

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

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

6 This act does not otherwise amend or affect Chapter
7 20 of Title 8.

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

10 (1) AREA OF SALES RESPONSIBILITY. The geographical
11 area, agreed to by the dealer and the manufacturer or the
12 distributor or in the manufacturer and dealer agreement,
13 within which the dealer has the exclusive right to display or
14 sell new recreational vehicles of a particular line-make of
15 the manufacturer or distributor to the retail public.

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

21 (3) DEALER. Any person, firm, corporation, or
22 business engaged in the business of selling recreational
23 vehicles to the general public and that maintains a permanent
24 business establishment including a service and repair facility
25 which offers mechanical services for the recreational vehicles
26 it sells.

1 (4) DISTRIBUTOR. Any person, firm, corporation, or
2 business entity that purchases new recreational vehicles for
3 resale to dealers.

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

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

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

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

19 a. Is identified by a common series trade name or
20 trademark.

21 b. Is targeted to a particular market segment, as
22 determined by the decor, features, equipment, size, weight,
23 and price range.

24 c. Has lengths and interior floor plans that
25 distinguish the recreational vehicles from other recreational
26 vehicles with substantially the same decor, equipment,
27 features, price, and weight.

1 d. Belongs to a single, distinct classification of
2 recreational vehicle product type having a substantial degree
3 of commonality in the construction of the chassis, frame, and
4 body.

5 e. Is a product that the manufacturer and dealer
6 agreement authorizes the dealer to sell.

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

10 (10) MANUFACTURER AND DEALER AGREEMENT. A written
11 agreement or contract entered into between a manufacturer or a
12 distributor and a dealer that fixes the rights and
13 responsibilities of the parties and pursuant to which the
14 dealer sells new recreational vehicles.

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

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

20 (13) RECREATIONAL VEHICLE. A motor home, travel
21 trailer, fifth wheel trailer, camping trailer, and truck
22 camper.

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

1 (15) TRANSIENT CUSTOMER. A customer who is
2 temporarily traveling through a dealer's area of sales
3 responsibility.

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

9 (17) TRUCK CAMPER. A portable unit, constructed to
10 provide temporary living quarters for recreational, travel, or
11 camping use, consisting of a roof, floor, and sides and
12 designed to be loaded onto and unloaded from the back of a
13 pickup truck.

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

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

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

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

14 (c) If, subsequent to entering into a manufacturer
15 and dealer agreement, a dealer enters into an agreement to
16 sell any competing recreational vehicle products, or enters
17 into an agreement to increase its pre-existing commitment to
18 sell any competing recreational vehicle products, a
19 manufacturer or distributor may revise the area of sales
20 responsibility designated in the manufacturer and dealer
21 agreement if the market penetration of the manufacturer's or
22 distributor's products is jeopardized by the dealer's
23 subsequent agreements.

24 (d) When taking on an additional line-make of
25 recreational vehicle, a dealer shall notify in writing any
26 manufacturer or distributor of a competing similar product
27 line with whom the dealer has a manufacturer and dealer

1 agreement at least 30 days subsequent to entering into a
2 manufacturer and dealer agreement with the manufacturer or
3 distributor of the additional line-make.

4 Section 4. (a) A manufacturer or distributor,
5 directly or through any authorized officer, agent, or
6 employee, may terminate, cancel, or fail to renew a
7 manufacturer and dealer agreement with or without cause. If
8 the manufacturer or distributor terminates, cancels, or fails
9 to renew a manufacturer and dealer agreement without cause,
10 the manufacturer or distributor shall comply with Section 5.
11 If the manufacturer or distributor terminates, cancels, or
12 fails to renew a manufacturer and dealer agreement with cause,
13 Section 5 does not apply.

14 (b) A manufacturer or distributor has the burden of
15 showing cause for terminating, canceling, or failing to renew
16 a manufacturer and dealer agreement with a dealer. For
17 purposes of determining whether there is cause for the
18 proposed action, any of the following factors may be
19 considered:

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

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

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

26 (4) The effect of the proposed action on the
27 community.

