

1 HB341
2 124659-2
3 By Representative Morrow
4 RFD: Commerce and Small Business
5 First Read: 24-MAR-11

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8 SYNOPSIS: This bill would require all manufacturers
9 and distributors that sell recreational vehicles in
10 this state to enter into a manufacturer and dealer
11 agreement with the dealer that will sell and
12 service the vehicles of the manufacturer or
13 distributor. This bill would provide that the
14 agreement must specify an exclusive designated area
15 of sales responsibility.

16 This bill would specify a procedure for
17 termination, cancellation, nonrenewal, or
18 alteration of the agreement.

19 This bill would provide for repurchase of
20 inventory by a manufacturer or distributor from the
21 dealer if the manufacturer or distributor
22 terminates, cancels, or fails to renew a contract
23 without cause.

24 This bill would require a dealer to give
25 notice to the manufacturer or distributor of a
26 change in ownership of the dealership.

1 This bill would provide requirements for
2 warranty service on recreational vehicles and would
3 require a warrantor to indemnify or hold harmless a
4 dealer for all losses caused by the warrantor's
5 negligence or willful misconduct and would require
6 the dealer to do the same with respect to the
7 warrantor.

8 This bill would prohibit a manufacturer or
9 distributor from coercing or attempting to coerce a
10 dealer into buying a product the dealer did not
11 order, from requiring the dealer to submit to
12 binding arbitration, or from entering into an
13 agreement against his or her will.

14 This bill would prohibit a manufacturer or
15 distributor from requiring a dealer to submit to
16 binding arbitration as a condition of any
17 manufacturer and dealer agreement. This bill would
18 require mediation of disputes between dealers,
19 manufacturers or distributors, or warrantors.

20 This bill would provide that the Motor
21 Vehicle Franchise Act would not apply to any
22 recreational vehicle manufacturer and dealer
23 agreement.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to manufacturers, distributors, and dealers
3 of recreational vehicles; to prohibit manufacturers and
4 distributors and dealers from selling recreational vehicles
5 without having first entered into a manufacturer and dealer
6 agreement; to provide requirements for the agreement; to
7 provide for termination, cancellation, nonrenewal, or
8 alteration of the agreement; to provide for repurchase of
9 inventory; to provide for the transfer of an ownership
10 interest in a dealership; to provide for obligations of a
11 warrantor; to require mediation of certain disputes; and to
12 amend Section 8-20-2, Code of Alabama 1975, to provide that
13 the Motor Vehicle Franchise Act will not apply to any
14 recreational vehicle manufacturer and dealer agreement.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. (a) It is the intent of the Legislature
17 to protect the public health, safety, and welfare of the
18 residents of the state by regulating the relationship between
19 recreational vehicle dealers, manufacturers, and distributors,
20 by maintaining competition, and by providing consumer
21 protection and fair trade.

22 (b) This act applies to manufacturer and dealer
23 agreements entered into on or after October 1, 2011.

24 (c) Chapter 20 of Title 8, Code of Alabama 1975,
25 shall not apply to any recreational vehicle manufacturer and
26 dealer agreement to which this act applies.

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

3 (1) AREA OF SALES RESPONSIBILITY. The geographical
4 area, agreed to by the dealer and the manufacturer or the
5 distributor or in the manufacturer and dealer agreement,
6 within which the dealer has the exclusive right to display or
7 sell new recreational vehicles of a particular line-make of
8 the manufacturer or distributor to the retail public.

9 (2) CAMPING TRAILER. A vehicular unit that is
10 mounted on wheels and constructed with collapsible partial
11 side walls that fold for towing by another vehicle and unfold
12 at the campsite to provide temporary living quarters for
13 recreational, camping, or travel use.

14 (3) DEALER. Any person, firm, corporation, or
15 business engaged in the business of selling recreational
16 vehicles to the general public and that maintains a permanent
17 business establishment including a service and repair facility
18 which offers mechanical services for the recreational vehicles
19 it sells.

20 (4) DISTRIBUTOR. Any person, firm, corporation, or
21 business entity that purchases new recreational vehicles for
22 resale to dealers.

23 (5) FACTORY CAMPAIGN. An effort on the part of a
24 warrantor to contact recreational vehicle owners or dealers in
25 order to address a part or equipment issue.

26 (6) FAMILY MEMBER. A spouse or a child, grandchild,
27 parent, sibling, niece, or nephew, or the spouse thereof.

