) NOTHING IN THIS SECTION PROHIBITS A MANUFACTURER FROM INCREASING THE PRICE OF A MOTOR VEHICLE OR MOTOR VEHICLE PART IN THE NORMAL COURSE OF BUSINESS.

(9) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING THAT ARE INVOLVED IN THE MANUFACTURING OF OR SELLING OF RECREATIONAL VEHICLES:

- (a) A MOTOR VEHICLE DEALER;
- (b) A MANUFACTURER OR COMPONENT MANUFACTURER;
- (c) A DISTRIBUTOR; OR
- (d) A MANUFACTURER REPRESENTATIVE.

**SECTION 3.** In Colorado Revised Statutes, **add 12-6-132.6** as follows:

**12-6-132.6. Fulfillment of warranty and recall obligations - recreational vehicles - definitions.** (1) **Definitions.** AS USED IN THIS SECTION:

(a) "DEALER" MEANS A PERSON LICENSED OR REQUIRED TO BE LICENSED AS A MOTOR VEHICLE DEALER THAT SELLS RECREATIONAL VEHICLES.

(b) "RECREATIONAL VEHICLE" MEANS THE CATEGORY OF VEHICLE PRIMARILY DESIGNED AS TEMPORARY LIVING QUARTERS FOR RECREATIONAL, CAMPING, OR TRAVEL USE, WHICH EITHER HAS ITS OWN MOTIVE POWER OR IS MOUNTED ON OR DRAWN BY ANOTHER VEHICLE.

(c) "WARRANTOR" MEANS A PERSON THAT GIVES A WARRANTY IN CONNECTION WITH A NEW RECREATIONAL VEHICLE OR PARTS, ACCESSORIES, OR COMPONENTS OF A RECREATIONAL VEHICLE. THE TERM DOES NOT INCLUDE A PERSON WHO OFFERS OR PERFORMS SERVICE CONTRACTS, INSURANCE, OR EXTENDED WARRANTIES SOLD FOR SEPARATE CONSIDERATION BY A PERSON WHO IS NOT:

- (I) THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE; OR
- (II) CONTROLLED BY A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

(2) **Warranty obligations of recreational vehicle warrantors.** EACH WARRANTOR SHALL:

(a) COMPENSATE THE DEALER FOR WARRANTY SERVICE, INCLUDING DIAGNOSTIC WORK;

(b) PROVIDE THE DEALER A SCHEDULE OF COMPENSATION TO BE PAID THAT MUST BE IN A FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;

(c) PROVIDE THE DEALER A SCHEDULE OF THE TIME ALLOWANCES FOR WARRANTY SERVICE THAT MUST PROVIDE ADEQUATE AND REASONABLE TIME TO COMPLETE SERVICE WORK AND THAT MUST BE IN A FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;

(d) REIMBURSE THE DEALER FOR WARRANTY SERVICE AND WARRANTY PARTS IN ACCORDANCE WITH THE SCHEDULE OF COMPENSATION THAT IS REQUIRED IN SUBSECTION (2)(b) OF THIS SECTION;

(e) IF THE SCHEDULE OF COMPENSATION REQUIRED IN SUBSECTION (2)(b) OF THIS SECTION DOES NOT INCLUDE A PARTICULAR REPAIR, REIMBURSE THE DEALER FOR WARRANTY SERVICE FOR THE ACTUAL TIME EXPENDED IF REASONABLE, AND THE MANUFACTURER BEARS THE BURDEN TO PROVE THAT THE ACTUAL TIME EXPENDED WAS UNREASONABLE;

(f) REIMBURSE THE DEALER FOR WARRANTY SERVICE AT NOT LESS THAN THE LOWEST RETAIL LABOR RATE ACTUALLY CHARGED BY THE DEALER FOR COMPARABLE NONWARRANTY LABOR IF THE RATE IS REASONABLE; AND

(g) REIMBURSE THE DEALER FOR WARRANTY PARTS AT WHOLESALE PRICE PLUS:

(I) A MINIMUM THIRTY PERCENT HANDLING CHARGE; AND

(II) ANY COST OF FREIGHT TO RETURN WARRANTY PARTS TO THE WARRANTOR.

