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4

As Engrossed: S3/21/13

A Bill

SENATE BILL 934

5 By: Senator D. Wyatt
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING RECREATIONAL
9 VEHICLES; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND ARKANSAS LAW CONCERNING
13 RECREATIONAL VEHICLES.
14

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 23-112-103(18), concerning the definition
20 of "motor vehicle", is amended to read as follows:

21 (18) "Motor vehicle" means a self-propelled vehicle having two
22 (2) or more wheels that has as its primary purpose the transportation of a
23 person, including without limitation all-terrain vehicles, automobiles,
24 trucks, motorcycles, motor-driven cycles, and motor scooters, ~~and motor~~
25 ~~homes~~;

26
27 SECTION 2. Arkansas Code § 23-112-103(33) and (34), concerning the
28 definitions of "wholesaler" and "line make of a motor vehicle", are amended
29 to read as follows, and § 23-112-103(35), concerning the definition of "line
30 make of a motor home", are repealed:

31 (33)(A) "Wholesaler" means any person, resident or nonresident,
32 not excluded by subdivision (19) of this section, who, in whole or in part,
33 sells used motor vehicles to motor vehicle dealers or purchases used vehicles
34 for the purpose of resale.

35 (B) However, motor vehicle dealers who, incidental to
36 their primary business, sell motor vehicles to other dealers are not



1 considered wholesalers because of the incidental sales; and

2 (34)(A) "Line make of a motor vehicle" means a group or series
3 of motor vehicles that have the same brand identification or brand name,
4 based upon the manufacturer's trademark, trade name, or logo.

5 ~~(B) "Line make of a motor vehicle" does not include motor
6 homes; and~~

7 ~~(35) "Line make of a motor home" means a specific series of
8 recreational vehicle products that:~~

9 ~~(A) Are identified by a common series trade name or
10 trademark;~~

11 ~~(B) Are targeted to a particular market segment, as
12 determined by their decor, features, equipment, size, weight, and price
13 range;~~

14 ~~(C) Have lengths and interior floor plans that distinguish
15 the recreational vehicles with substantially the same decor, equipment,
16 features, price, and weight;~~

17 ~~(D) Belong to a single distinct classification of
18 recreational vehicle product type having a substantial degree of commonality
19 in the construction of the chassis, frame, and body; and~~

20 ~~(E) The manufacturer-dealer agreement authorizes a dealer
21 to sell.~~

22
23 SECTION 3. Arkansas Code § 23-112-105(b), concerning civil damages, is
24 amended to read as follows:

25 ~~(b)(1) Except as provided under subdivision (b)(2) of this section, if~~
26 If a motor vehicle dealer prevails in an action against a manufacturer,
27 distributor, second-stage manufacturer, importer, converter, manufacturer
28 branch or division, or distributor branch or division under any provision of
29 this chapter, the motor vehicle dealer shall also have a cause of action
30 against the manufacturer, distributor, second-stage manufacturer, importer,
31 converter, manufacturer branch or division, or distributor branch or division
32 for attorney's fees, if none have been awarded in an earlier administrative
33 hearing.

34 ~~(2) Subdivision (b)(1) of this section does not apply to motor
35 vehicle dealers, manufacturers, or distributors of motor homes.~~

36

1 SECTION 4. Arkansas Code § 23-112-310(d)(1), concerning warranty
2 obligations, is amended to read as follows:

3 (d)(1)(A) A manufacturer, distributor, distributor branch or division,
4 or factory or division branch shall not pay to any of its motor vehicle
5 dealers a labor rate per hour or parts price for warranty work that is less
6 than that charged by the dealer to its retail customers, provided the rate is
7 reasonable compared to other same line-make dealers in the dealer's relevant
8 market area or the dealer's competitive market area.

9 (B) Conversely, a dealer shall not charge to its
10 manufacturer, distributor, distributor branch or division, or factory branch
11 or division a labor rate per hour or parts price in excess of the rate
12 charged to its retail customers.

13 ~~(C) In the case of a motor home, a warrantor shall~~
14 ~~reimburse the dealer for warranty parts at the actual wholesale cost plus a~~
15 ~~minimum thirty percent (30%) handling charge and the cost, if any, of freight~~
16 ~~to return the warranty parts to the warrantor.~~

17 ~~(D)~~(C) A manufacturer, distributor, distributor branch or
18 division, or factory branch or division of new motorcycles, motorized cycles,
19 and all-terrain vehicles shall not pay to any new motor vehicle dealers of
20 motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour
21 or parts price for warranty work that is less than that charged by the new
22 motor vehicle dealer to its retail customers, provided that the rate is
23 reasonable compared to other same line make motor vehicle dealers in the new
24 motor vehicle dealer's relevant market area or the new motor vehicle dealer's
25 competitive market area.

26
27 SECTION 5. Arkansas Code § 23-112-313(f), concerning warranty
28 agreements, is repealed.

29 ~~(f) This section does not apply to compensation for parts of a motor~~
30 ~~home other than parts of a motorized chassis, engine, and power train.~~

31
32 SECTION 6. Arkansas Code § 23-112-403(a)(2)(C)(v), concerning
33 notification of the termination or cancellation of franchise or selling
34 agreements, is amended to read as follows:

35 (v)(a) If the franchise agreement, sales and service
36 agreement, or bona fide contract is terminated or cancelled, the terminating

1 or canceling party shall notify the commission of the termination or
2 cancellation of the franchise or selling agreement at least sixty (60) days
3 before the effective date.

4 (b) For motor vehicles other than motor homes,
5 this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary
6 termination or cancellation of the franchise or selling agreement-

7 ~~(c)(1) For motor homes, this subdivision~~
8 ~~(a)(2)(C)(v) applies to both the voluntary dealer initiated termination or~~
9 ~~cancellation of all motor home franchise or selling agreements and the~~
10 ~~involuntary manufacturer initiated termination or cancellation of any one (1)~~
11 ~~or more motor home franchise or selling agreements.~~

12 ~~(2) This subdivision only applies to the~~
13 ~~voluntary dealer initiated termination of one (1) of two (2) or more line~~
14 ~~makes of motor homes if the dealer can show due cause to terminate or cancel~~
15 ~~the motor home franchise or selling agreement;~~

16
17 SECTION 7. Arkansas Code § 23-112-403(a)(2)(K)(vii), concerning the
18 termination or discontinuance of a line make, is amended to read as follows:

19 (vii)(a) Except as provided under subdivisions
20 (a)(2)(K)(vii)(b) and (c) of this section, the fair market value of the
21 franchise that is at least equivalent to the fair market value of the
22 franchise one (1) day before the manufacturer announces the action that
23 results in the termination or discontinuance of a line make.