1 (7) FIFTH WHEEL TRAILER. A vehicular unit, mounted
2 on wheels, designed to provide temporary living quarters for
3 recreational, camping, or travel use and of such size and
4 weight as not to require a special highway movement permit and
5 designed to be towed by a motorized vehicle that contains a
6 towing mechanism that is mounted above or forward of the tow
7 vehicle's rear axle.

8 (8) LINE-MAKE. A specific series of recreational
9 vehicle products that meets all of the following
10 specifications:

11 a. Is identified by a common series trade name or
12 trademark.

13 b. Is targeted to a particular market segment, as
14 determined by the decor, features, equipment, size, weight,
15 and price range.

16 c. Has lengths and interior floor plans that
17 distinguish the recreational vehicles from other recreational
18 vehicles with substantially the same decor, equipment,
19 features, price, and weight.

20 d. Belongs to a single, distinct classification of
21 recreational vehicle product type having a substantial degree
22 of commonality in the construction of the chassis, frame, and
23 body.

24 e. Is a product that the manufacturer and dealer
25 agreement authorizes the dealer to sell.

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

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

9 (11) MOTOR HOME. A motorized, vehicular unit
10 designed to provide temporary living quarters for
11 recreational, camping, or travel use.

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

14 (13) RECREATIONAL VEHICLE. A motor home, travel
15 trailer, fifth wheel trailer, camping trailer, and truck
16 camper.

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

20 (15) TRANSIENT CUSTOMER. A customer who is
21 temporarily traveling through a dealer's area of sales
22 responsibility.

23 (16) TRAVEL TRAILER. A vehicular unit, mounted on
24 wheels, designed to provide temporary living quarters for
25 recreational, camping, or travel use and of such size and
26 weight as not to require a special highway movement permit
27 when towed by a motorized vehicle.

1 (17) TRUCK CAMPER. A portable unit, constructed to
2 provide temporary living quarters for recreational, travel, or
3 camping use, consisting of a roof, floor, and sides and
4 designed to be loaded onto and unloaded from the back of a
5 pickup truck.

6 (18) WARRANTOR. Any person, firm, corporation, or
7 business entity, including any manufacturer or distributor,
8 that provides a written warranty to the consumer in connection
9 with a new recreational vehicle or parts, accessories, or
10 components thereof. The term does not include service
11 contracts, mechanical or other insurance, or extended
12 warranties sold for separate consideration by a dealer or
13 other person not controlled by a manufacturer or distributor.

14 Section 3. (a) (1) After September 30, 2011, a
15 manufacturer or distributor may not sell a recreational
16 vehicle in this state to or through a dealer without having
17 first entered into a manufacturer and dealer agreement with
18 the dealer which has been signed by both parties.

19 (2) A dealer may not sell a new recreational vehicle
20 in this state without having first entered into a manufacturer
21 and dealer agreement with a manufacturer or distributor which
22 has been signed by both parties.

23 (b) The manufacturer or distributor shall designate
24 the area of sales responsibility exclusively assigned to a
25 dealer in the manufacturer and dealer agreement. Except as
26 provided in subsection (c), the manufacturer or distributor
27 may not review or change the area of sales responsibility

1 without the consent of both parties or contract with another
2 dealer for the sale of the same line-make in the designated
3 area until at least one year after the execution of the
4 manufacturer and dealer agreement.

5 (c) If, subsequent to entering into a manufacturer
6 and dealer agreement, a dealer enters into an agreement to
7 sell any competing recreational vehicle products, or enters
8 into an agreement to increase its pre-existing commitment to
9 sell any competing recreational vehicle products, a
10 manufacturer or distributor may revise the area of sales
11 responsibility designated in the manufacturer and dealer
12 agreement if the market penetration of the manufacturer's or
13 distributor's products is jeopardized by the dealer's
14 subsequent agreements.

15 (d) When taking on an additional line-make of
16 recreational vehicle, a dealer shall notify in writing any
17 manufacturer or distributor of a competing similar product
18 line with whom the dealer has a manufacturer and dealer
19 agreement at least 30 days subsequent to entering into a
20 manufacturer and dealer agreement with the manufacturer or
21 distributor of the additional line-make.

