

1 SB322
2 157039-1
3 By Senator Reed
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 06-FEB-14

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8 SYNOPSIS: Existing law does not specifically prohibit
9 manufacturers, distributors, and dealers of
10 powersports vehicles from selling the vehicles
11 without first entering into a manufacturer's and
12 dealer's agreement.

13 This bill would prohibit manufacturers,
14 distributors, and dealers of powersports vehicles
15 from selling the vehicles without first entering
16 into a manufacturer's and dealer's agreement.

17 This bill would provide the requirements for
18 the agreement.

19 This bill would provide for the termination,
20 cancellation, nonrenewal, or alteration of the
21 agreement.

22 This bill would provide for the repurchase
23 of the inventory.

24 This bill would provide for the transfer of
25 the ownership interest in a dealership.

26 This bill would provide for the obligation
27 of a warrantor.

1 This bill would exempt certain dealership
2 agreement powersports vehicle manufacturers and
3 dealers.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to manufacturers, distributors, and dealers
10 of powersports vehicles; to prohibit manufacturers,
11 distributors, and dealers from selling powersports vehicles
12 without having first entered into a manufacturer and dealer
13 agreement; to provide requirements for the agreement; to
14 provide for termination, cancellation, nonrenewal, or
15 alteration of the agreement; to provide for repurchase of
16 inventory; to provide for the transfer of an ownership
17 interest in a dealership; to provide for obligations of a
18 warrantor; and to amend Section 8-20-2, Code of Alabama 1975,
19 to provide that the Motor Vehicle Franchise Act will not apply
20 to any dealer agreement between powersports vehicle
21 manufacturers and dealers to the extent that such agreement
22 relates exclusively to the sales of powersports vehicles.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. It is the intent of the Legislature to
25 protect the public health, safety, and welfare of the
26 residents of the state by regulating the relationship between
27 powersports vehicle dealers, manufacturers, and distributors,

1 by maintaining competition, and by providing consumer
2 protection and fair trade.

3 Section 2. As used in this act, the following words
4 shall have the following meanings:

5 (1) AREA OF SALES RESPONSIBILITY. The greater of
6 either of the following:

7 a. the geographical area, agreed to by the dealer
8 and the manufacturer or the distributor in the dealer
9 agreement, within which the dealer has the exclusive right to
10 display or sell new powersports vehicles of a particular
11 line-make of the manufacturer or distributor to the retail
12 public.

13 b. The area within a radius of 30 miles around an
14 existing dealer except that, where a manufacturer is seeking
15 to establish an additional new motor vehicle dealer and there
16 are one or more existing powersports dealers of the same
17 line-make within a 10-mile radius of the proposed dealer site
18 or the area within a radius of 10 miles around an existing
19 dealer.

20 (2) COERCE. The failure to act in good faith in
21 performing or complying with any term or provision of the
22 dealer agreement, except that recommendation, persuasion,
23 urging, or argument shall not be deemed to constitute a lack
24 of good faith.

25 (3) DEALER. Any person, firm, corporation, or
26 business engaged in the business of selling powersports
27 vehicles to the general public and that maintains a permanent

1 business establishment including a service and repair facility
2 which offers mechanical services for the powersports vehicles
3 it sells.

4 (4) DEALER AGREEMENT. A written agreement or
5 contract entered into between a manufacturer or a distributor
6 and a dealer that fixes the rights and responsibilities of the
7 parties and pursuant to which the dealer sells new powersports
8 vehicles.

9 (5) DISTRIBUTOR. Any person, firm, corporation, or
10 business entity that purchases new powersports vehicles for
11 resale to dealers.

12 (6) FACTORY CAMPAIGN. An effort on the part of a
13 warrantor to contact powersports vehicle owners or dealers in
14 order to address a part or equipment issue.

15 (7) FAMILY MEMBER. A spouse or a child, grandchild,
16 parent, sibling, niece, or nephew, or the spouse thereof.

17 (8) GOOD FAITH. Honesty in fact and the observation
18 of reasonable commercial standards of fair dealing in the
19 trade as is defined and interpreted in subdivision (1)(b) of
20 Section 7-2-103, Code of Alabama 1975.

21 (9) LINE-MAKE. A specific series of powersports
22 vehicle products that meets all of the following
23 specifications:

24 a. Is identified by a common series trade name or
25 trademark.

26 b. Is a product that the manufacturer and dealer
27 agreement authorizes the dealer to sell.

1 (10) MANUFACTURER. Any person, firm, corporation, or
2 business entity that engages in the manufacture of powersports
3 vehicles.

4 (11) NEW POWERSPORTS VEHICLE. A powersports vehicle
5 which has been sold to a new powersports dealer and which has
6 not been used for other than demonstration purposes.

7 (12) PROPRIETARY PART. Any part manufactured by or
8 for and sold exclusively by the manufacturer.

9 (13) POWERSPORTS VEHICLE. A self-propelled land
10 vehicle, other than a motor vehicle intended for use and
11 operation on the public highways, including vehicles
12 designated as "all terrain vehicles," "UTVs," and motorcycles
13 intended for use and operation other than on the public
14 highways.

15 (14) SUPPLIER. Any person, firm, corporation, or
16 business entity that engages in the manufacturing of
17 powersports vehicle parts, accessories, or components.

18 (15) WARRANTOR. Any person, firm, corporation, or
19 business entity, including any manufacturer or distributor,
20 that provides a written warranty to the consumer in connection
21 with a new powersports vehicle or parts, accessories, or
22 components thereof. The term does not include service
23 contracts, mechanical or other insurance, or extended
24 warranties sold for separate consideration by a dealer or
25 other person not controlled by a manufacturer or distributor.