24 (b) If the termination, cancellation,
25 discontinuance, or nonrenewal is due to a manufacturer's change in
26 distributors or manufacturer, the manufacturer may avoid paying fair market
27 value to the new motor vehicle dealer if the distributor, manufacturer, new
28 distributor, or new manufacturer offers the new motor vehicle dealer a
29 franchise agreement with terms substantially similar to terms offered to
30 other same line make new motor vehicle dealers-

31 ~~(c) Subdivisions (a)(2)(K)(vii)(a) and (b)~~
32 ~~of this section do not apply to motor vehicle dealers, manufacturers, or~~
33 ~~distributors of motor homes;~~

34
35 SECTION 8. Arkansas Code § 23-112-403(a)(2)(Q) - (U), concerning
36 certain unlawful actions, are amended to read as follows:

1 (Q)(i)(a) Unless the manufacturer's, distributor's,
2 second-stage manufacturer's, importer's, converter's, manufacturer's branch
3 or division, or distributor's branch or division requirements are reasonable
4 and justifiable in light of the current and reasonably foreseeable
5 projections of economic conditions, financial expectations, and the motor
6 vehicle dealer's market and notwithstanding the terms of a franchise
7 agreement or sales and service agreement, to require, coerce, or attempt to
8 coerce any new motor vehicle dealer by program, policy, standard, or
9 otherwise to:

10 (1) Change location of the dealership;
11 (2) Make any substantial changes,
12 alterations, or remodeling to a motor vehicle dealer's sales or service
13 facilities; or

14 (3) Replace a motor vehicle dealer's
15 sales or service facilities.

16 (b) A manufacturer, distributor, second-stage
17 manufacturer, importer, converter, manufacturer branch or division, or
18 distributor branch or division shall have the burden of proving that changes,
19 alterations, remodeling, or replacement to a motor vehicle dealer's sales or
20 service facilities are reasonable and justifiable under this subchapter.

21 (ii)(a) However, a manufacturer, distributor,
22 second-stage manufacturer, importer, convertor, manufacturer branch or
23 division, or distributor branch or division, consistent with its allocation
24 obligations at law and to its other same line make motor vehicle dealers, may
25 provide to a motor vehicle dealer a commitment to supply additional vehicles
26 or provide a loan or grant of money as an inducement for the motor vehicle
27 dealer to expand, improve, remodel, alter, or renovate its facilities if the
28 provisions of the commitment are contained in a writing voluntarily agreed to
29 by the dealer and are made available, on substantially similar terms, to any
30 of the licensee's other same line make dealers who voluntarily agree to make
31 a substantially similar facility expansion, improvement, remodeling,
32 alteration, or renovation.

33 (b) Subdivisions (a)(2)(Q)(i) and (ii)(a) of
34 this section do not require a manufacturer, distributor, second-stage
35 manufacturer, importer, convertor, manufacturer branch or division, or
36 distributor branch or division to provide financial support for or

1 contribution to the purchase sale of the assets of or equity in a motor
 2 vehicle dealer or a relocation of a motor vehicle dealer because such support
 3 has been provided to other purchases, sales, or relocations.

4 (c) A manufacturer, distributor, second-stage
 5 manufacturer, importer, convertor, manufacturer branch or division, or
 6 distributor branch or division shall not take or threaten to take any action
 7 that is unfair or adverse to a dealer who does not enter into an agreement
 8 pursuant to subdivisions (a)(2)(Q)(i) and (ii)(a) of this section.

9 (d) This subdivision does not affect any
 10 contract between a licensee and any of its dealers regarding relocation,
 11 expansion, improvement, remodeling, renovation, or alteration which exists on
 12 July 27, 2011.

13 ~~(iii) Subdivisions (a)(2)(Q)(i) and (ii) of this~~
 14 ~~section do not apply to motor vehicle dealers, manufacturers, or distributors~~
 15 ~~of motor homes;~~

16 (R)~~(i)~~ To unreasonably withhold approval for a new motor
 17 vehicle dealer to purchase substantially similar goods and services related
 18 to facility changes, alterations, or remodels from vendors the dealer
 19 chooses.

20 ~~(ii) Subdivision (a)(2)(R)(i) of this section does~~
 21 ~~not apply to motor vehicle dealers, manufacturers, or distributors of motor~~
 22 ~~homes;~~

23 (S)~~(i)~~ To require as a prerequisite to receiving a model
 24 or a series of vehicles a dealer to:

25 ~~(a)(i)~~ Pay an extra fee or remodel, renovate,
 26 or recondition the dealer's existing facilities unless justified by the
 27 technological requirements for the sale or service of a vehicle;

28 ~~(b)(ii)~~ Purchase unreasonable advertising
 29 displays, training, tools, or other materials;

30 ~~(e)(iii)~~ Establish exclusive facilities; or

31 ~~(d)(iv)~~ Establish dedicated personnel.

32 ~~(ii) Subdivision (a)(2)(S)(i) of this section does~~
 33 ~~not apply to motor vehicle dealers, manufacturers, or distributors of motor~~
 34 ~~homes;~~

35 (T)(i)(a) To use any written instrument, agreement, or
 36 waiver, to attempt to nullify or modify any provision of this chapter or

1 prevent a new motor vehicle dealer from bringing an action in a particular
2 forum otherwise available under law.

3 (b) An instrument contrary to this subdivision
4 (a)(2)(T)(i) is void.

5 (c) However, this subdivision shall not apply
6 to:

7 (1) Voluntary agreements in which
8 separate and valuable consideration has been offered and accepted; or

9 (2) Settlement agreements entered into
10 as a result of a dispute.

11 (ii)(a) Except as provided in subdivision
12 (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory
13 branch shall not directly or indirectly condition any of the following on the
14 willingness of a motor vehicle dealer, proposed new motor vehicle dealer, or
15 owner of an interest in the dealership facility to enter into a site control
16 agreement or exclusive use agreement:

17 (1) Awarding a franchise to a
18 prospective new motor vehicle dealer;

19 (2) Adding a line make or franchise to
20 an existing motor vehicle dealer;

21 (3) Renewing a franchise of an existing
22 motor vehicle dealer;

23 (4) Approving the relocation of an
24 existing motor vehicle dealer's facility; or

25 (5) Approving the sale or transfer of
26 the ownership of a franchise.

27 (b) This subdivision does not apply to a site
28 control agreement or an exclusive use agreement if the site control agreement
29 or an exclusive use agreement:

30 (1) Is voluntarily entered into by the
31 motor vehicle dealer or the motor vehicle dealer's lessor;

32 (2) Clearly and conspicuously discloses
33 that the site control agreement or an exclusive use agreement is voluntary;
34 and

35 (3) Provides for separate and valuable
36 consideration to the motor vehicle dealer or motor vehicle dealer's lessor.

1 (iii) Any provision contained in any agreement that
2 is inconsistent with this subchapter is voidable at the election of the
3 affected motor vehicle dealer or owner of an interest in the dealership
4 facility.

5 ~~(iv) Subdivisions (a)(2)(T)(i)-(iii) of this section~~
6 ~~do not apply to motor vehicle dealers, manufacturers, or distributors of~~
7 ~~motor homes; or~~

8 (U)(i) To fail to offer to all of its franchisees of the
9 same line make any consumer rebates, dealer incentives, price or interest
10 rate reduction, or finance terms that the franchisor offers or advertises;

11 (ii) To offer rebates, cash incentives, or other
12 promotional items for the sale of a vehicle by its franchisees unless the
13 same rebate, cash incentive, or promotion is offered to all of its
14 franchisees of the same line make, and any rebate, cash incentive, or
15 promotion that is based on the sale of an individual vehicle is not increased
16 for meeting a performance standard;

17 (iii) To unreasonably discriminate among its
18 franchisees in any program that provides assistance to its franchisees,
19 including Internet listings, sales leads, warranty policy adjustments,
20 marketing programs, or dealer recognition programs;

21 (iv) To fail to offer rebates, cash incentives, or
22 other promotional incentive programs on a fair and equitable or
23 proportionally equivalent basis to its franchisees of the same line make.