22 Section 4. (a) A manufacturer or distributor,
23 directly or through any authorized officer, agent, or
24 employee, may terminate, cancel, or fail to renew a
25 manufacturer and dealer agreement with or without cause. If
26 the manufacturer or distributor terminates, cancels, or fails
27 to renew a manufacturer and dealer agreement without cause,

1 the manufacturer or distributor shall comply with Section 5.
2 If the manufacturer or distributor terminates, cancels, or
3 fails to renew a manufacturer and dealer agreement with cause,
4 Section 5 does not apply.

5 (b) A manufacturer or distributor has the burden of
6 showing cause for terminating, canceling, or failing to renew
7 a manufacturer and dealer agreement with a dealer. For
8 purposes of determining whether there is cause for the
9 proposed action, any of the following factors may be
10 considered:

11 (1) The extent of the affected dealer's penetration
12 in the area of sales responsibility.

13 (2) The nature and extent of the dealer's investment
14 in its business.

15 (3) The adequacy of the dealer's service facilities,
16 equipment, parts, supplies, and personnel.

17 (4) The effect of the proposed action on the
18 community.

19 (5) The extent and quality of the dealer's service
20 under recreational vehicle warranties.

21 (6) The failure to follow agreed upon procedures or
22 standards related to the overall operation of the dealership.

23 (7) The dealer's performance under the terms of the
24 manufacturer and dealer agreement.

25 (c) In the event the manufacturer or distributor is
26 terminating the agreement for cause and except as otherwise
27 provided in this section, a manufacturer or distributor shall

1 provide the dealer, at least 120 days prior, with a written
2 notice of termination, cancellation, or nonrenewal of the
3 manufacturer and dealer agreement for cause.

4 (d)(1) A manufacturer or distributor that terminates
5 a dealer agreement pursuant to subsection (c) shall provide a
6 notice stating all reasons for the proposed termination,
7 cancellation, or nonrenewal. The notice shall further state
8 that if, within 30 days following receipt of the notice, the
9 dealer provides to the manufacturer or distributor a written
10 notice of intent to cure all claimed deficiencies, the dealer
11 shall then have 120 days following receipt of the notice to
12 rectify the deficiencies. If the deficiencies are rectified
13 within 120 days, the manufacturer's or distributor's notice is
14 void. If the dealer fails to provide the notice of intent to
15 cure the deficiencies in the prescribed time period, the
16 termination, cancellation, or nonrenewal takes effect 30 days
17 after the receipt by the dealer of the notice unless the
18 dealer has new and untitled inventory on hand. The dealer may
19 dispose of the inventory pursuant to Section 5.

20 (2) The notice period for a termination for cause
21 may be reduced to 30 days if the grounds of the manufacturer
22 or distributor for termination, cancellation, or nonrenewal
23 are due to any of the following factors:

24 a. A dealer or any of its owners is convicted of, or
25 enters a plea of nolo contendere to, a felony.

26 b. The dealer abandons or closes the business
27 operations of the dealer for 10 consecutive business days

1 unless the closing is due to a natural disaster, fire, labor
2 difficulty, act of terrorism, war, riot, or other cause over
3 which the dealer has no control.

4 c. A significant misrepresentation by the dealer
5 materially affecting the business relationship.

6 d. A suspension or revocation of any license the
7 dealer is required to possess, or a refusal by a licensing
8 authority to renew a required license.

9 e. A material violation of this act which is not
10 cured within 30 days after the written notice by the
11 manufacturer or distributor.

12 (e) The notice provisions of subsections (c) and (d)
13 do not apply if the reason for termination, cancellation, or
14 nonrenewal is the insolvency of the dealer or the occurrence
15 of an assignment for the benefit of creditors or bankruptcy.

16 (f) (1) A dealer may terminate or cancel its
17 manufacturer and dealer agreement with a manufacturer or
18 distributor with or without cause by giving 30 days written
19 notice. If the termination or cancellation is for cause, the
20 notice shall state all reasons for the proposed termination or
21 cancellation and shall further state that if, within 30 days
22 following receipt of the notice, the manufacturer or
23 distributor provides to the dealer a written notice of intent
24 to cure all claimed deficiencies, the manufacturer or
25 distributor will then have 120 days following receipt of the
26 original notice to rectify the deficiencies. If the
27 deficiencies are rectified within 120 days, the dealer's

1 notice is void. If the manufacturer or distributor fails to
2 provide the notice of intent to cure the deficiencies in the
3 time period prescribed in the original notice of termination
4 or cancellation, the pending termination or cancellation shall
5 take effect 30 days after the receipt by the manufacturer or
6 distributor of the original notice.