26 Section 3. (a) (1) After June 1, 2014, a manufacturer
27 or distributor may not sell a powersports vehicle in this

1 state to or through a dealer without having first entered into
2 a manufacturer and dealer agreement with the dealer which has
3 been signed by both parties.

4 (2) A dealer may not sell a new powersports vehicle
5 in this state without having first entered into a manufacturer
6 and dealer agreement with a manufacturer or distributor which
7 has been signed by both parties.

8 (b) The manufacturer or distributor shall designate
9 the area of sales responsibility exclusively assigned to a
10 dealer in the manufacturer and dealer agreement. The
11 manufacturer or distributor may not review or change the area
12 of sales responsibility without the consent of both parties or
13 contract with another dealer for the sale of the same
14 line-make in the designated area until at least one year after
15 the execution of the manufacturer and dealer agreement.

16 Section 4. Notwithstanding the terms, provisions, or
17 conditions of any dealer agreement, the terms or provisions of
18 any waiver, prior to the termination, cancellation, or
19 nonrenewal of any dealer agreement, the following acts or
20 conduct shall constitute unfair and deceptive trade practices:

21 (1) For any manufacturer, manufacturer
22 representative, distributor, or wholesaler or distributor
23 representative to coerce or attempt to coerce any powersports
24 dealer to do any of the following:

25 a. Accept, buy or order any powersports vehicle or
26 vehicles, appliances, equipment, parts, or accessories
27 therefor, or any other commodity or commodities or service or

1 services which such powersports dealer has not voluntarily
2 ordered or requested except items required by applicable
3 local, state, or federal law; or to require a powersports
4 dealer to accept, buy, order, or purchase such items in order,
5 to obtain any powersports vehicle or any other commodity or
6 commodities which have been ordered or requested by such
7 powersports dealer.

8 b. Order or accept delivery of any powersports
9 vehicle with special features, appliances, accessories, or
10 equipment not included in the list price of the powersports
11 vehicle as publicly advertised by the manufacturer thereof,
12 except items required by applicable law.

13 c. Enter into any agreement with such manufacturer,
14 manufacturer representative, distributor, or wholesaler,
15 distributor branch or distributor representative, to do any
16 other act prejudicial to the dealer, the effect of which is to
17 reduce the powersports dealer's allocation of powersports
18 vehicles or cancel or fail to renew any dealer agreement
19 existing between the parties other than as hereinafter
20 provided; provided, however, that this subsection is not
21 intended to preclude the manufacturer or distributor from
22 insisting on compliance with the reasonable terms or
23 provisions of the franchise, and notice in good faith to any
24 powersports vehicle dealer of the dealer's violation of any
25 reasonable terms or provisions of such dealer agreement or of
26 any law or regulation applicable to the conduct of a

1 powersports vehicle dealer shall not constitute a violation of
2 this act.

3 d. Participate monetarily in an advertising campaign
4 or contest, or to purchase any promotional materials, training
5 materials, showroom or other display decorations, or materials
6 at the expense of the powersports vehicle dealer. This
7 paragraph is not intended to modify any reasonable and
8 uniformly applied provision of the franchise which requires
9 the powersports vehicle dealer to advertise and promote the
10 sale of vehicles and does not apply to campaigns, contests,
11 advertising, and other promotional programs in which the
12 powersports vehicle dealer voluntarily elects to participate.

13 e. Refrain from participation in the management of,
14 investment in, or the acquisition of any other line of
15 powersports vehicles or related products; provided that the
16 powersports vehicle dealer maintains a reasonable line of
17 credit, and that the powersports dealer remains in substantial
18 compliance with the terms and conditions of the dealer
19 agreement and with any reasonable facilities requirements of
20 the manufacturer.

21 f. Change the location of the powersports vehicle
22 dealership or, during the course of the agreement, to make any
23 substantial alterations to the dealership premises when to do
24 so would be unreasonable.

25 g. Establish or maintain exclusive sales facilities,
26 personnel, or sales display space for a powersports vehicle
27 line-make, if such requirement is not reasonable unless such

1 exclusive sales facilities or sales display space is
2 reasonable and is otherwise justified by reasonable business
3 considerations. The burden of proving that reasonable business
4 considerations justify exclusive sales facilities or sales
5 display space is on the manufacturer. Provided, however, a
6 manufacturer or distributor may not coerce, attempt to coerce,
7 or require a powersports vehicle dealer to establish or
8 maintain exclusive personnel or exclusive service, parts, or
9 administrative facilities for a line-make.

10 h. Adhere to performance standards that are not
11 fair, reasonable, and equitable or that are not applied
12 uniformly to other similarly situated dealers. A performance
13 standard, sales objective, or program for measuring dealership
14 performance that may have a material effect on a dealer,
15 including the dealer's right to payment under any incentive or
16 reimbursement program shall be fair, reasonable, equitable,
17 and based on accurate information.

18 i. Engage in any acts which constitute fraud,
19 deceit, or suppression under Sections 6-5-100 to 6-5-104,
20 inclusive, Code of Alabama 1975.

21 j. Offer to sell or sell any extended service
22 contract or extended maintenance plan offered, sold, backed
23 by, or sponsored by the manufacturer or to sell, assign, or
24 transfer any retail installment sales contract or lease
25 obtained by the dealer in connection with the sale or lease of
26 a new motor vehicle manufactured by the manufacturer to a
27 specified finance company, class of finance companies, leasing

1 company, or class of leasing companies, or to any other
2 specified persons.

3 (2) For any manufacturer, manufacturer
4 representative, distributor, or wholesaler, distributor branch
5 or distributor representative to engage in any action with
6 respect to a franchise which is arbitrary, in bad faith or
7 unconscionable, unreasonable, or is not in good faith and
8 which causes damage to any of the parties.