(3) THE WARRANTOR SHALL NOT DENY A DEALER'S CLAIMS FOR WARRANTY COMPENSATION WITHOUT CAUSE, WHICH MAY INCLUDE PERFORMANCE OF NONWARRANTY REPAIRS, MATERIAL NONCOMPLIANCE WITH THE WARRANTOR'S PUBLISHED POLICIES AND PROCEDURES, LACK OF MATERIAL DOCUMENTATION, FRAUD, OR MISREPRESENTATION.

(4) A WARRANTOR SHALL NOT:

(a) FAIL TO COMPENSATE A DEALER FOR WARRANTY REPAIRS MADE TO A RECREATION VEHICLE OR COMPONENT OF A RECREATIONAL VEHICLE MADE BY THE DEALER OF MERCHANDISE:

(I) DAMAGED DURING DELIVERY TO THE DEALER OR DURING MANUFACTURING;  
OR

(II) DEFECTIVELY BUILT OR DESIGNED;

(b) SEND REPLACEMENT PARTS TO A DEALER AT NO CHARGE WITHOUT PAYING THE PARTS MARKUP REQUIRED BY SUBSECTION (2)(g) OF THIS SECTION TIMES THE DEALER COST OF THE PART;

(c) FAIL TO FULFILL PARTS ORDERS WHEN PARTS ARE AVAILABLE;

(d) RETALIATE AGAINST A DEALER FOR EXERCISING THE DEALER'S RIGHTS UNDER THIS SECTION; OR



(e) ATTEMPT TO COERCE A DEALER TO NOT EXERCISE ITS RIGHTS UNDER THIS SECTION.

(5) THE DEALER MAY SUBMIT WARRANTY CLAIMS INVOLVING ANY COMPONENT USED IN THE MANUFACTURING OF A RECREATIONAL VEHICLE TO THE MANUFACTURER THAT:

(a) COMPLETES THE MANUFACTURING OF THE RECREATIONAL VEHICLE; AND

(b) ISSUES THE MANUFACTURER'S CERTIFICATE OF ORIGIN.

(6) NOTWITHSTANDING THE TERMS OF ANY MANUFACTURER AND DEALER AGREEMENT:

(a) A WARRANTOR SHALL INDEMNIFY AND DEFEND A DEALER AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR DAMAGES, INCLUDING DEFENSE COSTS AND ATTORNEY FEES, TO THE EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE WARRANTOR OR ANY COMPONENT WARRANTOR WHOSE PRODUCT IS INCORPORATED IN THE WARRANTOR'S PRODUCT. THE WARRANTOR SHALL NOT DENY THE DEALER INDEMNIFICATION OR DEFENSE FOR FAILING TO DISCOVER, DISCLOSE, OR REMEDY A DEFECT IN THE DESIGN OR MANUFACTURING OF A RECREATIONAL VEHICLE. TO BE INDEMNIFIED OR DEFENDED, THE DEALER MUST PROVIDE TO THE WARRANTOR A COPY OF ANY CLAIM IN WHICH ALLEGATIONS ARE MADE THAT FALL UNDER THIS SUBSECTION (6)(a) WITHIN TEN DAYS AFTER RECEIVING THE CLAIM OR SUIT.

(b) A DEALER SHALL INDEMNIFY AND DEFEND ITS WARRANTOR AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR DAMAGES TO THE EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DEALER INDEPENDENT OF ANY MANUFACTURING OR DESIGN DEFECT. TO BE INDEMNIFIED OR DEFENDED, THE WARRANTOR MUST PROVIDE TO THE DEALER A COPY OF ANY CLAIM IN WHICH ALLEGATIONS ARE MADE THAT FALL UNDER THIS SUBSECTION (6)(b) WITHIN TEN DAYS AFTER RECEIVING THE CLAIM OR SUIT.

**(7) Dispute resolution for recreational dealers and manufacturers.** (a) A DEALER OR WARRANTOR INJURED BY ANOTHER PARTY'S VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN STATE COURT TO RECOVER ACTUAL DAMAGES. THE COURT SHALL AWARD ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN THE ACTION. VENUE FOR A CIVIL ACTION AUTHORIZED BY THIS SECTION MUST EXCLUSIVELY BE IN THE COUNTY WHERE THE DEALER IS LOCATED. IN AN ACTION INVOLVING MORE THAN ONE DEALER, VENUE MAY BE IN ANY COUNTY WHERE A DEALER WHO IS PARTY TO THE ACTION IS LOCATED.