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

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

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

7 (c) In the event the manufacturer or distributor is
8 terminating the agreement for cause and except as otherwise
9 provided in this section, a manufacturer or distributor shall
10 provide the dealer, at least 120 days prior, with a written
11 notice of termination, cancellation, or nonrenewal of the
12 manufacturer and dealer agreement for cause.

13 (d) (1) A manufacturer or distributor that terminates
14 a dealer agreement pursuant to subsection (c) shall provide a
15 notice stating all reasons for the proposed termination,
16 cancellation, or nonrenewal. The notice shall further state
17 that if, within 30 days following receipt of the notice, the
18 dealer provides to the manufacturer or distributor a written
19 notice of intent to cure all claimed deficiencies, the dealer
20 shall then have 120 days following receipt of the notice to
21 rectify the deficiencies. If the deficiencies are rectified
22 within 120 days, the manufacturer's or distributor's notice is
23 void. If the dealer fails to provide the notice of intent to
24 cure the deficiencies in the prescribed time period, the
25 termination, cancellation, or nonrenewal takes effect 30 days
26 after the receipt by the dealer of the notice unless the

1 dealer has new and untitled inventory on hand. The dealer may
2 dispose of the inventory pursuant to Section 5.

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

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

9 b. The dealer abandons or closes the business
10 operations of the dealer for 10 consecutive business days
11 unless the closing is due to a natural disaster, fire, labor
12 difficulty, act of terrorism, war, riot, or other cause over
13 which the dealer has no control.

14 c. A significant misrepresentation by the dealer
15 materially affecting the business relationship.

16 d. A suspension or revocation of any license the
17 dealer is required to possess, or a refusal by a licensing
18 authority to renew a required license.

19 e. A material violation of this act which is not
20 cured within 30 days after the written notice by the
21 manufacturer or distributor.

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

26 (f) (1) A dealer may terminate or cancel its
27 manufacturer and dealer agreement with a manufacturer or

1 distributor with or without cause by giving 30 days written
2 notice. If the termination or cancellation is for cause, the
3 notice shall state all reasons for the proposed termination or
4 cancellation and shall further state that if, within 30 days
5 following receipt of the notice, the manufacturer or
6 distributor provides to the dealer a written notice of intent
7 to cure all claimed deficiencies, the manufacturer or
8 distributor will then have 120 days following receipt of the
9 original notice to rectify the deficiencies. If the
10 deficiencies are rectified within 120 days, the dealer's
11 notice is void. If the manufacturer or distributor fails to
12 provide the notice of intent to cure the deficiencies in the
13 time period prescribed in the original notice of termination
14 or cancellation, the pending termination or cancellation shall
15 take effect 30 days after the receipt by the manufacturer or
16 distributor of the original notice.

17 (2) If the dealer terminates, cancels, or fails to
18 renew the manufacturer and dealer agreement without good
19 cause, the terms of Section 5 do not apply. If the dealer
20 terminates, cancels, or fails to renew the manufacturer and
21 dealer agreement for good cause, Section 5 applies. The dealer
22 has the burden of showing cause. Any of the following shall be
23 deemed cause for the proposed termination, cancellation, or
24 nonrenewal action by a dealer:

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

1 b. The business operations of the manufacturer or
2 distributor have been abandoned or closed for 10 consecutive
3 business days, unless the closing is due to a natural
4 disaster, fire, labor difficulty, act of terrorism, war, riot,
5 or other cause over which the manufacturer or distributor has
6 no control.

7 c. A significant misrepresentation by the
8 manufacturer or distributor materially affecting the business
9 relationship.