24 (v) To require a motor vehicle dealer to improve the
25 dealer's facilities, including signs, or to replace factory required and
26 approved facility improvements completed within the last five (5) years in
27 order to qualify for a new vehicle sales incentive program.

28 ~~(vi) Subdivisions (a)(2)(U)(i)-(v) of this section~~
29 ~~do not apply to motor vehicle dealers, manufacturers, or distributors of~~
30 ~~motor homes.~~

31
32 SECTION 9. Arkansas Code § 23-112-501(b)(2), concerning hearings
33 before the Arkansas Motor Vehicle Commission, is amended to read as follows:

34 (2) Impose a civil penalty pursuant to §§ 23-112-314 and 23-112-
35 1020 without first giving the respondent a hearing pursuant to the Arkansas
36 Administrative Procedure Act, § 25-15-201 et seq.

1
2 SECTION 10. Arkansas Code Title 23, Chapter 112, is amended to add an
3 additional subchapter to read as follows:

4
5 Subchapter 10 – Recreational Vehicle Franchise Act

6
7 23-112-1001. Title.

8 This subchapter shall be known and may be cited as "Recreational
9 Vehicle and Franchise Act".

10
11 23-112-1002. Legislative findings.

12 The General Assembly finds that:

13 (1) The distribution and sale of recreational vehicles vitally
14 affects the general economy, the public interest, and the public welfare; and

15 (2) It is necessary, in the exercise of the General Assembly's
16 police power, to regulate and to license recreational vehicle manufacturers,
17 factory branches and divisions, distributors, distributor branches and
18 divisions, distributor representatives, dealers, and salespersons doing
19 business in Arkansas to:

20 (A) Prevent fraud, unfair practices, discrimination,
21 impositions, and other abuses upon the citizens of Arkansas;

22 (B) Foster and keep alive vigorous and healthy
23 competition;

24 (C) Prevent the creation or perpetuation of monopolies;

25 (D) Prevent the practice of requiring the buying of
26 special features, accessories, special models, appliances, and equipment not
27 desired by a recreational vehicle dealer or the ultimate purchaser;

28 (E) Prevent false and misleading advertising;

29 (F) Promote and keep alive a sound system of distribution
30 of recreational vehicles to the public; and

31 (G) Promote the public safety and welfare.

32
33 23-112-1003. Definitions.

34 As used in this subchapter:

35 (1) "Area of sales responsibility" means the geographical area
36 agreed to by the dealer and the manufacturer or distributor in a dealer

1 agreement where the dealer has the exclusive right to display or sell the
2 manufacturer or distributor's new recreational vehicles of a particular line-
3 make to the retail public;

4 (2) "Dealer" means a person, firm, corporation, or business
5 entity that is:

6 (A) Engaged in the business of selling or offering to
7 sell, selling and servicing, soliciting, or advertising the selling or
8 selling and servicing of recreational vehicles under a manufacturer's
9 warranty; and

10 (B) Located at an established and permanent place of
11 business under a dealer agreement;

12 (3) "Dealer agreement" means a written agreement, contract,
13 franchise agreement, or sales and service agreement that:

14 (A) Is entered into between a manufacturer or distributor
15 and a dealer;

16 (B) Establishes the rights, responsibilities, and
17 obligations of the manufacturer or distributor and a dealer; and

18 (C) Authorizes the dealer to sell new recreational
19 vehicles;

20 (4) "Distributor" means a person, firm, corporation, or business
21 entity that purchases new recreational vehicles for resale to dealers;

22 (5) "Factory campaign" means an effort on the part of a
23 warrantor to contact recreational vehicle owners or dealers to address a part
24 or equipment issue;

25 (6) "Factory representative" means a representative employed by
26 a person, firm, association, corporation, or trust that manufactures,
27 assembles, or distributes new recreational vehicles;

28 (7) "Family member" means:

29 (A) A spouse;

30 (B) A child, grandchild, parent, sibling, niece, or
31 nephew; or

32 (C) The spouse of a child, grandchild, parent, sibling,
33 niece, or nephew;

34 (8) "Fifth wheel travel trailer" means a recreational vehicle
35 designed to be towed by a motorized vehicle by means of a towing mechanism
36 that is mounted above or forward of the tow vehicle's rear axle;

1 (9) "Folding camping trailer" means a recreational vehicle
2 designed to be towed by a motorized vehicle that is constructed with
3 partially collapsible side walls that fold for travel and unfold and extend
4 in the set-up mode;

5 (10) "Line-make" means a specific series of recreational vehicle
6 products that:

7 (A) Are identified by a common series trade name or
8 trademark;

9 (B) Are targeted to a particular market segment, as
10 determined by their decor, features, equipment, size, weight, and price
11 range;

12 (C) Have lengths and interior floor plans that distinguish
13 the recreational vehicles from other recreational vehicles with substantially
14 the same decor, equipment, features, price, and weight;

15 (D) Belong to a single, distinct classification of
16 recreational vehicle product type having a substantial degree of commonality
17 in the construction of the chassis, frame, and body; and

18 (E) The dealer agreement authorizes a dealer to sell;

19 (11) "Manufacturer" means a person, firm, corporation, or
20 business entity that engages in the manufacturing of recreational vehicles;

21 (12) "Motor home" means a recreational vehicle built on a self-
22 propelled motor vehicle chassis that contains at least four (4) of the
23 following permanently installed independent life support systems:

24 (A) A cooking facility with an on-board fuel source;

25 (B) A potable water supply system that includes at least a
26 sink, faucet, and water tank with an exterior service supply connection;

27 (C) A toilet with exterior evacuation;

28 (D) A gas or electric refrigerator;

29 (E) A heating or air conditioning system with an on-board
30 power or fuel source separate from the vehicle engine; or

31 (F) An electric power supply of one hundred ten to one
32 hundred twenty-five (110-125) volts;

33 (13) "Person" means, individually and collectively, individuals,
34 firms, partnerships, copartnerships, associations, corporations, trusts, or
35 any other form of business enterprise or other legal entity;

36 (14) "Proprietary part" means a recreational vehicle part:

- 1 (A) Manufactured by or for a manufacturer; and
2 (B) Sold exclusively by the manufacturer;
3 (15) "Recreational vehicle":
4 (A) Means a vehicle that:
5 (i) Has its own motor power or is towed by another
6 vehicle;
7 (ii) Is primarily designed as a temporary living
8 quarters for noncommercial recreation or camping use;
9 (iii) Complies with all applicable federal vehicle
10 regulations as existing on January 1, 2013; and
11 (iv) Does not require a special-movement permit to
12 legally use the highways; and
13 (B) Includes without limitation a:
14 (i) Motor home;
15 (ii) Travel trailer;
16 (iii) Fifth wheel travel trailer; and
17 (iv) Folding camping trailer;
18 (16) "Recreational vehicle salesperson" means a person who:
19 (A) Is employed by a dealer as a salesperson whose duties
20 include the selling or offering for sale of recreational vehicles;
21 (B) For compensation of any kind acts as a salesperson,
22 agent, or representative of a dealer;
23 (C) Attempts to or in fact negotiates a sale of a
24 recreational vehicle owned partially or entirely by a dealer; and
25 (D) Uses the financial resources, line of credit, or floor
26 plan of a dealer to purchase, sell, or exchange an interest in a recreational
27 vehicle;
28 (17) "Supplier" means a person, firm, corporation, or business
29 entity that engages in the manufacturing of recreational vehicle parts,
30 accessories, or components;
31 (18) "Transient customer" means a person who:
32 (A) Owns a recreational vehicle;
33 (B) Is temporarily traveling through a dealer's area of
34 sales responsibility;
35 (C) Engages a dealer to perform service work on that
36 recreational vehicle; and

1 (D) Requires repairs that relate to the safe operation of
2 that recreational vehicle that if not undertaken are of a nature that would
3 render that recreational vehicle unusable for its intended purpose;

4 (19) "Travel trailer" means a recreational vehicle designed to
5 be towed by a motorized vehicle; and

6 (20)(A) "Warrantor" means a person, firm, corporation, or
7 business entity, including without limitation a manufacturer or supplier,
8 that provides a written warranty to the consumer in connection with a new
9 recreational vehicle or accessories, parts, or components of a new
10 recreational vehicle.