(b) (I) TO BRING AN ACTION UNDER THIS SUBSECTION (7):

(A) A PERSON MUST SERVE A WRITTEN DEMAND FOR MEDIATION UPON THE ALLEGED VIOLATOR;

(B) THE DEMAND FOR MEDIATION MUST BE SERVED UPON THE ALLEGED VIOLATOR BY CERTIFIED MAIL AT THE ADDRESS STATED WITHIN THE SALES, SERVICE, AND PARTS AGREEMENT BETWEEN THE PARTIES UNLESS SUBSECTION (7)(b)(I)(C) APPLIES

TO THE ACTION;

(C) IF A CIVIL ACTION IS BETWEEN TWO DEALERS, THE DEMAND MUST BE MAILED TO THE ADDRESS ON THE DEALER'S LICENSE FILED WITH THE DIRECTOR;

(D) THE DEMAND FOR MEDIATION MUST CONTAIN A BRIEF STATEMENT OF THE DISPUTE AND THE RELIEF SOUGHT BY THE PARTY FILING THE DEMAND.

(II) WITHIN TWENTY DAYS AFTER THE DEMAND FOR MEDIATION IS SERVED, THE PARTIES SHALL MUTUALLY SELECT AN INDEPENDENT CERTIFIED MEDIATOR AND MEET WITH THE MEDIATOR FOR THE PURPOSE OF ATTEMPTING TO RESOLVE THE DISPUTE. THE MEETING PLACE MUST BE IN THIS STATE IN A LOCATION SELECTED BY THE MEDIATOR. THE MEDIATOR MAY EXTEND THE DATE OF THE MEETING FOR GOOD CAUSE SHOWN BY EITHER PARTY OR UPON STIPULATION OF BOTH PARTIES.

(III) THE SERVICE OF A DEMAND FOR MEDIATION UNDER THIS SUBSECTION (7) STAYS THE TIME FOR THE FILING OF AN ACTION UNDER THIS SUBSECTION (7) UNTIL REPRESENTATIVES OF BOTH PARTIES HAVE MET WITH A MUTUALLY SELECTED MEDIATOR TO ATTEMPT TO RESOLVE THE DISPUTE. IF AN ACTION IS FILED BEFORE THAT MEETING, THE COURT SHALL ENTER AN ORDER SUSPENDING THE PROCEEDINGS UNTIL THE MEETING HAS OCCURRED AND MAY, UPON WRITTEN STIPULATION OF ALL PARTIES TO THE PROCEEDING THAT THEY WISH TO CONTINUE TO MEDIATE UNDER THIS SUBSECTION (7), ENTER AN ORDER SUSPENDING THE PROCEEDING OR ACTION FOR AS LONG A PERIOD AS THE COURT CONSIDERS APPROPRIATE. A SUSPENSION ORDER ISSUED UNDER THIS SUBSECTION (7)(b)(III) MAY BE REVOKED BY THE COURT.

(IV) IN MEDIATION, THE PARTIES TO THE MEDIATION BEAR THEIR OWN COSTS FOR ATTORNEY FEES AND DIVIDE EQUALLY THE COST OF THE MEDIATOR.

(c) IN ADDITION TO THE REMEDIES PROVIDED IN THIS SUBSECTION (7) AND NOTWITHSTANDING THE EXISTENCE OF ANY ADDITIONAL REMEDY AT LAW, A DEALER OR MANUFACTURER MAY APPLY TO A STATE COURT FOR THE GRANT, UPON A HEARING AND FOR CAUSE SHOWN, OF A TEMPORARY OR PERMANENT INJUNCTION RESTRAINING A PERSON FROM VIOLATING OR CONTINUING TO VIOLATE THIS SECTION. THE MOVING PARTY NEED NOT POST A BOND FOR THE INJUNCTION TO BE ISSUED. MEDIATION IS NOT REQUIRED PRIOR TO SEEKING INJUNCTIVE RELIEF. A SINGLE ACT IN VIOLATION OF THIS SECTION IS SUFFICIENT TO AUTHORIZE THE ISSUANCE OF AN INJUNCTION.