7 (2) If the dealer terminates, cancels, or fails to
8 renew the manufacturer and dealer agreement without good
9 cause, the terms of Section 5 do not apply. If the dealer
10 terminates, cancels, or fails to renew the manufacturer and
11 dealer agreement for good cause, Section 5 applies. The dealer
12 has the burden of showing cause. Any of the following shall be
13 deemed cause for the proposed termination, cancellation, or
14 nonrenewal action by a dealer:

15 a. The manufacturer or distributor being convicted
16 of, or entering a plea of nolo contendere to, a felony.

17 b. The business operations of the manufacturer or
18 distributor have been abandoned or closed for 10 consecutive
19 business days, unless the closing is due to a natural
20 disaster, fire, labor difficulty, act of terrorism, war, riot,
21 or other cause over which the manufacturer or distributor has
22 no control.

23 c. A significant misrepresentation by the
24 manufacturer or distributor materially affecting the business
25 relationship.

26 d. A material violation of this act which is not
27 cured within 30 days after written notice by the dealer.

1 (3) The notice provisions of subdivisions (1) and
2 (2) do not apply if the reason for termination, cancellation,
3 or nonrenewal is the insolvency of the or distributor or the
4 occurrence of an assignment for the benefit of creditors or
5 bankruptcy.

6 Section 5. (a) If the manufacturer and dealer
7 agreement is terminated, canceled, or not renewed by the
8 manufacturer or distributor without cause as defined in
9 subsection (b) of Section 4 or if the dealer terminates or
10 cancels the manufacturer and dealer agreement for cause as
11 defined in subsection (f) of Section 4, and the manufacturer
12 or distributor fails to cure the claimed deficiencies within
13 the time provided in Section 4, the manufacturer or
14 distributor, at the election of the dealer and within 45 days
15 after termination, cancellation, or nonrenewal, shall do all
16 of the following:

17 (1) Repurchase all new, untitled recreational
18 vehicles that were acquired and delivered to the dealership
19 from the manufacturer or distributor within 12 months before
20 the effective date of the notice of termination, cancellation,
21 or nonrenewal that have not been used, except for
22 demonstration purposes, and that have not been altered or
23 damaged at 100 percent of the net invoice cost, including
24 transportation, less applicable rebates and discounts to the
25 dealer. In the event any of the vehicles repurchased pursuant
26 to this subdivision are damaged, but do not trigger a consumer
27 disclosure requirement, the amount due the dealer shall be

1 reduced by the cost of repairing the vehicle. Damage prior to
2 delivery to the dealer that is disclosed at the time of
3 delivery does not disqualify repurchase under this
4 subdivision.

5 (2) Repurchase all undamaged accessories and
6 proprietary parts sold to the dealer for resale within the 12
7 months prior to termination, cancellation, or nonrenewal, if
8 accompanied by the original invoice, at 105 percent of the
9 original net price paid to the manufacturer or distributor to
10 compensate the dealer for handling, packing, and shipping the
11 parts.

12 (3) Repurchase any properly functioning diagnostic
13 equipment, special tools, current signage, and other equipment
14 and machinery at 100 percent of the dealer's net cost plus
15 freight, destination, delivery, and distribution charges and
16 sales taxes, if any, if the items were purchased by the dealer
17 within 5 years before termination, cancellation, or
18 nonrenewal, upon the manufacturer's or distributor's request,
19 and which the dealer meets the burden of establishing, and can
20 no longer be used in the normal course of the dealer's ongoing
21 business.

22 (b) The manufacturer or distributor shall pay the
23 dealer within 30 days after receipt of the repurchased items.

24 Section 6. (a) If a dealer desires to make a change
25 in ownership by the sale of the business assets, a stock
26 transfer, or otherwise, the dealer shall give the manufacturer
27 or distributor written notice at least 15 business days before

1 the closing, including all supporting documentation as may be
2 reasonably required by the manufacturer or distributor to
3 determine if an objection to the sale may be made. In the
4 absence of a breach by the selling dealer of its dealer
5 agreement or this act, the manufacturer or distributor may not
6 object to the proposed change in ownership unless any of the
7 following circumstances is present:

8 (1) The prospective transferee has previously been
9 terminated by the manufacturer or distributor for breach of
10 its dealer agreement.