11 (B) "Warrantor" does not include service contracts,
12 mechanical or other insurance, or extended warranties sold for separate
13 consideration by a dealer or other person not controlled by a manufacturer.

14
15 23-112-1004. License requirements and application fees.

16 (a) The following acts are unlawful:

17 (1) The violation of any of the provisions of this subchapter;

18 (2) Engaging in the business as, serving in the capacity of, or
19 acting as a new recreational vehicle dealer, recreational vehicle
20 salesperson, recreational vehicle manufacturer, recreational vehicle
21 distributor, recreational vehicle factory representative, or recreational
22 vehicle manufacturer representative in this state without first obtaining a
23 license as provided in this subchapter; or

24 (3) Offering to sell or selling a recreational vehicle to a
25 consumer except through a licensed new recreational vehicle dealer holding a
26 dealer agreement for the line-make covering the new recreational vehicle or
27 as may otherwise be provided in § 23-112-403(a)(3).

28 (b) A person, firm, association, corporation, or trust engaging,
29 acting, or serving in more than one (1) of the capacities under subdivision
30 (a)(2) of this section or having more than one (1) place where one (1) or
31 more of the actions under subdivision (a)(2) of this section is carried on or
32 conducted shall obtain and hold a separate and current license for each
33 capacity and place of business.

34 (c)(1) A person shall not engage in the business of buying, selling,
35 or exchanging new recreational vehicles unless the person:

36 (A) Holds a valid license issued by the Arkansas Motor

1 Vehicle Commission for the make of recreational vehicles being bought, sold,
2 or exchanged; or

3 (B) Is a bona fide employee or agent of the licensee.

4 (2) As used in this subsection, "engage in the business of
5 buying, selling, or exchanging recreational vehicles" means:

6 (A) Displaying for sale new recreational vehicles on a lot
7 or in a showroom;

8 (B) Advertising for sale new recreational vehicles
9 regardless of the medium used; or

10 (C) Regularly or actively soliciting buyers for new
11 recreational vehicles.

12 (d)(1) An application for a license shall be accompanied by the
13 appropriate fees in accordance with the schedule under this subchapter.

14 (2) If an application is denied and the license applied for is
15 not issued, the entire license fee shall be returned to the applicant.

16 (3) The license fees to be charged and received by the
17 commission for the licenses issued under this subchapter shall be as follows:

18 (A) For each manufacturer, distributor, factory branch and
19 division, or distributor branch and division, nine hundred dollars (\$900);

20 (B) For each manufacturer, distributor, or factory
21 representative, four hundred dollars (\$400);

22 (C) For each recreational vehicle dealer, one hundred
23 dollars (\$100);

24 (D) For each recreational vehicle salesperson, fifteen
25 dollars (\$15.00);

26 (E) For each branch location, twenty-five dollars
27 (\$25.00); and

28 (F) For each replacement certificate of license, ten
29 dollars (\$10.00).

30 (4)(A)(i) A person, firm, or corporation required to be licensed
31 under this subchapter that fails to make application for the license at the
32 time required shall pay a penalty of fifty percent (50%) of the amount of the
33 license fee for each thirty (30) days of default, in addition to the fees
34 required to be paid under subsection (d) of this section.

35 (ii) The penalty under subdivision (d)(4)(A)(i) of
36 this section may be waived, in whole or in part, within the discretion of the

1 commission.

2 (B) A license application for sales personnel shall be
3 received in the commission office within thirty (30) days of employment.

4
5 23-112-1005. Application for license.

6 (a) An application for a license required under this subchapter shall:

7 (1) Be verified by the oath or affirmation of the applicant;

8 (2) Be on a form prescribed by the Arkansas Motor Vehicle
9 Commission and furnished to the applicant; and

10 (3) Contain such information as the commission deems necessary
11 to enable it to fully determine the qualifications and eligibility of the
12 applicant to receive the license applied for.

13 (b) The commission shall require that there be set forth in each
14 application:

15 (1) Information relating to:

16 (A) The applicant's business integrity;

17 (B) Whether the applicant has an established place of
18 business in the State of Arkansas and is primarily engaged in the pursuit,
19 avocation, or business for which the license is applied for; and

20 (C) Whether the applicant has the proper facilities and is
21 able to properly conduct the business for which the license is applied for;
22 and

23 (2) Other pertinent information consistent with the safeguarding
24 of the public interest and public welfare.

25 (c)(1)(A) In addition to the provisions of subsections (a) and (b) of
26 this section, an application for a license as a new recreational vehicle
27 dealer shall be accompanied by the filing with the commission of a corporate
28 surety bond in the penal sum of fifty thousand dollars (\$50,000) on a bond
29 form approved by the commission.

30 (B) In each instance that a branch license is applied for,
31 each application shall be accompanied by the filing with the commission of a
32 corporate surety bond in the penal sum of twenty-five thousand dollars
33 (\$25,000) on a bond form approved by the commission.

34 (2) The bond shall be in effect upon the applicant's being
35 licensed and shall be conditioned upon the applicant's complying with this
36 subchapter.

1 (3) The bond shall be an indemnity for any loss sustained by any
2 person by reason of the acts of the person bonded when those acts constitute
3 grounds for the suspension or revocation of his or her license.

4 (4) The bond shall be executed in the name of the State of
5 Arkansas for the benefit of any aggrieved party.

6 (5) The aggregate liability of the surety for all claimants,
7 regardless of the number of years the bond is in force or has been in effect,
8 shall not exceed the amount of the bond.

9 (6) The proceeds of the bond shall be paid upon receipt by the
10 commission of a final judgment from an Arkansas court of competent
11 jurisdiction against the principal and in favor of an aggrieved party.

12 (d) A recreational vehicle dealer shall provide proof of liability
13 insurance coverage on all vehicles to be offered for sale in an amount equal
14 to or greater than the amount required by the Motor Vehicle Safety
15 Responsibility Act, § 27-19-101 et seq.

16 (e)(1) In addition to the provisions of subsections (a)-(d) of this
17 section, an application for a license as a recreational vehicle dealer shall
18 also be accompanied by the filing with the commission of a dealer agreement
19 then in effect between the applicant and a manufacturer or distributor of the
20 new recreational vehicles proposed to be dealt in.