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

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

17 Section 5. (a) If the manufacturer and dealer
18 agreement is terminated, canceled, or not renewed by the
19 manufacturer or distributor without cause as defined in
20 subsection (b) of Section 4 or if the dealer terminates or
21 cancels the manufacturer and dealer agreement for cause as
22 defined in subsection (f) of Section 4, and the manufacturer
23 or distributor fails to cure the claimed deficiencies within
24 the time provided in Section 4, the manufacturer or
25 distributor, at the election of the dealer and within 45 days
26 after termination, cancellation, or nonrenewal, shall do all
27 of the following:

1 (1) Repurchase all new, untitled recreational
2 vehicles that were acquired and delivered to the dealership
3 from the manufacturer or distributor within 12 months before
4 the effective date of the notice of termination, cancellation,
5 or nonrenewal that have not been used, except for
6 demonstration purposes, and that have not been altered or
7 damaged at 100 percent of the net invoice cost, including
8 transportation, less applicable rebates and discounts to the
9 dealer. In the event any of the vehicles repurchased pursuant
10 to this subdivision are damaged, but do not trigger a consumer
11 disclosure requirement, the amount due the dealer shall be
12 reduced by the cost of repairing the vehicle. Damage prior to
13 delivery to the dealer that is disclosed at the time of
14 delivery does not disqualify repurchase under this
15 subdivision.

16 (2) Repurchase all undamaged accessories and
17 proprietary parts sold to the dealer for resale within the 12
18 months prior to termination, cancellation, or nonrenewal, if
19 accompanied by the original invoice, at 105 percent of the
20 original net price paid to the manufacturer or distributor to
21 compensate the dealer for handling, packing, and shipping the
22 parts.

23 (3) Repurchase any properly functioning diagnostic
24 equipment, special tools, current signage, and other equipment
25 and machinery at 100 percent of the dealer's net cost plus
26 freight, destination, delivery, and distribution charges and
27 sales taxes, if any, if the items were purchased by the dealer

1 within 5 years before termination, cancellation, or
2 nonrenewal, upon the manufacturer's or distributor's request,
3 and which the dealer meets the burden of establishing, and can
4 no longer be used in the normal course of the dealer's ongoing
5 business.

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

8 Section 6. (a) If a dealer desires to make a change
9 in ownership by the sale of the business assets, a stock
10 transfer, or otherwise, the dealer shall give the manufacturer
11 or distributor written notice at least 15 business days before
12 the closing, including all supporting documentation as may be
13 reasonably required by the manufacturer or distributor to
14 determine if an objection to the sale may be made. In the
15 absence of a breach by the selling dealer of its dealer
16 agreement or this act, the manufacturer or distributor may not
17 object to the proposed change in ownership unless any of the
18 following circumstances is present:

19 (1) The prospective transferee has previously been
20 terminated by the manufacturer or distributor for breach of
21 its dealer agreement.

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

24 (3) The prospective transferee lacks any license
25 required by law.

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

4 (5) The prospective transferee has undergone in the
5 last 10 years bankruptcy, insolvency, a general assignment for
6 the benefit of creditors, or the appointment of a receiver,
7 trustee, or conservator to take possession of the transferee's
8 business or property. This subdivision may be waived if the
9 prospective transferee meets all of the requirements of this
10 section and if the prospective transferee fully qualifies
11 under the manufacturer's or lender's financial criteria.

12 (b) If the manufacturer or distributor objects to a
13 proposed change of ownership, the manufacturer or distributor
14 shall give written notice of its reasons to the dealer within
15 10 business days after receipt of the dealer's notification
16 and complete documentation. The manufacturer or distributor
17 has the burden of proof with regard to its objection. If the
18 manufacturer or distributor does not give timely notice of its
19 objection, the change or sale shall be deemed approved.

20 (c) A manufacturer or distributor shall allow a
21 dealer an opportunity to designate, in writing, a family
22 member as a successor to the dealership in the event of the
23 death, incapacity, or retirement of the dealer. The
24 manufacturer or distributor may not prevent or refuse to honor
25 the succession to a dealership by a family member of the
26 deceased, incapacitated, or retired dealer unless the
27 manufacturer or distributor has provided to the dealer written

1 notice of its objections within 10 business days after receipt
2 of the dealer's modification of the dealer's succession plan.
3 In the absence of a breach of the dealer agreement, the
4 manufacturer or distributor may object to the succession for
5 the following reasons only:

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

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

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

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

18 (5) The lack of any license required by law of the
19 successor.