11 (2) The prospective transferee has been convicted of
12 a felony or any crime of fraud, deceit, or moral turpitude.

13 (3) The prospective transferee lacks any license
14 required by law.

15 (4) The prospective transferee does not have an
16 active line of credit sufficient to purchase a manufacturer's
17 or distributor's product.

18 (5) The prospective transferee has undergone in the
19 last 10 years bankruptcy, insolvency, a general assignment for
20 the benefit of creditors, or the appointment of a receiver,
21 trustee, or conservator to take possession of the transferee's
22 business or property. This subdivision may be waived if the
23 prospective transferee meets all of the requirements of this
24 section and if the prospective transferee fully qualifies
25 under the manufacturer's or lender's financial criteria.

26 (b) If the manufacturer or distributor objects to a
27 proposed change of ownership, the manufacturer or distributor

1 shall give written notice of its reasons to the dealer within
2 10 business days after receipt of the dealer's notification
3 and complete documentation. The manufacturer or distributor
4 has the burden of proof with regard to its objection. If the
5 manufacturer or distributor does not give timely notice of its
6 objection, the change or sale shall be deemed approved.

7 (c) A manufacturer or distributor shall allow a
8 dealer an opportunity to designate, in writing, a family
9 member as a successor to the dealership in the event of the
10 death, incapacity, or retirement of the dealer. The
11 manufacturer or distributor may not prevent or refuse to honor
12 the succession to a dealership by a family member of the
13 deceased, incapacitated, or retired dealer unless the
14 manufacturer or distributor has provided to the dealer written
15 notice of its objections within 10 business days after receipt
16 of the dealer's modification of the dealer's succession plan.
17 In the absence of a breach of the dealer agreement, the
18 manufacturer or distributor may object to the succession for
19 the following reasons only:

20 (1) Conviction of the successor of a felony or any
21 crime involving fraud, deceit, or moral turpitude.

22 (2) Bankruptcy or insolvency of the successor during
23 the past 10 years. This subdivision can be waived if the
24 prospective successor meets all of the requirements of this
25 section and if the prospective successor fully qualifies under
26 the manufacturer's or lender's financial criteria.

1 (3) Prior termination by the manufacturer or
2 distributor of the successor for breach of a dealer agreement.

3 (4) The lack of an active line of credit for the
4 successor sufficient to purchase the manufacturer's or
5 distributor's product.

6 (5) The lack of any license required by law of the
7 successor.

8 (d) The manufacturer or distributor has the burden
9 of proving its objection. A family member may not succeed to a
10 dealership if the succession involves, without the
11 manufacturer's or distributor's consent, a relocation of the
12 business or an alteration of the terms and conditions of the
13 manufacturer and dealer agreement.

14 Section 7. (a) Each warrantor shall do all of the
15 following:

16 (1) Specify in writing each of its dealer
17 obligations, if any, for preparation, delivery, and warranty
18 service on its products.

19 (2) Compensate a dealer for warranty service
20 required of the dealer by the warrantor.

21 (3) Provide a dealer the schedule of compensation to
22 be paid and the time allowances for the performance of any
23 work and service. The schedule of compensation shall include
24 reasonable compensation for diagnostic work as well as
25 warranty labor.

26 (b) Time allowances for the diagnosis and
27 performance of warranty labor shall be reasonable for the work

1 to be performed. In the determination of what constitutes
2 reasonable compensation under this section, the principal
3 factors to be given consideration shall be the actual wage
4 rates being paid by the dealer and the actual retail labor
5 rate being charged by the dealers in the community in which
6 the dealer is doing business. The compensation of a dealer for
7 warranty labor may not be less than the lowest retail labor
8 rates actually charged by the dealer for like non-warranty
9 labor as long as such rates are reasonable.

10 (c) The warrantor shall reimburse the dealer for
11 warranty parts at actual wholesale cost plus a minimum 30
12 percent handling charge and the cost, if any, of freight to
13 return warranty parts to the warrantor.

14 (d) Warranty audits of dealer records may be
15 conducted by the warrantor on a reasonable basis, and dealer
16 claims for warranty compensation may not be denied except for
17 cause, such as performance of non-warranty repairs, material
18 noncompliance with the warrantor's published policies and
19 procedures, lack of material documentation, fraud, or
20 misrepresentation.