21 (2) However, if the dealer agreement has already been filed with
22 the commission in connection with a previous application made by the
23 applicant, the applicant, in lieu of again filing the dealer agreement, shall
24 identify the contract or franchise by appropriate reference and file all
25 revisions and additions, if any, that have been made to the contract or
26 franchise.

27 (f) The applicant for a license as a new recreational vehicle dealer
28 shall furnish satisfactory evidence that the applicant:

29 (1) Maintains adequate space in the building or structure
30 wherein the applicant conducts the business of selling recreational vehicles;

31 (2) Has or will have adequate facilities in the building or
32 structure to perform repair and service work on recreational vehicles and
33 adequate space for storage of new parts and accessories for recreational
34 vehicles; and

35 (3) Will perform repair and warranty services on recreational
36 vehicles at the licensed location, if the dealer provides such services.

1 (g)(1) A dealer shall maintain for three (3) years after the date of
2 purchase records of each vehicle transaction to which the dealer was a party.

3 (2) A dealer shall:

4 (A) Maintain copies of all documents executed in
5 connection with a transaction, including without limitation bills of sale,
6 titles, odometer statements, invoices, affidavits of alteration, and
7 reassignments; and

8 (B) Be open to inspection by the Executive Director of the
9 Arkansas Motor Vehicle Commission or a commission representative acting in an
10 official capacity during reasonable business hours and upon execution of a
11 subpoena.

12
13 23-112-1006. Issuance of license – Change of location – Change of
14 business or corporate name, structure, or DBA name – Dealers, manufacturers,
15 and distributors.

16 (a) The license issued to each recreational vehicle dealer,
17 manufacturer, or distributor shall specify the location of the factory,
18 office, branch, or division of the recreational vehicle dealer, manufacturer,
19 or distributor.

20 (b) In case the location is changed, the Arkansas Motor Vehicle
21 Commission shall endorse the change of location on the license without charge
22 if it is within the same county in this state for a dealership or if it is
23 within this state for a manufacturer or distributor.

24 (c) The change of a dealership location to another county in this
25 state or of a manufacturer or distributor to another state requires a new
26 license.

27 (d)(1) A licensee shall notify the commission in writing of any change
28 in the business or corporate name or structure and of any alternate name or
29 names in which the company will do business, otherwise known as "DBA names",
30 and shall provide the original issue license with the notification of name
31 change or addition of a DBA name or names.

32 (2) The commission shall endorse the change on the license
33 without charge.

34
35 23-112-1007. Display of license – Change of employer – Factory
36 representative and distributor representative.

1 (a) A recreational vehicle factory representative shall have his or
2 her license upon his or her person when engaged in his or her business and
3 shall display the license upon request.

4 (b)(1) The name of the employer of the factory representative shall be
5 stated on the license.

6 (2) In case of a change of employer, the holder of the license
7 shall immediately mail the license to the Arkansas Motor Vehicle Commission
8 for its endorsement on the license of the change of employer.

9
10 23-112-1008. Display of license – Change of employer – Salesperson.

11 (a)(1) Except as provided in this section, a recreational vehicle
12 salesperson shall have his or her license upon his or her person or displayed
13 at his or her place of employment when engaged in his or her business and
14 shall display the license upon request.

15 (2) The name and address of the applicant shall be stated on the
16 license.

17 (b) In case of a change of employer, the following procedure shall be
18 followed:

19 (1) Within three (3) days following the change of employer, the
20 licensee shall notify in writing the Arkansas Motor Vehicle Commission for
21 its endorsement;

22 (2) Within three (3) days following the termination of
23 employment of the licensee, the last employer of the licensee shall make a
24 report to the commission setting forth the reasons that the services of the
25 licensee were terminated and such other information as may be required by the
26 commission;

27 (3)(A) Upon receipt by the commission of the licensee's written
28 notification and the last employer's report, the commission shall determine
29 if it has grounds to believe, and does believe, that the licensee is no
30 longer qualified under this subchapter as a recreational vehicle salesperson.

31 (B) Under such circumstances, the commission shall
32 immediately notify the licensee and the licensee's new employer in writing
33 that a hearing will be held for the purpose of determining whether his or her
34 license should be revoked or suspended, specifying the grounds for revocation
35 or suspension, as the case may be, and the time and place for the hearing.

36 (C) The hearing and any appeal by the licensee with

1 respect to the hearing shall comply with § 23-112-501 et seq.; and

2 (4)(A) If after the commission receives the licensee's license
3 and fee and his or her last employer's report the Executive Director of the
4 Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to
5 the licensee his or her license within a period of three (3) days following
6 the receipt by the commission of the licensee's license and fee and his or
7 her last employer's report, then the executive director shall mail to the
8 licensee a permit in such form as the commission shall prescribe.

9 (B) The permit shall serve in lieu of a license until such
10 time as the:

11 (i) Commission endorses and mails the license to the
12 licensee; or

13 (ii) Licensee's license is revoked or suspended in
14 accordance with this subchapter.

15 (C) If the license is ultimately revoked or suspended,
16 then immediately upon the revocation or suspension the licensee shall return
17 the permit to the commission for cancellation.

18 (c)(1) The commission shall maintain a permanent file with respect to
19 each licensed recreational vehicle salesperson.

20 (2) Each file shall contain all pertinent information with
21 respect to the fitness and qualifications of each licensee for use by the
22 commission in determining whether his or her license should be revoked or
23 suspended.

24 (d)(1) There is no intent under this subchapter to prevent a
25 salesperson who has not previously been licensed as a salesperson from
26 selling during the time required to process his or her application.

27 (2) The applicant shall be allowed to sell from the date of
28 employment as long as the applicant and his or her dealer follow the
29 procedure for license application.

30
31 23-112-1009. Expiration of license.

32 Unless the Arkansas Motor Vehicle Commission by rule provides to the
33 contrary, all licenses issued to:

34 (1) Recreational vehicle manufacturers, distributors, and their
35 representatives expire June 30 following the date of issue; and

36 (2) Recreational vehicle dealers and salespersons expire

1 December 31 following the date of issue.

2
3 23-112-1010. Area of sales responsibility.

4 (a) The following conditions shall apply to the area of sales
5 responsibility of a dealer included in a dealer agreement:

6 (1) The manufacturer shall designate in the dealer agreement the
7 area of sales responsibility exclusively assigned to the dealer;

8 (2) The manufacturer shall not change the area of sales
9 responsibility of a dealer or establish another dealer for the same line-make
10 in that area during the term of the dealer agreement; and

11 (3) The area of sales responsibility shall not be reviewed or
12 changed without the consent of both parties until one (1) year after the
13 execution of the dealer agreement.

14 (b) A dealer shall not conduct sales activity or display for sale
15 recreational vehicles outside of its designated area of sales responsibility
16 except as provided under § 23-112-901 et seq. and commission rules.

17 (c) A dealer may sell off-premise or display recreational vehicles
18 within the area of sales responsibility as provided by commission rule.

19 (d) The dealer shall notify the commission of any change in ownership
20 in accordance with § 23-112-1019.

21
22 23-112-1011. Renewal of a dealer agreement.

23 In a renewal of a dealer agreement, the manufacturer shall not impose
24 on the dealer stocking requirements or retail sales targets that are
25 inconsistent with market growth or contraction in the area of sales
26 responsibility of the dealer.

27
28 23-112-1012. Termination, cancellation, or nonrenewal of dealer
29 agreement.