9 (3) For any manufacturer, manufacturer
10 representative, distributor, or wholesaler, distributor branch
11 or distributor representative to do any of the following:

12 a. Adopt, change, establish, or implement a plan or
13 system for the allocation and distribution of powersports
14 vehicles to powersports vehicle dealers which is arbitrary,
15 capricious, or unreasonably discriminatory or to modify an
16 existing plan so as to cause the same to be arbitrary,
17 capricious, or unreasonably discriminatory.

18 b. Fail or refuse to advise or disclose to any
19 powersports vehicle dealer having a dealer agreement, upon
20 written request therefor, the basis upon which powersports
21 vehicles of the same line-make are allocated or distributed to
22 powersports dealers in the state and the basis upon which the
23 current allocation or distribution is being made or will be
24 made to such powersports dealer.

25 c. Refuse to deliver to a powersports dealer in
26 reasonable quantities and within a reasonable time after
27 receipt of the powersports dealer's order any such powersports

1 vehicles as are covered by a dealer agreement and specifically
2 publicly advertised in the state by such manufacturer,
3 manufacturer representative, distributor, or wholesaler,
4 distributor branch, or distributor representative to be
5 available for immediate delivery; provided, however, that the
6 failure to deliver any powersports vehicle shall not be
7 considered a violation of this act if such failure is due to
8 an act of God, a work stoppage or delay due to a strike or
9 labor difficulty, a shortage of materials, lack of available
10 manufacturing capacity, a freight embargo or other cause over
11 which the manufacturer, manufacturer representative,
12 distributor, or wholesaler, distributor branch, or distributor
13 representative shall have no control.

14 d. Cancel or terminate the franchise or dealer
15 agreement of a powersports dealer other than as hereinafter
16 provided.

17 e. Fail or refuse to extend the franchise or dealer
18 agreement of a motor vehicle dealer upon its expiration other
19 than as hereinafter provided.

20 f. Offer a renewal, replacement, or succeeding
21 franchise or dealer agreement containing terms and provisions
22 the effect of which is to substantially change or modify the
23 sales and service obligations or capital requirements of the
24 powersports vehicle dealer other than as hereinafter provided.

25 g. Offer to sell or lease, or to sell or lease, any
26 new powersports vehicle to any powersports vehicle dealer at a
27 lower actual price therefor than the actual price offered to

1 any other powersports vehicle dealer for the same model
2 vehicle similarly equipped or to utilize any device including,
3 but not limited to, sales promotion plans or programs which
4 result in such lesser actual price and which are not offered
5 to dealers of vehicles of the same line-make; provided,
6 however, that the provisions of this paragraph shall not apply
7 to sale to a powersports vehicle dealer for resale to any unit
8 of the United States government, the state, or any of its
9 political subdivisions.

10 h. Offer to sell or lease, or to sell or lease, any
11 new powersports vehicle to any person, except a wholesaler's
12 or distributor's or manufacturer's employees, at a lower
13 actual price therefor than the actual price offered and
14 charged to a powersports vehicle dealer for the same model
15 vehicle similarly equipped or to utilize any device which
16 results in such lesser actual price and which are not offered
17 to dealers of vehicles of the same line-make; provided,
18 however, that the provisions of this paragraph shall not apply
19 to sales to a powersports vehicle dealer for resale to any
20 unit of the United States government, the state, or any of its
21 political subdivisions.

22 i. Prevent or attempt to prevent by contract or
23 otherwise any powersports vehicle dealer from changing the
24 executive management control of the powersports vehicle dealer
25 unless such change of executive management control will result
26 in executive management control by a person or persons who are
27 not of good moral character or who do not meet the

1 manufacturer's or wholesaler's or distributor's existing and
2 reasonable capital standards and, with consideration given to
3 the volume of sales and service of the new powersports vehicle
4 dealer, uniformly applied minimum business experience
5 standards in the market area; provided, however, that where
6 the manufacturer or wholesaler rejects a proposed change in
7 executive management control, the manufacturer or wholesaler
8 shall give written notice of his or her reasons to the
9 powersports vehicle dealer within 45 days of notice to the
10 manufacturer or wholesaler or distributor by the powersports
11 vehicle dealer of the proposed change accompanied by
12 information reflecting the identity, business experience and
13 affiliations, and source of investment funds of the proposed
14 new management.

15 j. Prevent or attempt to prevent by contract or
16 otherwise any powersports vehicle dealer from establishing or
17 changing the capital structure of his or her dealership or the
18 means by or through which he or she finances the operation
19 thereof; provided the dealer meets any reasonable capital
20 standards agreed to between the powersports vehicle dealer and
21 the manufacturer, distributor, or wholesaler, who may require
22 that the sources, method, and manner by which the powersports
23 vehicle dealer finances or intends to finance its operation,
24 equipment, or facilities be fully disclosed.

25 k. Refuse to give effect to or prevent or attempt to
26 prevent by contract or otherwise any powersports vehicle
27 dealer or any officer, partner, or stockholder of any

1 powersports vehicle dealer from selling or transferring any
2 part of the interest of any of them to any other person unless
3 such sale or transfer is to a transferee who would not
4 otherwise qualify for a new powersports vehicle dealer's
5 license issued by the State of Alabama or a political
6 subdivision thereof or unless such sale or transfer is to a
7 person who is not of good moral character or who does not meet
8 the manufacturer's or wholesaler's or distributor's existing
9 and reasonable capital standards and, with consideration given
10 to the volume of sales and service of the dealership,
11 uniformly applied minimum business experience standards in the
12 market area; provided, however, that where such a rejection of
13 a transfer is made the manufacturer or distributor or
14 wholesaler shall give written notice of his or her reasons to
15 the powersports vehicle dealer within 45 days of notice to the
16 manufacturer or wholesaler or distributor by the dealer of the
17 proposed transfer accompanied by information reflecting the
18 identity of the new owner or owners, their business experience
19 and affiliations and the pro forma balance sheet and source of
20 investment funds of the proposed new dealership. A
21 manufacturer or distributor may exercise a contractual right
22 of first refusal with respect to the sale or transfer of the
23 interest of the dealer only if each of the following
24 requirements are met:

25 1. The sale or transfer is not to a family member of
26 an owner of the dealership, nor a managerial employee of the
27 dealership owning 15 percent or more of the dealership, nor a

1 corporation, partnership, or other legal entity owned by the
2 existing owners of the dealership.