**SECTION 4.** In Colorado Revised Statutes, add 12-6-538.5 as follows:

**12-6-538.5. Fulfillment and compensation for warranty and recall obligations - definitions.** (1) AS USED IN THIS SECTION:

(a) "MANUFACTURER" MEANS A POWERSPORTS VEHICLE MANUFACTURER, A POWERSPORTS VEHICLE DISTRIBUTOR, AND A POWERSPORTS VEHICLE MANUFACTURER REPRESENTATIVE.

(b) "NONWARRANTY REPAIR" MEANS A DIAGNOSIS, REPAIR, LABOR, OR PART FOR WHICH PAYMENT WAS MADE BY A PERSON OTHER THAN A MANUFACTURER AND THAT WAS NOT A WARRANTY OBLIGATION. "NONWARRANTY REPAIR" ALSO MEANS

CUSTOMER-PAY REPAIRS, LABOR, OR PARTS.

(c) "PART" MEANS AN ACCESSORY, A PART, OR A COMPONENT USED TO REPAIR A POWERSPORTS VEHICLE. "PART" INCLUDES ENGINE AND TRANSMISSION PARTS AND ALL POWERSPORTS VEHICLE ASSEMBLIES.

(d) "REPAIR" MEANS DIAGNOSING, WORK, AND LABOR PERFORMED BY A POWERSPORTS VEHICLE DEALER FOR WHICH THE POWERSPORTS VEHICLE DEALER IS MAKING A CLAIM FOR COMPENSATION.

(e) "RETAIL LABOR RATE" MEANS THE RATE FOR LABOR CALCULATED BY THE POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS REQUIRED TO PAY A POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(f) "RETAIL PARTS MARKUP PERCENTAGE" MEANS THE PERCENTAGE MARKUP ON PARTS CALCULATED BY THE POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS REQUIRED TO PAY A POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(g) "WARRANTY OBLIGATION" MEANS DIAGNOSING AND REPAIRING A POWERSPORTS VEHICLE IN ACCORDANCE WITH ANY WARRANTY, RECALL, OR CERTIFIED PREOWNED WARRANTY, UNDER WHICH A MANUFACTURER MAKES A REPAIR COMMITMENT TO A CONSUMER OR POWERSPORTS VEHICLE DEALER.

(2) AT A POWERSPORTS VEHICLE DEALER'S REQUEST, A MANUFACTURER SHALL TIMELY COMPENSATE THE POWERSPORTS VEHICLE DEALER AT THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FOR ALL LABOR PERFORMED AND PARTS USED BY THE POWERSPORTS VEHICLE DEALER FOR COVERED REPAIRS PERFORMED IN ACCORDANCE WITH THE WARRANTY OBLIGATION, IF THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE ARE REASONABLE AND CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION THAT CONCERN THE RETAIL LABOR RATE AND PARTS MARKUP PERCENTAGE.

(3) (a) A POWERSPORTS VEHICLE DEALER MAY ESTABLISH THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE BY SUBMITTING TO THE MANUFACTURER EITHER OF THE FOLLOWING AS DECIDED BY THE POWERSPORTS VEHICLE DEALER:

(I) ONE HUNDRED SEQUENTIAL REPAIR ORDERS CONTAINING NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER WITH A WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME OF SUBMISSION; OR

(II) ALL REPAIR ORDERS FOR NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER WITH WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME OF SUBMISSION FOR A PERIOD OF NINETY CONSECUTIVE DAYS.

(b) A MANUFACTURER SHALL NOT DISQUALIFY A REPAIR ORDER UNDER THIS SUBSECTION (3) BECAUSE THE REPAIR ORDER CONTAINS BOTH WARRANTY AND NONWARRANTY REPAIRS, BUT ONLY NONWARRANTY REPAIRS ARE USED IN THE CALCULATION OF THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE.

(c) A POWERSPORTS VEHICLE DEALER MAY SUBMIT ONE SET OF REPAIR ORDERS FOR THE PURPOSE OF CALCULATING BOTH ITS RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE OR MAY SUBMIT SEPARATE SETS OF REPAIR ORDERS FOR PURPOSES OF CALCULATING ONLY ITS RETAIL LABOR RATE OR FOR PURPOSES OF CALCULATING ONLY ITS RETAIL PARTS MARKUP PERCENTAGE. IF THE RATES FROM THE CALCULATION ARE TEN PERCENT HIGHER OR LOWER THAN THE CURRENT RATES, THE MANUFACTURER MAY REQUEST ADDITIONAL REPAIR ORDERS FOR THE NINETY DAYS BEFORE OR AFTER THE SUBMITTED REPAIR ORDERS FOR PURPOSES OF ALTERATION.