21 (e) The dealer shall submit warranty claims within
22 30 days after completing work.

23 (f) The dealer shall immediately notify the
24 warrantor in writing if the dealer is unable to perform any
25 warranty repairs within 10 days of receipt of verbal or
26 written complaints from a consumer.

1 (g) The warrantor shall disapprove warranty claims
2 in writing within 30 days after the date of submission by the
3 dealer in the manner and form prescribed by the warrantor.
4 Claims not specifically disapproved in writing within 30 days
5 shall be construed to be approved and shall be paid within 60
6 days of submission.

7 (h) It is a violation of this act for any warrantor
8 to do any of the following:

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

11 (2) Fail to include, in written notices of factory
12 campaigns to recreational vehicle owners and dealers, the
13 expected date by which necessary parts and equipment,
14 including tires and chassis or chassis parts, will be
15 available to dealers to perform the campaign work. The
16 warrantor may ship parts to the dealer to effect the campaign
17 work, and, if such parts are in excess of the dealer's
18 requirements, the dealer may return unused parts to the
19 warrantor for credit after completion of the campaign.

20 (3) Fail to compensate any of its dealers for
21 authorized repairs effected by the dealer of merchandise
22 damaged in manufacture or transit to the dealer, if the
23 carrier is designated by the warrantor, factory branch,
24 distributor, or distributor branch.

25 (4) Fail to compensate any of its dealers in
26 accordance with the schedule of compensation provided to the

1 dealer pursuant to this section if performed in a timely and
2 competent manner.

3 (5) Intentionally misrepresent in any way to
4 purchasers of recreational vehicles that warranties with
5 respect to the manufacture, performance, or design of the
6 vehicle are made by the dealer as warrantor or co-warrantor.

7 (6) Require the dealer to make warranties to
8 customers in any manner related to the manufacture of the
9 recreational vehicle.

10 (i) It is a violation of this act for any dealer to
11 do any of the following:

12 (1) Fail to perform pre-delivery inspection
13 functions, as specified by the warrantor, in a competent and
14 timely manner so long as there are specific instructions from
15 the manufacturer.

16 (2) Fail to perform warranty service work authorized
17 by the warrantor in a reasonably competent and timely manner
18 on any transient customer's vehicle of the same line-make.

19 (3) Fail to accurately document the time spent
20 completing each repair, the total number of repair attempts
21 conducted on a single unit, and the number of repair attempts
22 for the same repair conducted on a single vehicle.

23 (4) Fail to notify the warrantor within 10 days of a
24 second repair attempt which impairs the use, value, or safety
25 of the vehicle.

1 (5) Fail to maintain written records, including a
2 consumer's signature, regarding the amount of time a unit is
3 stored for the consumer's convenience during a repair.

4 (6) Make fraudulent warranty claims or misrepresent
5 the terms of any warranty.

6 Section 8. Notwithstanding the terms of any
7 manufacturer and dealer agreement:

8 (1) A warrantor shall indemnify and hold harmless
9 its dealer against any losses or damages to the extent such
10 losses or damages are caused by the negligence or willful
11 misconduct of the warrantor. The dealer shall provide to the
12 warrantor a copy of any pending lawsuit or similar proceeding
13 in which allegations are made that come within this subsection
14 within 10 days after receiving such suit.

15 (2) A dealer shall indemnify and hold harmless its
16 warrantor against any losses or damages to the extent such
17 losses or damages are caused by the negligence or willful
18 misconduct of the dealer. The warrantor shall provide to the
19 dealer a copy of any pending lawsuit or similar proceeding in
20 which allegations are made that come within this subsection
21 within 10 days after receiving such suit.

22 Section 9. (a) Whenever a new recreational vehicle
23 is 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 recreational vehicle because of damage, ownership of the new
12 recreational vehicle shall revert to the manufacturer or
13 distributor.

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

22 (e) Any recreational vehicle that, at the time of
23 delivery to the dealer, has an unreasonable amount of miles on
24 its odometer, as determined by the dealer, may be subject to
25 rejection by the dealer and reversion of the vehicle to the
26 manufacturer or distributor. In no instance shall a dealer
27 deem an amount less than the distance between the dealer and

1 the manufacturer's factory or a distributor's point of
2 distribution, plus 100 miles, as unreasonable.