3 2. The manufacturer or distributor notifies the
4 dealer in writing within 60 days after receipt of the
5 completed application forms and related information generally
6 used by a manufacturer or distributor to conduct its review
7 and a copy of all agreements regarding the proposed transfer
8 of its intent to exercise its right of first refusal or its
9 rejection of the proposed transfer. If the manufacturer or
10 distributor fails to notify the dealer of its exercise of the
11 right of first refusal or its rejection of the proposed
12 transferee within the 45-day period, the effect of such
13 failure shall constitute approval of the proposed sale or
14 transfer. If the manufacturer or distributor exercises a right
15 of first refusal under this section, the transfer shall be
16 deemed to be rejected.

17 3. The exercise of the right of first refusal
18 provides to the dealer the same compensation as, or greater
19 compensation than, the dealer had negotiated to receive from
20 the proposed buyer or transferee.

21 4. The manufacturer or distributor agrees to pay the
22 reasonable expenses, including reasonable attorneys' and
23 accountants' fees that do not exceed the usual, customary, and
24 reasonable fees charged for similar work done for other
25 clients incurred by the proposed buyer or transferee before
26 the manufacturer's or distributor's exercise of its right of
27 first refusal in negotiating and implementing the contract for

1 the sale or transfer. The proposed buyer or transferee shall
2 provide to the manufacturer or distributor a written
3 itemization of the expenses incurred within 30 days of the
4 receipt by the proposed buyer or transferee of a written
5 request from the manufacturer or distributor for an accounting
6 of the expenses. The manufacturer or distributor shall make
7 payment of these expenses within 30 days of exercising the
8 right of first refusal.

9 1. Unreasonably and without notice to existing
10 powersports vehicle dealers, as hereinafter provided, enter
11 into a franchise with an additional powersports vehicle dealer
12 who intends to conduct its dealership operations from a place
13 of business situated within the area of sales responsibility
14 of an existing powersports vehicle dealer or powersports
15 vehicle dealers representing the same line-make. The
16 appointment of a successor powersports vehicle dealer at the
17 same location as its predecessor or within a two-mile radius
18 therefrom within two years from the date on which its
19 predecessor ceased operations or was terminated, whichever
20 occurred later, shall not be construed as the entering into of
21 an additional franchise. Any manufacturer, distributor, or
22 wholesaler, factory branch, factory representative,
23 distributor branch, or distributor representative which
24 intends to enter into an additional franchise shall, at least
25 60 days prior to granting such franchise, give written notice
26 of its intention to do so to each powersports vehicle dealer
27 of the same line-make within the area of sales responsibility.

1 Such notice shall state the date on or after which such
2 proposed franchise shall be granted or entered into. Prior to
3 the date set forth in the notice on or after which such
4 franchise will be entered into, any such powersports vehicle
5 dealer may petition a court of competent jurisdiction to
6 determine whether such appointment or proposed appointment is
7 unreasonable in which action the manufacturer, wholesaler, or
8 distributor shall have the burden of proof that such action is
9 not unreasonable. No bond shall be required as a precondition
10 to entry of an injunction enjoining appointment of an
11 additional franchise. Such petition shall be entitled to a
12 speedy trial. In determining whether such proposed appointment
13 is unreasonable, the court shall consider all pertinent
14 circumstances. These may include but are not limited to:

15 1. Whether the establishment of such additional
16 franchise is warranted by economic and marketing conditions
17 including anticipated future changes;

18 2. The past, present, and anticipated retail sales
19 and service business transacted by the objecting powersports
20 vehicle dealer or dealers and other powersports vehicle
21 dealers of the same line-make with a place of business in the
22 relevant market area;

23 3. The investment made and obligations incurred by
24 the objecting powersports vehicle dealer or dealers and other
25 powersports vehicle dealers of the same line-make with a place
26 of business in the relevant market area;

1 4. Whether it is beneficial or injurious to the
2 public welfare for an additional franchise to be established.

3 m. Prospectively assent to a release, assignment,
4 novation, agreement, waiver, or estoppel 1. which would
5 relieve any person from any liability or obligation under this
6 act, 2. which would or to require any controversy between a
7 new powersports vehicle dealer and a manufacturer to be
8 referred to any person other than the duly constituted courts
9 of this state or the United States, if the referral would be
10 binding on the new powersports vehicle dealer, 3. which would
11 limit the entitlement to recover damages under this act or
12 other Alabama law, 4. which specifies the jurisdiction or
13 venues in which disputes arising with respect to the franchise
14 shall or shall not be submitted for resolution or otherwise
15 prohibits a dealer from bringing an action in the courts of
16 Alabama, or 5. which would waive the right to trial by jury.