30 (a)(1) A manufacturer or distributor, directly or through any
31 authorized officer, agent or employee, may terminate, cancel, or fail to
32 renew a dealer agreement with or without good cause.

33 (2) If the manufacturer or distributor terminates, cancels, or
34 fails to renew the dealer agreement without good cause, the manufacturer or
35 distributor shall comply with § 23-112-1013.

36 (3) If the manufacturer or distributor terminates, cancels or

1 fails to renew the dealer agreement with good cause, the terms of § 23-112-
2 1013 do not apply.

3 (b)(1) When terminating or cancelling for good cause, the manufacturer
4 or distributor has the burden of showing good cause for terminating or
5 cancelling a dealer agreement with a dealer.

6 (2) For purposes of determining whether there is good cause for
7 the proposed action, any of the following factors may be considered:

8 (A) The extent of the affected dealer's penetration in the
9 area of sales responsibility;

10 (B) The nature and extent of the dealer's investment in
11 its business;

12 (C) The adequacy of the dealer's service facilities,
13 equipment, parts, supplies, and personnel;

14 (D) The effect of the proposed action on the community;

15 (E) The extent and quality of the dealer's service under
16 warranties associated with recreational vehicles;

17 (F) The failure to follow agreed-upon procedures or
18 standards related to the overall operation of the dealership; and

19 (G) The performance of the dealer under the terms of its
20 dealer agreement.

21 (c)(1) Except as otherwise provided in this section, a manufacturer or
22 distributor shall provide a dealer with at least ninety (90) days prior
23 written notice of termination, cancellation, or nonrenewal of the dealer
24 agreement if the dealer is being terminated for good cause.

25 (2) The notice shall state:

26 (A) All reasons for the proposed termination,
27 cancellation, or nonrenewal of the dealer agreement; and

28 (B)(i) That if within thirty (30) days following receipt
29 of the notice the dealer provides to the manufacturer or distributor a
30 written notice of intent to cure all claimed deficiencies, the dealer will
31 then have ninety (90) days following receipt of the original notice to
32 rectify the deficiencies.

33 (ii) If the deficiencies are rectified within ninety
34 (90) days following receipt of the original notice, the manufacturer's or
35 distributor's notice is voided.

36 (iii) If the dealer fails to provide the notice of

1 intent to cure the deficiencies in the prescribed time period, the
2 termination, cancellation, or nonrenewal takes effect thirty (30) days after
3 the dealer's receipt of the original notice from the manufacturer. If the
4 dealer has new and untitled recreational vehicle inventory, the inventory may
5 be sold under § 23-112-1014.

6 (3) The notice period may be reduced to thirty (30) days if the
7 manufacturer's or distributor's grounds for termination, cancellation, or
8 nonrenewal are due to any of the following good-cause factors:

9 (A) A dealer or one (1) of its owners being convicted of,
10 or entering a plea of nolo contendere to, a felony;

11 (B) The abandonment or closing of the business operations
12 of the dealer for ten (10) consecutive business days unless the closing is
13 due to an act of God, strike, labor difficulty, or other cause over which the
14 dealer has no control;

15 (C) A misrepresentation by the dealer materially affecting
16 the business relationship;

17 (D) A suspension or revocation of the dealer's license or
18 refusal to renew the dealer's license by the commission; or

19 (E) A material violation of this subchapter that is not
20 cured within thirty (30) days after the written notice by the manufacturer.

21 (4) The notice provisions of this subsection do not apply if the
22 reason for termination, cancellation, or nonrenewal is:

23 (A) The dealer's insolvency;

24 (B) The occurrence of an assignment for the benefit of
25 creditors; or

26 (C) Bankruptcy.

27 (d)(1) A dealer may terminate or cancel its dealer agreement with a
28 manufacturer or distributor with or without good cause by giving ninety (90)
29 days' written notice.

30 (2) If the termination or cancellation is for good cause, the
31 notice shall state:

32 (A) All reasons for the proposed termination or
33 cancellation; and

34 (B) That if within thirty (30) days following receipt of
35 the notice the manufacturer or distributor provides to the dealer a written
36 notice of intent to cure all claimed deficiencies, the manufacturer or

1 distributor will then have ninety (90) days following receipt of the original
2 notice to rectify the deficiencies.

3 (3)(A) If the deficiencies are rectified within ninety (90) days
4 from receipt of the original notice, the dealer's notice is voided.

5 (B) If the manufacturer or distributor fails to provide
6 the notice of intent to cure the deficiencies in the time period prescribed
7 in the original notice of termination or cancellation, the pending
8 termination or cancellation shall take effect thirty (30) days after the
9 manufacturer's or distributor's receipt of the original notice.

10 (4)(A) If the dealer terminates, cancels, or fails to renew the
11 dealer agreement without good cause, the terms of § 23-112-1013 do not apply.

12 (B) If the dealer terminates, cancels, or fails to renew
13 the dealer agreement with good cause, the terms of § 23-112-1013 do apply.

14 (C) The dealer has the burden of showing good cause.

15 (D) Any of the following items shall be deemed "good
16 cause" for the proposed termination, cancellation, or nonrenewal action by a
17 dealer:

18 (i) A manufacturer being convicted of, or entering a
19 plea of nolo contendere to, a felony;

20 (ii) The business operations of the manufacturer
21 having been abandoned or closed for ten (10) consecutive business days,
22 unless the closing is due to an act of God, strike, labor difficulty, or
23 other cause over which the manufacturer has no control;

24 (iii) A significant misrepresentation by the
25 manufacturer materially affecting the business relationship;

26 (iv) A material violation of this subchapter which
27 is not cured by the manufacturer within thirty (30) days after written
28 notice; or

29 (v) A declaration by the manufacturer of bankruptcy,
30 insolvency, or the occurrence of an assignment for the benefit of creditors
31 or bankruptcy.

32 (e) If the dealer agreement is terminated or cancelled with or without
33 cause, the terminating or cancelling party shall notify the commission of the
34 termination or cancellation within ten (10) days of sending the termination
35 or cancellation notice and include a copy of the notice.

36

1 23-112-1013. Repurchase of inventory.

2 If the dealer agreement is terminated, canceled, or not renewed by the
3 manufacturer or distributor without good cause under § 23-112-1011 or
4 by the dealer for good cause as defined in § 23-112-1011 and the manufacturer
5 fails to cure the claimed deficiencies under § 23-112-1011, the manufacturer,
6 at the election of the dealer and within forty-five (45) days after
7 termination, cancellation, or nonrenewal, shall repurchase:

8 (1)(A) All new, untitled recreational vehicles that were
9 acquired from the manufacturer or distributor within twelve (12) months
10 before the effective date of the notice of termination, cancellation, or
11 nonrenewal that have not been used, except for demonstration purposes, and
12 that have not been altered or damaged, at one hundred percent (100%) of the
13 net invoice cost, including transportation, less applicable rebates and
14 discounts to the dealer.

15 (B) If any of the vehicles repurchased under this
16 subchapter are damaged but do not trigger a consumer disclosure requirement,
17 the amount due the dealer shall be reduced by the cost to repair the vehicle.