3 Section 10. (a) A manufacturer or distributor may
4 not coerce or attempt to coerce a dealer to do any of the
5 following:

6 (1) Purchase a product that the dealer did not
7 order.

8 (2) Enter into an agreement with the manufacturer or
9 distributor.

10 (3) Enter into an agreement that requires the dealer
11 to submit its disputes to binding arbitration or otherwise
12 waive rights or responsibilities provided under this act.

13 (b) As used in this section, the term coerce
14 includes, but is not limited to, threatening to terminate,
15 cancel, or not renew a manufacturer and dealer agreement
16 without good cause or threatening to withhold product lines
17 the dealer is entitled to purchase pursuant to the
18 manufacturer and dealer agreement or delay product delivery as
19 an inducement to amending the manufacturer and dealer
20 agreement.

21 Section 11. (a) A dealer, manufacturer, distributor,
22 or warrantor injured by another party's violation of this act
23 may bring a civil action in circuit court to recover actual
24 damages. The court shall award attorney's fees and costs to
25 the prevailing party in such an action. Venue for any civil
26 action authorized by this section shall be exclusively in the
27 county in which the dealer's business is located. In an action

1 involving more than one dealer, venue may be in any county in
2 which any dealer that is party to the action is located.

3 (b) (1) Prior to bringing suit under this section,
4 the party bringing suit for an alleged violation shall serve a
5 written demand for mediation upon the offending party.

6 a. The demand for mediation shall be served upon the
7 other party via certified mail at the address stated within
8 the manufacturer and dealer agreement between the parties.

9 b. The demand for mediation shall contain a brief
10 statement of the dispute and the relief sought by the party
11 filing the demand.

12 (2) Within 20 days after the date a demand for
13 mediation is served, the parties shall mutually select an
14 independent certified mediator and meet with that mediator for
15 the purpose of attempting to resolve the dispute. The meeting
16 place shall be in this state in a location selected by the
17 mediator. The mediator may extend the date of the meeting for
18 good cause shown by either party or upon stipulation of both
19 parties.

20 (3) The service of a demand for mediation under this
21 section shall toll the time for the filing of any complaint,
22 petition, protest, or other action under this act until
23 representatives of both parties have met with a mutually
24 selected mediator for the purpose of attempting to resolve the
25 dispute. If a complaint, petition, protest, or other action is
26 filed before that meeting, the court shall enter an order
27 suspending the proceeding or action until the mediation

1 meeting has occurred and may, upon written stipulation of all
2 parties to the proceeding or action that they wish to continue
3 to mediate under this section, enter an order suspending the
4 proceeding or action for as long a period as the court
5 considers appropriate.

6 (4) The parties to the mediation shall bear their
7 own costs for attorney's fees and divide equally the cost of
8 the mediator.

9 (c) In addition to the remedies provided in this
10 section and notwithstanding the existence of any additional
11 remedy at law, a dealer, manufacturer, distributor, or
12 warrantor, is authorized to make application to a circuit
13 court, upon a hearing and for cause shown, for the grant of a
14 temporary or permanent injunction, or both, restraining any
15 person from acting as a dealer without being properly
16 licensed, from violating or continuing to violate any of the
17 provisions of this act, or from failing or refusing to comply
18 with the requirements of this act. The injunction shall be
19 issued without bond. A single act in violation of the
20 provisions of this act shall be sufficient to authorize the
21 issuance of an injunction.

22 Section 12. Section 8-20-2 of the Code of Alabama
23 1975, is amended to read as follows:

24 "§8-20-2.

25 "(a) The legislature finds and declares that the
26 distribution and sale of motor vehicles within this state
27 vitally affect the general economy of the state and the public

1 interest and the public welfare, and that in order to promote
2 the public interest and the public welfare, and in the
3 exercise of its police power, it is necessary to regulate
4 motor vehicle manufacturers, distributors, dealers, and their
5 representatives and to regulate the dealings between
6 manufacturers and distributors or wholesalers and their
7 dealers in order to prevent fraud and other abuses upon the
8 citizens of this state and to protect and preserve the
9 investments and properties of the citizens of this state.

10 "(b) This chapter shall not apply to any
11 recreational vehicle manufacturer and dealer agreement to
12 which Sections 1 to 11 of this act apply."

13 Section 13. This act shall become effective October
14 1, 2011.