17 n. Prevent or refuse to give effect to the
18 succession to the ownership or management control of a
19 dealership upon the death or incapacity of a powersports
20 vehicle dealer to any legatee or devisee under the will of a
21 dealer or to an heir under the laws of descent and
22 distribution of this state unless the successor is a person
23 who is not of good moral character or who does not meet the
24 manufacturer's or distributor's or wholesaler's existing and
25 reasonable capital standards and, with consideration given to
26 the volume of the sales and service of the dealership,
27 uniformly applied minimum business experience standards in the

1 market area; provided, however, that where such a rejection of
2 succession is made, the manufacturer or distributor or
3 wholesaler shall give written notice of his or her reasons to
4 the proposed successor within 45 days of notice to the
5 manufacturer or wholesaler or distributor by the proposed
6 successor of his or her intent to succeed to the ownership or
7 management of the dealership accompanied by information
8 reflecting the identity of the new owner or owners, their
9 business experience and affiliation and the pro forma balance
10 sheet and source of investment funds of the proposed new
11 dealership. This section does not preclude the owner of a new
12 powersports vehicle dealer from designating any person as his
13 or her successor by written instrument filed with the
14 manufacturer or distributor and, in the event there is a
15 conflict between such written instrument and the provisions of
16 this section, the written instrument shall govern.

17 o. Fail to indemnify and hold harmless its
18 powersports vehicle dealers against any losses, including, but
19 not limited to, court costs and reasonable attorneys' fees, or
20 damages arising out of complaints, claims, or lawsuits,
21 including, but not limited to, strict liability, negligence,
22 misrepresentation, warranty (express or implied), or
23 rescission of the sale where the complaint, claim, or lawsuit
24 relates to 1. the manufacture, assembly, or design of new
25 powersports vehicles, parts, or accessories; 2. a defect in
26 any forms furnished to the dealer or in the written
27 instructions for the completion of such forms by the

1 manufacturer, an affiliate of the manufacturer, or person
2 controlled by the manufacturer used in connection with the
3 sale, lease, or financing of a vehicle and associated
4 products, unless the dealer improperly completes the forms or
5 makes misrepresentations contrary either to the terms of the
6 forms or the written instructions for their completion; or 3.
7 other functions by the manufacturer, beyond the control of the
8 dealer, including, without limitation, the selection by the
9 manufacturer of parts or components for the vehicle, or any
10 damages to merchandise occurring in transit to the dealer
11 where the carrier is designated by the manufacturer.

12 p. Increase prices of new powersports vehicles which
13 the new powersports vehicle dealer had ordered for retail
14 consumers prior to the dealer's receipt of the written
15 official price increase notification. A sales contract signed
16 by a retail consumer shall constitute evidence of each such
17 order; provided that the vehicle is in fact delivered to that
18 customer. In the event of manufacturer price reductions or
19 cash rebates, the amount of any such reduction or rebate
20 received by a dealer shall be passed on to the retail consumer
21 by the dealer if the retail price was negotiated on the basis
22 of the previous higher price to the dealer. Price reductions
23 shall apply to all vehicles in the dealer's inventory which
24 were subject to the price reduction. Price differences
25 applicable to new model or series powersports vehicles at the
26 time of the introduction of new models or series shall not be
27 considered a price increase or price decrease. Price changes

1 caused by either: 1. the addition to a powersports vehicle of
2 required or optional equipment pursuant to state or federal
3 law; 2. revaluation of the United States dollar, in the case
4 of foreign-made vehicles or components; or 3. an increase in
5 transportation charges due to increased rates imposed by
6 common or contract carriers, shall not be subject to the
7 provisions of this paragraph.

8 q. Offer any refunds or other types of inducements
9 to any person for the purchase of new powersports vehicles of
10 a certain line-make to be sold to the state or any political
11 subdivision thereof without making the same offer to all other
12 new powersports vehicle dealers in the same line-make within
13 the state.

14 r. Release to any outside party, except under
15 subpoena, or as otherwise required by law or in an
16 administrative, judicial, or arbitration proceeding, any
17 business, financial, or personal information which may be from
18 time to time provided by the dealer to the manufacturer,
19 without the express written consent of the dealer.

20 s. Own an interest in a new powersports vehicle
21 dealership, to operate or control a dealership, to make direct
22 sales or leases of new powersports vehicles to the public in
23 Alabama, or to own, operate, or control a facility for
24 performance of powersports vehicle warranty or repair service
25 work, except as follows:

26 1. The manufacturer or distributor is owning or
27 operating a new powersports vehicle dealership or a warranty

1 repair facility for a temporary period of not more than 24
2 months, as long as the new powersports vehicle dealership or
3 warranty repair center is for sale at a reasonable price and
4 on reasonable terms and conditions; or

5 2. The manufacturer's or distributor's participation
6 is in a bona fide relationship with an independent person (i)
7 who is required to make significant investment in the new
8 powersports vehicle dealership or warranty repair center
9 subject to loss, (ii) and operates the dealership or warranty
10 repair center and may reasonably be expected to acquire full
11 ownership of the dealership or warranty repair center within a
12 reasonable time and under reasonable terms and conditions.

13 3. The manufacturer or distributor is selling or
14 leasing new powersports vehicles in Alabama to its qualified
15 vendors, not-for-profit organizations, fleets, or the federal,
16 state, or local government if sold or leased and delivered
17 through new powersports vehicle dealers in this state. The
18 manufacturer or distributor is selling or leasing new
19 powersports vehicles in Alabama to its employees and
20 employees' families if delivered through new powersports
21 vehicle dealers in this state. The manufacturer or distributor
22 is implementing a program to sell or lease or offer to sell or
23 lease new powersports vehicles through new powersports vehicle
24 dealers in this state.

25 t. Make any material change in any franchise
26 agreement without giving the dealer written notice by

1 certified mail of such change at least 60 days prior to the
2 effective date of such change.