20 (d) The manufacturer or distributor has the burden
21 of proving its objection. A family member may not succeed to a
22 dealership if the succession involves, without the
23 manufacturer's or distributor's consent, a relocation of the
24 business or an alteration of the terms and conditions of the
25 manufacturer and dealer agreement.

26 Section 7. (a) Each warrantor shall do all of the
27 following:

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

4 (2) Compensate a dealer for warranty service
5 required of the dealer by the warrantor.

6 (3) Provide a dealer the schedule of compensation to
7 be paid and the time allowances for the performance of any
8 work and service. The schedule of compensation shall include
9 reasonable compensation for diagnostic work as well as
10 warranty labor.

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

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

26 (d) Warranty audits of dealer records may be
27 conducted by the warrantor on a reasonable basis, and dealer

1 claims for warranty compensation may not be denied except for
2 cause, such as performance of non-warranty repairs, material
3 noncompliance with the warrantor's published policies and
4 procedures, lack of material documentation, fraud, or
5 misrepresentation.

6 (e) The dealer shall submit warranty claims within
7 30 days after completing work.

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

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

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

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

22 (2) Fail to include, in written notices of factory
23 campaigns to recreational vehicle owners and dealers, the
24 expected date by which necessary parts and equipment,
25 including tires and chassis or chassis parts, will be
26 available to dealers to perform the campaign work. The
27 warrantor may ship parts to the dealer to effect the campaign

1 work, and, if such parts are in excess of the dealer's
2 requirements, the dealer may return unused parts to the
3 warrantor for credit after completion of the campaign.

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

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

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

17 (6) Require the dealer to make warranties to
18 customers in any manner related to the manufacture of the
19 recreational vehicle.

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

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

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

4 (3) Fail to accurately document the time spent
5 completing each repair, the total number of repair attempts
6 conducted on a single unit, and the number of repair attempts
7 for the same repair conducted on a single vehicle.

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

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

14 (6) Make fraudulent warranty claims or misrepresent
15 the terms of any warranty.

16 Section 8. Notwithstanding the terms of any
17 manufacturer and dealer agreement:

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

25 (2) A dealer shall indemnify and hold harmless its
26 warrantor against any losses or damages to the extent such
27 losses or damages are caused by the negligence or willful

1 misconduct of the dealer. The warrantor shall provide to the
2 dealer a copy of any pending lawsuit or similar proceeding in
3 which allegations are made that come within this subsection
4 within 10 days after receiving such suit.

5 Section 9. (a) Whenever a new recreational vehicle
6 is damaged prior to transit to the dealer or is damaged in
7 transit to the dealer when the carrier or means of
8 transportation has been selected by the manufacturer or
9 distributor, the dealer shall notify the manufacturer or
10 distributor of the damage within the time frame specified in
11 the manufacturer and dealer agreement and shall do either of
12 the following:

13 (1) Request from the manufacturer or distributor
14 authorization to replace the components, parts, and
15 accessories damaged or otherwise correct the damage.

16 (2) Reject the vehicle within the time frame set
17 forth in subsection (d).

18 (b) If the manufacturer or distributor refuses or
19 fails to authorize repair of the damage within 10 days after
20 receipt of notification, or if the dealer rejects the
21 recreational vehicle because of damage, ownership of the new
22 recreational vehicle shall revert to the manufacturer or
23 distributor.

24 (c) The dealer shall exercise due care while having
25 custody of the damaged recreational vehicle, but the dealer
26 shall have no other obligations, financial or otherwise, with
27 respect to that recreational vehicle.

1 (d) The time frame for inspection and rejection by
2 the dealer must be part of the manufacturer and dealer
3 agreement and may not be less than two business days after the
4 physical delivery of the recreational vehicle.

5 (e) Any recreational vehicle that, at the time of
6 delivery to the dealer, has an unreasonable amount of miles on
7 its odometer, as determined by the dealer, may be subject to
8 rejection by the dealer and reversion of the vehicle to the
9 manufacturer or distributor. In no instance shall a dealer
10 deem an amount less than the distance between the dealer and
11 the manufacturer's factory or a distributor's point of
12 distribution, plus 100 miles, as unreasonable.