18 (C) Damage to a recreational vehicle before delivery to a
19 dealer that is disclosed at the time of delivery shall not disqualify its
20 repurchase under this subdivision (a)(1);

21 (2) All undamaged accessories and proprietary parts sold to the
22 dealer for resale within the twelve (12) months before termination,
23 cancellation, or nonrenewal, if accompanied by the original invoice, at one
24 hundred five percent (105%) of the original net price paid to the
25 manufacturer or distributor to compensate the dealer for handling, packing,
26 and shipping the parts; and

27 (3)(A) Any properly functioning diagnostic equipment, special
28 tools, current signage, and other equipment and machinery at one hundred
29 percent (100%) of the dealer's net cost plus freight, destination, delivery,
30 and distribution charges and sales taxes, if any, if:

31 (i) The diagnostic equipment, special tools, current
32 signage, and other equipment and machinery were purchased by the dealer
33 within five (5) years before termination, cancellation, or nonrenewal upon
34 the manufacturer's or distributor's request; and

35 (ii) The dealer meets the burden of establishing
36 that the diagnostic equipment, special tools, current signage, and other

1 equipment and machinery can no longer be used in the normal course of the
2 dealer's ongoing business.

3
4 23-112-1014. Sale of remaining inventory after termination.

5 (a) A dealer is not prohibited from selling the remaining in-stock
6 inventory of a particular line-make after a dealer agreement has been
7 terminated or not renewed under § 23-112-1012.

8 (b) If recreational vehicles of a line-make are not returned or
9 required to be returned to the manufacturer or distributor, the dealer may
10 continue to sell all line-makes that were subject to the dealer agreement and
11 are currently in stock until those line-makes are no longer in the dealer's
12 inventory.

13
14 23-112-1015. Change of ownership of dealer – Family succession.

15 (a) The following conditions apply to a proposed sale of the business
16 assets, transfer of the stock, or other transaction that will result in a
17 change of ownership of a dealer, except a transaction described in subsection
18 (b) of this section:

19 (1) The dealer shall:

20 (A) Provide written notice to the manufacturer *within*
21 *sixty (60) days* before the proposed closing of the transaction; and

22 (B) Include all supporting documentation as may be
23 reasonably required by the manufacturer or distributor to determine if an
24 objection to the sale may be made;

25 (2) In the absence of a breach by the selling dealer of its
26 dealer agreement or a failure to comply with subdivision (a)(1) of this
27 section, the manufacturer or distributor shall not object to the proposed
28 change in ownership unless the prospective transferee meets one (1) or more
29 of the following:

30 (A) The prospective transferee has previously been
31 terminated by the manufacturer for breach of its dealer agreement;

32 (B) The prospective transferee has been convicted of a
33 felony or any crime of fraud, deceit, or moral turpitude in the preceding ten
34 (10) years;

35 (C) The prospective transferee does not have:

36 (i) An application for a recreational vehicle

1 dealer's license pending; or

2 (ii) A tentative dealer agreement with a
3 recreational vehicle manufacturer to conduct business as a dealer in this
4 state;

5 (D) The prospective transferee does not have an active
6 line of credit sufficient to purchase a manufacturer's product; or

7 (E) In the preceding ten (10) years the prospective
8 transferee has undergone:

9 (i) Bankruptcy;

10 (ii) Insolvency;

11 (iii) A general assignment for the benefit of
12 creditors; or

13 (iv) The appointment of a receiver, trustee, or
14 conservator to take possession of the transferee's business or property; and

15 (3)(A) If the manufacturer or distributor objects to a proposed
16 change of ownership, the manufacturer or distributor shall give written
17 notice of its reasons to the dealer within fifteen (15) business days after
18 receipt of the dealer's notification and complete documentation.

19 (B) If the manufacturer or distributor does not give
20 timely notice of its objection, the change or sale shall be deemed approved.

21 (C) The manufacturer or distributor has the burden of
22 proof when objecting to the proposed change of ownership.

23 (b) The following conditions apply concerning the death, incapacity,
24 or retirement of the designated dealer principal:

25 (1) It is unlawful for a manufacturer or distributor:

26 (A) To fail to provide a dealer an opportunity to
27 designate, in writing, a family member as a successor to the dealership; and

28 (B) To prevent or refuse to honor the succession to a
29 dealership by a family member unless the manufacturer or distributor has
30 provided to the dealer written notice of its objections within *thirty (30)*
31 days after receipt of the dealer's modification of the dealer's succession
32 plan;

33 (2) In the absence of a breach of the dealer agreement, the
34 manufacturer or distributor may object to the succession for the following
35 reasons:

36 (A) Conviction of the successor of a felony or any crime

1 of fraud, deceit, or moral turpitude in the preceding ten (10) years;

2 (B) Bankruptcy or insolvency of the successor in the
3 preceding ten (10) years;

4 (C) Prior termination by the manufacturer or distributor
5 of the successor for breach of a dealer agreement;

6 (D) The lack of an active line of credit for the successor
7 sufficient to purchase the manufacturer's product; or

8 (E) The lack of:

9 (i) A pending application for a recreational vehicle
10 dealer's license; or

11 (ii) A tentative dealer agreement with a
12 recreational vehicle manufacturer to conduct business as a dealer in this
13 state;

14 (3) The manufacturer or distributor has the burden of proof
15 regarding its objection to the succession to a dealership by a family member;
16 and

17 (4) The consent of the manufacturer or distributor is required
18 for the succession to a dealership by a family member if the succession
19 involves a relocation of the business or an alteration of the terms and
20 conditions of the dealer agreement.

21 (c) The dealer shall notify the commission of any change in ownership
22 in accordance with § 23-112-1019.

23
24 23-112-1016. Warranty obligation.

25 (a) Each warrantor shall:

26 (1) Specify in writing to each of its dealers the obligations
27 for preparation, delivery, and warranty service on its products;

28 (2) Compensate the dealer for warranty service required of the
29 dealer by the warrantor;

30 (3)(A) Provide the dealer:

31 (i) The schedule of compensation to be paid; and

32 (ii) The time allowances for the performance of any
33 work or service.

34 (B) The schedule of compensation shall include:

35 (i) Reasonable compensation for diagnostic work as
36 well as warranty labor; and

1 (ii) Reasonable time allowances in the schedule for
2 the diagnosis and performance of warranty labor.

3 (C) In the determination of what constitutes reasonable
4 compensation under this section, the principal factors to be given
5 consideration are:

6 (i) The actual wage rates being paid by the dealer;
7 and

8 (ii) The actual retail labor rate being charged by
9 the recreational vehicle dealers in the community in which the dealer is
10 doing business;

11 (4) Compensate a dealer for warranty labor not less than the
12 lowest retail labor rates actually charged by the dealer for like nonwarranty
13 labor as long as such rates are reasonable;

14 (5) For individual warranty parts, reimburse the dealer at
15 actual wholesale cost plus a minimum handling charge of thirty percent (30%)
16 and the cost, if any, of freight to return warranty parts to the warrantor;

17 (6) For complete components or accessories, provide the dealer
18 with the new complete component or accessory plus the cost, if any, of
19 freight to return the defective complete component or accessory to the
20 warrantor; and

21 (7)(A) Approve or disapprove warranty claims in writing within
22 thirty (30) days after the date of submission by the dealer in the manner and
23 form prescribed by the warrantor.

24 (B) Claims not specifically disapproved in writing within
25 thirty (30) days shall be considered to be approved.

26 (C) A claim that is approved or considered to be approved
27 under this section shall be paid within sixty (60) days of submission.