3 u. Fail to pay or otherwise compensate its new
4 powersports vehicle dealers for sales incentives, service
5 incentives, rebates, or other forms of incentive compensation
6 earned by the dealer as a consequence of incentive programs of
7 the manufacturer. The manufacturer shall have the right to
8 audit any such incentive payments made to the dealer and to
9 charge back the dealer for any fraudulent claims for incentive
10 payments made to the dealer for a period not to exceed the
11 current and the immediately preceding calendar year from
12 payment of a claim nine months from the date the claim was
13 paid. A manufacturer shall not disapprove claims for which the
14 dealer has received preauthorization from the manufacturer or
15 its representative nor shall the manufacturer unreasonably
16 disapprove a claim solely based on the dealer's incidental
17 failure to comply with a specific claim processing requirement
18 that results only in a clerical error or administrative error;
19 rather a claim denial must be based upon a material defect and
20 deviation from the reasonable written claim submission
21 requirements of the manufacturer. In the event of neglect,
22 oversight, or mistake by the dealer, a dealer may submit an
23 amended claim, or may submit a claim not submitted within the
24 time required by the manufacturer, for sales incentives,
25 service incentives, rebates, or other forms of incentive
26 compensation up to 120 days from the date on which such claim
27 was first submitted or could have been submitted.

1 v. Fail or refuse to offer its same line-make
2 franchised dealers all models of new powersports vehicles
3 manufactured for that line-make and offered to any dealer in
4 this state. No unreasonable additional requirements, over the
5 requirements originally required to obtain a franchise from
6 the manufacturer, may be required of existing franchised
7 dealers to receive any model by that line-make. The provisions
8 in this paragraph shall not apply to recreational vehicles and
9 reasonable requirements of a manufacturer that its dealers
10 obtain tools or diagnostic equipment to properly service its
11 line-make of powersports vehicles. The failure to deliver any
12 such new powersports vehicle shall not be considered a
13 violation of this section if the failure is due to a lack of
14 manufacturing capacity or to a strike or labor difficulty, a
15 shortage of materials, a freight embargo, or any other cause
16 over which the manufacturer has no control.

17 w. Prohibit a powersports vehicle dealer from
18 changing the location of the new powersports vehicle
19 dealership to another location within the dealer's assigned
20 area of responsibility if the refusal to approve the
21 relocation is not reasonable under the circumstances.

22 x. Assign or change a dealer's area of
23 responsibility under the franchise or dealer agreement
24 arbitrarily or without due regard to the present or projected
25 future pattern of powersports vehicle sales and registrations
26 within the dealer's market area and without first having
27 provided the dealer with written notice of the change in the

1 dealer's area of responsibility and a detailed description of
2 the change and reasons therefor.

3 y. Require a dealer to utilize manufacturer approved
4 floor fixtures for the display of any product that is not a
5 product of the manufacturer.

6 z. Require a dealer to purchase lighting fixtures
7 that are to be installed in the dealership only from the
8 manufacturer's approved vendors.

9 Section 5. (a) Notwithstanding the terms,
10 provisions, or conditions of any dealer agreement and
11 notwithstanding the terms or provisions of any waiver, no
12 manufacturer shall cancel, terminate, modify, fail to renew,
13 or refuse to continue any dealer agreement with a powersports
14 vehicle dealer unless the manufacturer has:

15 (1) Satisfied the notice requirement of this
16 section.

17 (2) Acted in good faith as defined in this act.

18 (3) Has good cause for the cancellation,
19 termination, modification, nonrenewal, or noncontinuance.

20 (b) Notwithstanding the terms, provisions, or
21 conditions of any dealer agreement or the terms or provisions
22 of any waiver, good cause shall exist for the purposes of a
23 termination, cancellation, modification, nonrenewal, or
24 noncontinuance when:

25 (1) There is a failure by the powersports dealer to
26 comply with a provision of the dealer agreement which
27 provision is both reasonable and of material significance to

1 the contractual relationship, provided that the manufacturer
2 first acquired actual or constructive knowledge of such
3 failure not more than 180 days prior to the date on which
4 notification is given by the manufacturer pursuant to the
5 requirements of this section.

6 (2) If the failure by the powersports dealer to
7 comply with a provision of the franchise relates to the
8 performance of the dealer in sales or service, then good cause
9 shall be defined as the failure of the dealer to substantially
10 comply with the reasonable performance provisions of the
11 franchise if:

12 a. The powersports dealer was apprised by the
13 manufacturer in writing of such failure; and

14 1. The notification stated that notice was provided
15 of failure of performance pursuant to this act; and

16 2. The powersports dealer was afforded a reasonable
17 opportunity, for a period of not less than nine months, to
18 exert good faith efforts to carry out such provisions; and

19 3. The powersports dealer did not demonstrate
20 substantial compliance with the manufacturer's performance
21 standards during such period and that the failure to
22 demonstrate such compliance was not due to factors which were
23 beyond the control of such dealer.

24 b. Such failure thereafter continued within the
25 period which began not more than 180 days before the date
26 notification of termination, cancellation, modification, or
27 nonrenewal was given pursuant to this section.

1 (c) The manufacturer shall have the burden of proof
2 for showing that it has acted in good faith, that the notice
3 requirements have been complied with, and that there was good
4 cause for the dealer agreement termination, cancellation,
5 modification, nonrenewal, or noncontinuance.

6 (d) Notwithstanding the terms, provisions, or
7 conditions of any dealer agreement or the terms or provisions
8 of any waiver, prior to the termination, cancellation,
9 modification, or nonrenewal of any dealer agreement, the
10 manufacturer shall furnish notification of such termination,
11 cancellation, modification, or nonrenewal to the powersports
12 vehicle dealer as follows:

13 (1) In the manner described in subsection (e); and

14 (2) Not less than 90 days prior to the effective
15 date of such termination, cancellation, modification, or
16 nonrenewal or not less than 30 days prior to the effective
17 date of such termination, cancellation, or nonrenewal with
18 respect to any of the following:

19 a. Filing of any petition by or against the
20 powersports vehicle dealer under any bankruptcy or
21 receivership law.