(d) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE RETAIL LABOR RATE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE MANUFACTURER.

(e) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE RETAIL PARTS MARKUP PERCENTAGE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE MANUFACTURER.

(4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION, TO CALCULATE THE RETAIL LABOR RATE, THE POWERSPORTS VEHICLE DEALER MUST DIVIDE THE POWERSPORTS VEHICLE DEALER'S TOTAL NONWARRANTY LABOR SALES GENERATED FROM THE NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE TOTAL NUMBER OF LABOR HOURS THAT GENERATED THOSE TOTAL LABOR SALES.

(b) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION, TO CALCULATE THE RETAIL PARTS MARKUP PERCENTAGE, THE POWERSPORTS VEHICLE DEALER MUST DIVIDE THE POWERSPORTS VEHICLE DEALER'S TOTAL PARTS SALES GENERATED FROM NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE AMOUNT OF THE POWERSPORTS VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS, SUBTRACTING ONE FROM THIS AMOUNT, AND THEN MULTIPLYING THE AMOUNT BY ONE HUNDRED.

(c) THE CALCULATION OF THE RETAIL LABOR RATE IN SUBSECTION (4)(a) OF THIS SECTION AND OF THE RETAIL PARTS MARKUP PERCENTAGE IN SUBSECTION (4)(b) OF THIS SECTION DO NOT INCLUDE PARTS USED OR LABOR PERFORMED:

(I) FOR MANUFACTURER OR POWERSPORTS VEHICLE DEALER SPECIAL EVENTS, ONE-TIME SPECIALS, EXPRESS SERVICE, AND QUOTED-PRICE PROMOTIONAL DISCOUNTS, BUT THIS EXCLUSION FROM THE CALCULATION DOES NOT INCLUDE BROADLY APPLICABLE DISCOUNTS OFFERED BY THE DEALER, SUCH AS

PERCENTAGE-OFF COUPONS, THAT APPLY TO REPAIRS AND PARTS;

(II) FOR PARTS SOLD AT WHOLESALE;

(III) FOR ROUTINE MAINTENANCE, INCLUDING REPLACEMENT FLUIDS, FILTERS, BATTERIES, BULBS, NUTS, BOLTS, FASTENERS, TIRES, AND BELTS;

(IV) THAT DO NOT HAVE INDIVIDUAL PART NUMBERS;

(V) FOR THE REPAIRS OF A POWERSPORTS VEHICLE OWNED BY THE POWERSPORTS VEHICLE DEALER, AN AFFILIATE OF THE POWERSPORTS VEHICLE DEALER, OR AN EMPLOYEE OF EITHER THE POWERSPORTS VEHICLE DEALER OR THE AFFILIATE;

(VI) FOR POWERSPORTS VEHICLE DEALER RECONDITIONING;

(VII) FOR WINDOW TINT, PROTECTIVE FILM, MASKING PRODUCTS, OR WINDOW REPLACEMENT LABOR;

(VIII) FOR MANUFACTURER-APPROVED AND -REIMBURSED GOODWILL REPAIRS OR REPLACEMENTS;

(IX) FOR EMISSION INSPECTIONS REQUIRED BY LAW;

(X) FOR SAFETY INSPECTIONS REQUIRED BY LAW;

(XI) FOR WHICH A VOLUME DISCOUNT WAS NEGOTIATED WITH A THIRD-PARTY PAYER, INCLUDING GOVERNMENT AGENCIES, INSURANCE CARRIERS, AND FLEET OPERATORS, BUT NOT INCLUDING THIRD-PARTY WARRANTY COMPANIES OR SERVICE CONTRACT COMPANIES.

(5) (a) NOTWITHSTANDING ANY MANUFACTURER REQUIREMENT, POLICY, PROCEDURE, GUIDELINE, OR STANDARD, A POWERSPORTS VEHICLE DEALER MAY SUBMIT TO THE MANUFACTURER THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AS EACH IS CALCULATED IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

(b) A POWERSPORTS VEHICLE DEALER MAY REQUEST IN WRITING, NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR LABOR AT THE RETAIL LABOR RATE FOR WARRANTY OBLIGATIONS.