13 Section 10. (a) A manufacturer or distributor may
14 not coerce or attempt to coerce a dealer to do any of the
15 following:

16 (1) Purchase a product that the dealer did not
17 order.

18 (2) Enter into an agreement with the manufacturer or
19 distributor.

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

23 (b) As used in this section, the term coerce
24 includes, but is not limited to, threatening to terminate,
25 cancel, or not renew a manufacturer and dealer agreement
26 without good cause or threatening to withhold product lines
27 the dealer is entitled to purchase pursuant to the

1 manufacturer and dealer agreement or delay product delivery as
2 an inducement to amending the manufacturer and dealer
3 agreement.

4 Section 11. (a) A dealer, manufacturer, distributor,
5 or warrantor injured by another party's violation of this act
6 may bring a civil action in circuit court to recover actual
7 damages. The court shall award attorney's fees and costs to
8 the prevailing party in such an action. Venue for any civil
9 action authorized by this section shall be exclusively in the
10 county in which the dealer's business is located. In an action
11 involving more than one dealer, venue may be in any county in
12 which any dealer that is party to the action is located.

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

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

19 b. The demand for mediation shall contain a brief
20 statement of the dispute and the relief sought by the party
21 filing the demand.

22 (2) Within 20 days after the date a demand for
23 mediation is served, the parties shall mutually select an
24 independent certified mediator and meet with that mediator for
25 the purpose of attempting to resolve the dispute. The meeting
26 place shall be in this state in a location selected by the
27 mediator. The mediator may extend the date of the meeting for

1 good cause shown by either party or upon stipulation of both
2 parties.

3 (3) The service of a demand for mediation under this
4 section shall toll the time for the filing of any complaint,
5 petition, protest, or other action under this act until
6 representatives of both parties have met with a mutually
7 selected mediator for the purpose of attempting to resolve the
8 dispute. If a complaint, petition, protest, or other action is
9 filed before that meeting, the court shall enter an order
10 suspending the proceeding or action until the mediation
11 meeting has occurred and may, upon written stipulation of all
12 parties to the proceeding or action that they wish to continue
13 to mediate under this section, enter an order suspending the
14 proceeding or action for as long a period as the court
15 considers appropriate.

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

19 (c) In addition to the remedies provided in this
20 section and notwithstanding the existence of any additional
21 remedy at law, a dealer, manufacturer, distributor, or
22 warrantor, is authorized to make application to a circuit
23 court, upon a hearing and for cause shown, for the grant of a
24 temporary or permanent injunction, or both, restraining any
25 person from acting as a dealer without being properly
26 licensed, from violating or continuing to violate any of the
27 provisions of this act, or from failing or refusing to comply

1 with the requirements of this act. The injunction shall be
2 issued without bond. A single act in violation of the
3 provisions of this act shall be sufficient to authorize the
4 issuance of an injunction.

5 Section 12. Section 8-20-2 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§8-20-2.

8 "(a) The legislature finds and declares that the
9 distribution and sale of motor vehicles within this state
10 vitally affect the general economy of the state and the public
11 interest and the public welfare, and that in order to promote
12 the public interest and the public welfare, and in the
13 exercise of its police power, it is necessary to regulate
14 motor vehicle manufacturers, distributors, dealers, and their
15 representatives and to regulate the dealings between
16 manufacturers and distributors or wholesalers and their
17 dealers in order to prevent fraud and other abuses upon the
18 citizens of this state and to protect and preserve the
19 investments and properties of the citizens of this state.

20 "(b) This chapter shall not apply to any
21 recreational vehicle manufacturer and dealer agreement to
22 which Sections 1 to 11 of ~~this act~~ the act adding this
23 subsection apply."

24 Section 13. This act shall become effective October
25 1, 2011.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 24-MAR-11

Read for the second time and placed
on the calendar 1 amendment 06-APR-11

Read for the third time and passed
as amended..... 21-APR-11

Yeas 91, Nays 0, Abstains 0

Greg Pappas
Clerk