22 b. Willful or intentional misrepresentation made by
23 the powersports vehicle dealer with the express intent to
24 defraud the manufacturer or distributor.

25 c. Failure of the powersports vehicle dealer to
26 conduct its customary sales and service operations during its
27 customary business hours for seven consecutive business days.

1 d. Final conviction, including appeal, of the new
2 powersports vehicle dealer, principal owner, or principal
3 executive manager of any felony.

4 (e) Notification under this section shall be in
5 writing, shall be by certified mail or personally delivered to
6 the powersports vehicle dealer, and shall contain the
7 following:

8 (1) A statement of intention to terminate the
9 franchise, cancel the franchise, modify the franchise, or not
10 to renew the franchise.

11 (2) A statement of the reasons for the termination,
12 cancellation, modification, or nonrenewal.

13 (3) The date on which such termination,
14 cancellation, modification, or nonrenewal takes effect.

15 (f) Upon the termination, cancellation, or
16 nonrenewal by the manufacturer of any franchise for good
17 cause, the powersports dealer shall be paid fair and
18 reasonable compensation by the manufacturer for the following:

19 (1) New powersports vehicle inventory of the current
20 and previous model year which has been acquired from the
21 manufacturer. Any new and unused powersports vehicle
22 repurchased by the manufacturer shall be repurchased at the
23 net cost to the dealer.

24 (2) Supplies and parts acquired by the powersports
25 vehicle dealer from the manufacturer or its approved sources
26 within seven years prior to the effective date of the
27 termination, cancellation, or nonrenewal.

1 (3) Equipment, signs, and furnishings acquired by
2 the powersports vehicle dealer from the manufacturer or its
3 approved sources.

4 (4) Special tools.

5 (5) Dealership facilities, if the facilities were
6 required to be purchased or constructed as a precondition to
7 obtaining the franchise or to its renewal by the manufacturer.
8 The manufacturer shall use its best efforts to locate a
9 purchaser who will offer to purchase the facilities at a
10 reasonable price. If the manufacturer does not locate a
11 purchaser within a reasonable time, the manufacturer will pay
12 the dealer an amount equivalent to the reasonable rental value
13 of such facilities for three years during which time the
14 manufacturer shall be entitled to possession of the
15 facilities. If the facilities were leased and the lease was
16 required as a precondition to obtaining the franchise or to
17 its renewal by the manufacturer, then the manufacturer shall
18 use its best efforts to locate a lessee who will offer to
19 lease the premises for a reasonable term at a reasonable rent.
20 If the manufacturer does not locate a lessee within a
21 reasonable time, the manufacturer shall pay such rent for
22 three years or the remainder of the term of the lease,
23 whichever is less and the manufacturer shall have the option
24 to succeed to the rights of the dealer under the lease.

25 (g) Upon the termination, cancellation, or
26 nonrenewal by the manufacturer of any franchise without good
27 cause, the powersports vehicle dealer shall be paid fair and

1 reasonable compensation by the manufacturer for the personal
2 property described in subdivisions (f)(1) through (f)(4) and
3 for the dealership facilities, if the facilities were required
4 to be purchased or constructed as a precondition to obtain the
5 franchise or to its renewal by the manufacturer. If the
6 facilities were leased and the lease was required as a
7 precondition to obtaining the franchise or to its renewal by
8 the manufacturer, then the manufacturer shall be liable for
9 payment of the rent for the remainder of the term of the lease
10 during which time the manufacturer shall be entitled to
11 possession of the facilities. The manufacturer shall also pay
12 the dealer fair and reasonable compensation for the value of
13 the dealership within six months after the date of
14 termination, cancellation, or nonrenewal.

15 (h) Upon the termination, cancellation, or
16 nonrenewal by the manufacturer of any dealer agreement as a
17 result of willful or intentional misrepresentations made by
18 the powersports vehicle dealer with the express intent to
19 defraud the manufacturer or distributor or upon the
20 termination, cancellation, or nonrenewal by the motor vehicle
21 dealer, the powersports vehicle dealer shall be paid fair and
22 reasonable compensation by the manufacturer for the personal
23 property described in subdivisions (f)(1) through (f)(4).

24 (i) The fair and reasonable compensation to the
25 dealer shall be paid by the manufacturer within 90 days after
26 tender by the dealer of the items in subdivisions (f)(1)
27 through (f)(4) at the dealership premises, provided the

1 powersports vehicle dealer has clear title to the inventory
2 and other items and is in a position to convey that title to
3 the manufacturer.

4 Section 6. (a) Each warrantor shall do all of the
5 following:

6 (1) Specify in writing each of its dealer
7 obligations, if any, for preparation, delivery, and warranty
8 service on its products.

9 (2) Compensate a dealer for preparation, delivery,
10 and warranty service required of the dealer by the warrantor.

11 (3) Provide a dealer the schedule of compensation to
12 be paid and the time allowances for the performance of any
13 work and service. The schedule of compensation shall include
14 reasonable compensation for diagnostic work as well as
15 warranty labor.

16 (b) Time allowances for the diagnosis and
17 performance of warranty labor shall be reasonable for the work
18 to be performed. In the determination of what constitutes
19 reasonable compensation under this section, the principal
20 factors to be given consideration shall be the actual wage
21 rates being paid by the dealer and the actual retail labor
22 rate being charged by the dealers in the community in which
23 the dealer is doing business. The compensation of a dealer for
24 warranty labor may not be less than the lowest retail labor
25 rates actually charged by the dealer for like non-warranty
26 labor as long as such rates are reasonable.

1 (c) The warrantor shall reimburse the dealer for
2 warranty parts at actual wholesale cost plus a minimum 40
3 percent handling charge and the cost, if any, of freight to
4 return warranty parts to the warrantor.