(c) A POWERSPORTS VEHICLE DEALER MAY REQUEST IN WRITING, NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR PARTS AT THE RETAIL PARTS MARKUP PERCENTAGE FOR WARRANTY OBLIGATIONS.

(d)(I) A MANUFACTURER MAY CONDUCT A PERIODIC REVIEW OF A POWERSPORTS VEHICLE DEALER'S SERVICE RECORDS TO VERIFY THE CONTINUING ACCURACY OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE PROPOSED BY OR IN EFFECT FOR THE DEALER.

(II) A MANUFACTURER SHALL NOT CONDUCT A PERIODIC REVIEW MORE THAN ONCE PER CALENDAR YEAR. THIS PERIODIC REVIEW IS NOT AN AUDIT IN

ACCORDANCE WITH SECTION 12-6-126.

(6)(a)(I) IF THE SUBMITTED CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IS MATERIALLY INACCURATE OR IS SUBSTANTIALLY DIFFERENT THAN THE RATE OF OR PERCENTAGE OF OTHER SIMILARLY SITUATED SAME LINE-MAKE DEALERS WITHIN THE STATE, A MANUFACTURER MAY CONTEST THE POWERSPORTS VEHICLE DEALER'S SUBMITTED CALCULATIONS OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE BY DELIVERING A NOTICE TO THE POWERSPORTS VEHICLE DEALER WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE SUBMISSION IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FROM THE POWERSPORTS VEHICLE DEALER. TO COMPLY WITH THIS SUBSECTION (6), THE NOTICE MUST:

(A) INCLUDE AN EXPLANATION OF THE REASONS THAT THE MANUFACTURER BELIEVES THE CALCULATION IS SUBJECT TO CONTEST;

(B) PROVIDE EVIDENCE SUBSTANTIATING THE MANUFACTURER'S POSITION; AND

(C) PROPOSE AN ADJUSTMENT OF THE CONTESTED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

(II) UPON THE DISCOVERY OF NEW RELEVANT INFORMATION BY THE MANUFACTURER, THE MANUFACTURER MAY MODIFY THE GROUNDS FOR CONTESTING THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AFTER DELIVERING THE NOTICE TO THE POWERSPORTS VEHICLE DEALER UNDER THIS SUBSECTION (6), BUT THE MODIFICATION DOES NOT CHANGE THE TIMING REQUIREMENTS IN THIS SECTION.

(b) IF THE MANUFACTURER DOES NOT TIMELY CONTEST THE POWERSPORTS VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH THIS SUBSECTION (6), THE UNCONTESTED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE BECOMES EFFECTIVE FORTY-FIVE DAYS AFTER THE MANUFACTURER HAS RECEIVED THE SUBMISSION FROM THE POWERSPORTS VEHICLE DEALER, AND THEREAFTER, THE MANUFACTURER SHALL USE THE POWERSPORTS VEHICLE DEALER'S INCREASED RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE IN CALCULATING COMPENSATION FOR WARRANTY OBLIGATIONS UNTIL A SUBSEQUENT CALCULATION OF THE POWERSPORTS VEHICLE DEALER'S RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE IS ESTABLISHED IN ACCORDANCE WITH THIS SECTION.

(c)(I) IF THE MANUFACTURER TIMELY CONTESTS THE POWERSPORTS VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE AND THE MANUFACTURER AND POWERSPORTS VEHICLE DEALER ARE UNABLE TO RESOLVE THE DISAGREEMENT, THE POWERSPORTS VEHICLE DEALER MAY SEEK A DETERMINATION BY FILING A COMPLAINT WITH A COURT OF COMPETENT JURISDICTION OR THE EXECUTIVE DIRECTOR NO LATER THAN SIXTY DAYS AFTER THE NEW POWERSPORTS VEHICLE DEALER RECEIVES THE MANUFACTURER'S CHALLENGE TO THE DETERMINED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

(II) IN A COURT PROCEEDING, THE COURT SHALL DETERMINE, IN ACCORDANCE WITH THIS SECTION, THE PROPER RETAIL LABOR RATE OR RETAIL PARTS MARKUP

PERCENTAGE.