5 (d) Warranty audits of dealer records may be
6 conducted by the warrantor on a reasonable basis, and dealer
7 claims for warranty compensation may not be denied except for
8 cause, such as performance of non-warranty repairs, material
9 noncompliance with the warrantor's published policies and
10 procedures, lack of material documentation, fraud, or
11 misrepresentation

12 (e) The dealer shall submit warranty claims within
13 30 days after completing work.

14 (f) The warrantor shall disapprove warranty claims
15 in writing within 30 days after the date of submission by the
16 dealer in the manner and form prescribed by the warrantor.
17 Claims not specifically disapproved in writing within 30 days
18 shall be construed to be approved and shall be paid within 60
19 days of submission.

20 (g) It is a violation of this act for any warrantor
21 to do any of the following:

22 (1) Fail to perform any of its warranty obligations
23 with respect to its warranted products.

24 (2) Fail to include, in written notices of factory
25 campaigns to powersports vehicle owners and dealers, the
26 expected date by which necessary parts and equipment,
27 including tires and chassis or chassis parts, will be

1 available to dealers to perform the campaign work. The
2 warrantor may ship parts to the dealer to effect the campaign
3 work, and, if such parts are in excess of the dealer's
4 requirements, the dealer may return unused parts to the
5 warrantor for credit after completion of the campaign.

6 (3) Fail to compensate any of its dealers for
7 authorized repairs effected by the dealer of merchandise
8 damaged in manufacture or transit to the dealer, if the
9 carrier is designated by the warrantor, factory branch,
10 distributor, or distributor branch.

11 (4) Fail to compensate any of its dealers in
12 accordance with the schedule of compensation provided to the
13 dealer pursuant to this section if performed in a timely and
14 competent manner.

15 (5) Intentionally misrepresent in any way to
16 purchasers of powersports vehicles that warranties with
17 respect to the manufacture, performance, or design of the
18 vehicle are made by the dealer as warrantor or co-warrantor.

19 (6) Require the dealer to make warranties to
20 customers in any manner related to the manufacture of the
21 powersports vehicle.

22 Section 7. (a) Whenever a new powersports vehicle is
23 damaged prior to transit to the dealer or is damaged in
24 transit to the dealer when the carrier or means of
25 transportation has been selected by the manufacturer or
26 distributor, the dealer shall notify the manufacturer or
27 distributor of the damage within the time frame specified in

1 the manufacturer and dealer agreement and shall do either of
2 the following:

3 (1) Request from the manufacturer or distributor
4 authorization to replace the components, parts, and
5 accessories damaged or otherwise correct the damage.

6 (2) Reject the vehicle within the time frame set
7 forth in subsection (d).

8 (b) If the manufacturer or distributor refuses or
9 fails to authorize repair of the damage within 10 days after
10 receipt of notification, or if the dealer rejects the
11 powersports vehicle because of damage, ownership of the new
12 powersports vehicle shall revert to the manufacturer or
13 distributor.

14 (c) The dealer shall exercise due care while having
15 custody of the damaged powersports vehicle, but the dealer
16 shall have no other obligations, financial or otherwise, with
17 respect to that powersports vehicle.

18 (d) The time frame for inspection and rejection by
19 the dealer must be part of the manufacturer and dealer
20 agreement and may not be less than two business days after the
21 physical delivery of the powersports vehicle.

22 Section 8. (a) A dealer injured by another party's
23 violation of this act may bring a civil action in circuit
24 court to recover actual damages. The court shall award
25 attorney's fees and costs to the dealer if it prevails in such
26 an action. Venue for any civil action authorized by this

1 section shall be exclusively in the county in which the
2 dealer's business is located.

3 (b) In addition to the remedies provided in this
4 section and notwithstanding the existence of any additional
5 remedy at law, a dealer is authorized to make application to a
6 circuit court, upon a hearing and for cause shown, for the
7 grant of a temporary or permanent injunction, or both,
8 restraining any person from violating or continuing to violate
9 any of the provisions of this act, or from failing or refusing
10 to comply with the requirements of this act. The injunction
11 shall be issued without bond. A single act in violation of the
12 provisions of this act shall be sufficient to authorize the
13 issuance of an injunction.

14 (c) Any civil action commenced under this act shall
15 be brought within four years after the cause of action
16 accrued. The cause of action shall not accrue until the
17 discovery by the aggrieved party of the fact or facts
18 constituting a violation of this act.

19 Section 9. Section 8-20-2 of the Code of Alabama 20
20 1975, is amended to read as follows:

21 "§8-20-2.

22 "(a) The Legislature finds and declares that the
23 distribution and sale of motor and powersports vehicles within
24 this state vitally affect the general economy of the state and
25 the public interest and the public welfare, and that in order
26 to promote the public interest and the public welfare, and in
27 the exercise of its police power, it is necessary to regulate

1 motor and powersports vehicle manufacturers, distributors,
2 dealers, and their representatives and to regulate the
3 dealings between manufacturers and distributors or wholesalers
4 and their dealers in order to prevent fraud and other abuses
5 upon the citizens of this state and to protect and preserve
6 the investments and properties of the citizens of this state.

7 "(b) This chapter shall not apply to any
8 ~~recreational~~ powersports vehicle manufacturer and dealer
9 agreement to which Sections 1 through 10 of the act amending
10 this subsection applies Chapter 21C of this title applies."

11 Section 10. This act applies to manufacturer and
12 dealer agreements existing on, entered into, amended or
13 renewed, on or after June 1, 2014.

14 Chapter 20 of Title 8, Code of Alabama 1975, shall
15 not apply to any dealer agreement between a powersports
16 vehicle manufacturer and dealer to the extent that such
17 agreement applies to powersports vehicles. This act does not
18 otherwise amend or affect Chapter 20 of Title 8.

19 Section 11. This act shall become effective on June
20 1, 2014.