(III) ANY RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE ESTABLISHED THROUGH THE PROCEEDING APPLIES RETROACTIVELY TO CALCULATE REIMBURSEMENT FOR ANY LABOR AND PART BEGINNING THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

(IV) IF THE MANUFACTURER CONTESTS THE POWERSPORTS VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL CONTINUE TO REIMBURSE THE POWERSPORTS VEHICLE DEALER FOR WARRANTY OBLIGATION REPAIRS AT THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP PERCENTAGE AS BOTH EXISTED BEFORE THE POWERSPORTS VEHICLE DEALER SUBMITTED A REQUEST FOR AN INCREASE UNDER SUBSECTION (5) OF THIS SECTION. WHEN THE MANUFACTURER AND POWERSPORTS VEHICLE DEALER AGREE ON THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL PAY ANY DIFFERENCE BETWEEN THE AMOUNT THE MANUFACTURER COMPENSATED THE DEALER AND THE AMOUNT AGREED TO BY THE POWERSPORTS VEHICLE DEALER AND MANUFACTURER AS OF THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

(d) IN THE COURT PROCEEDING, THE COURT SHALL AWARD THE PREVAILING PARTY REASONABLE ATTORNEY FEES AND COSTS. IF THE POWERSPORTS VEHICLE DEALER PREVAILS, THE COURT SHALL AWARD AS DAMAGES THE FULL AMOUNT OF REIMBURSEMENT THAT SHOULD HAVE BEEN PAID TO THE POWERSPORTS VEHICLE DEALER.

(7) WHEN CALCULATING THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER:

(a) SHALL NOT ESTABLISH AN UNREASONABLE FLAT-RATE TIME, NOR ESTABLISH UNREASONABLE FLAT-RATE LABOR TIMES FOR NEW LINE-MAKES THAT ARE INCONSISTENT WITH THE EXISTING RATES;

(b) SHALL, IF THE MANUFACTURER FURNISHES A PART TO A POWERSPORTS VEHICLE DEALER AT NO COST FOR USE IN PERFORMING A REPAIR UNDER A WARRANTY OBLIGATION, COMPENSATE THE POWERSPORTS VEHICLE DEALER FOR THE AUTHORIZED REPAIR PART BY PAYING THE DEALER AN AMOUNT EQUAL TO THE RETAIL PARTS MARKUP PERCENTAGE MULTIPLIED BY THE COST THE DEALER WOULD HAVE PAID FOR THE AUTHORIZED PART AS LISTED IN THE MANUFACTURER'S PRICE SCHEDULE;

(c) SHALL NOT ESTABLISH A DIFFERENT PART NUMBER FOR REPAIRS MADE IN ACCORDANCE WITH A WARRANTY OBLIGATION THAN THE PART NUMBER ESTABLISHED FOR NONWARRANTY REPAIRS SOLELY TO PROVIDE A LOWER COMPENSATION TO A POWERSPORTS VEHICLE DEALER;

(d) SHALL NOT RECOVER OR ATTEMPT TO RECOVER, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, ANY OF ITS COSTS FROM THE POWERSPORTS VEHICLE DEALER FOR COMPENSATING THE POWERSPORTS VEHICLE DEALER UNDER THIS SECTION;

(e) SHALL NOT, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, ASSESS PENALTIES OR SURCHARGES TO THE POWERSPORTS VEHICLE DEALER, LIMIT ALLOCATION OF POWERSPORTS VEHICLES OR PARTS TO THE POWERSPORTS VEHICLE DEALER, OR TAKE ANY ADVERSE ACTION BASED ON THE POWERSPORTS VEHICLE DEALER'S EXERCISE OF THE DEALER'S RIGHTS UNDER THIS SECTION;

(f) SHALL NOT REQUIRE FROM A POWERSPORTS VEHICLE ANY INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO OBTAIN, INCLUDING ANY PART-BY-PART OR TRANSACTION-BY-TRANSACTION CALCULATIONS.

(8) NOTHING IN THIS SECTION PROHIBITS A MANUFACTURER FROM INCREASING THE PRICE OF A POWERSPORTS VEHICLE OR POWERSPORTS VEHICLE PART IN THE NORMAL COURSE OF BUSINESS.

**SECTION 5. Act subject to petition - effective date.** This act takes effect October 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 30, 2018