28 (b)(1) Warranty audits of dealer records may be conducted by the
29 warrantor on a reasonable basis.

30 (2) Dealer claims for warranty compensation shall not be denied
31 except for cause, including without limitation:

32 (A) Performance of nonwarranty repairs;

33 (B) Material noncompliance with the warrantor's published
34 policies and procedures;

35 (C) Lack of material documentation;

36 (D) Fraud; or

1 (E) Misrepresentation.

2 (c) A dealer shall:

3 (1) Submit warranty claims within thirty (30) days after
4 completing work; and

5 (2) Notify the warrantor in writing if the dealer is unable to
6 perform any warranty repairs within ten (10) days of receipt of a written
7 complaint from a consumer.

8 (d)(1) A warrantor shall not:

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

11 (B)(i) Fail to include, in written notices of factory
12 campaigns to recreational vehicle owners and dealers, the expected date by
13 which necessary parts and equipment, including tires and chassis or chassis
14 parts, will be available to dealers to perform the factory campaign work.

15 (ii) The warrantor may ship parts to the dealer to
16 effect the factory campaign work and, if the parts are in excess of the
17 dealer's requirements, the dealer may return unused, undamaged parts to the
18 warrantor for credit after completion of the factory campaign;

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

23 (D) Fail to compensate any of its dealers in accordance
24 with the schedule of compensation provided to the dealer under this section
25 if performed in a timely and competent manner;

26 (E) Intentionally misrepresent in any way to purchasers of
27 recreational vehicles that warranties with respect to the manufacture,
28 performance, or design of the vehicle are made by the dealer as warrantor or
29 co-warrantor; or

30 (F) Require the dealer to make warranties to customers in
31 any manner related to the manufacture of the recreational vehicle.

32 (2)(A) Notwithstanding the terms of any dealer agreement, it is
33 a violation of this subchapter for a warrantor to fail to indemnify and hold
34 harmless its new recreational vehicle dealer against any losses or damages to
35 the extent that the losses or damages are caused by the negligence or willful
36 misconduct of the warrantor.

1 (B) A new recreational vehicle dealer shall not be denied
2 indemnification for failing to discover, disclose, or remedy a defect in the
3 design or manufacturing of a new recreational vehicle.

4 (C) A new recreational vehicle dealer may be denied
5 indemnification if the new recreational vehicle dealer fails to remedy a
6 known and announced defect in accordance with the written instructions of a
7 warrantor for whom the new recreational vehicle dealer is obligated to
8 perform warranty service.

9 (D)(i) A new recreational vehicle dealer shall provide to
10 a warrantor written notice of a pending lawsuit in which allegations are made
11 that are covered by this subchapter within ten (10) business days after the
12 dealer receives written notice of the lawsuit.

13 (ii) Written notice to the warrantor shall be by any
14 method that provides a receipt for delivery.

15 (E) Subdivision (d)(2) of this section applies even after
16 the new recreational vehicle is titled.

17 (e)(1) It is a violation of this subchapter for any dealer to:

18 (A) Fail to perform predelivery inspection functions, as
19 specified by the warrantor, in a competent and timely manner;

20 (B) Fail to perform warranty service work authorized by
21 the warrantor in a competent and reasonably timely manner on a transient
22 customer's vehicle of a line-make sold and serviced or serviced by that
23 dealer;

24 (C) Fail to accurately document the:

25 (i) Time spent completing each repair;

26 (ii) Total number of repair attempts conducted on a
27 single unit; and

28 (iii) Total number of repair attempts for the same
29 repair conducted on a single vehicle;

30 (D) Fail to maintain written records, including a
31 consumer's signature, regarding the amount of time a unit is stored for the
32 consumer's convenience during a repair;

33 (E) Make fraudulent warranty claims; or

34 (F) Misrepresent the terms of a warranty.

35 (2)(A) Notwithstanding the terms of any dealer agreement, it is
36 a violation of this subchapter for a new recreational vehicle dealer to fail

1 to indemnify and hold harmless its warrantor against any losses or damages to
2 the extent that the losses or damages are caused by the negligence or willful
3 misconduct of the new recreational vehicle dealer.

4 (B) A warrantor shall provide to a new recreational
5 vehicle dealer a copy of any pending lawsuit or similar proceeding in which
6 allegations are made that come within the provisions of this subsection (e)
7 within ten (10) days after receiving such suit.

8 (C) This subdivision (e)(2) applies even after the new
9 recreational vehicle is titled.

10
11 23-112-1017. Damage to recreational vehicles before arrival at
12 dealership.

13 (a) All the following apply if a new recreational vehicle is damaged
14 before transit to the dealer or is damaged in transit to the dealer when the
15 carrier or means of transportation has been selected by the manufacturer or
16 distributor:

17 (1) The dealer shall notify the manufacturer or distributor of
18 the damage within the time frame specified in the dealer agreement and:

19 (A) Request authorization from the manufacturer or
20 distributor to replace the components, parts, and accessories damaged or
21 otherwise correct the damage; or

22 (B) Reject the vehicle within the time frame specified in
23 the dealer agreement;

24 (2) If the manufacturer or distributor refuses or fails to
25 authorize repair of the damage within ten (10) days after receipt of
26 notification or if the dealer rejects the recreational vehicle because of
27 damage, ownership of the new recreational vehicle reverts to the manufacturer
28 or distributor; and

29 (3) The dealer shall exercise due care in custody of the damaged
30 recreational vehicle, but the dealer has no other obligations, financial or
31 otherwise, with respect to that recreational vehicle.

32 (b)(1) A dealer agreement shall include a time frame for inspection
33 and rejection by the dealer.

34 (2) The time frame shall not be less than three (3) business
35 days after the physical delivery of the recreational vehicle.

36 (c) As used in this section, "damaged before transit" and "damaged in

1 transit" do not include inspection or warranty repairs or service.

2 (d)(1) A recreational vehicle that has at the time of delivery to the
3 dealer an unreasonable number of miles on its odometer, as determined by the
4 dealer, may be subject to rejection by the dealer and reversion of the
5 vehicle to the manufacturer or distributor.

6 (2) However, if the number of miles on the odometer of the
7 recreational vehicle is less than the sum of the distance in miles between
8 the dealer and the factory of the manufacturer or point of distribution plus
9 one hundred (100) miles, the dealer shall not consider the number of miles on
10 the odometer unreasonable.

11
12 23-112-1018. Prohibited activity of a manufacturer or distributor –
13 Coercion.

14 (a) A manufacturer or distributor shall not coerce or attempt to
15 coerce a dealer to:

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

17 (2) Enter into an agreement with the manufacturer or
18 distributor; or

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

22 (b) As used in this subchapter, "coerce" includes without limitation:

23 (1) Threatening to terminate, cancel, or not renew a dealer
24 agreement without good cause;

25 (2) Threatening to withhold product lines the dealer is entitled
26 to purchase under the dealer agreement; or

27 (3) Delaying delivery of recreational vehicles as an inducement
28 to amend the dealer agreement.

29
30 23-112-1019. License – Denial, revocation, and suspension.

31 (a) For any of the following reasons, the Arkansas Motor Vehicle
32 Commission may deny an application for a license required by this subchapter
33 or revoke or suspend a license after it has been granted:

34 (1)(A) Selling or soliciting sales of a recreational vehicle
35 without a license issued by the commission.

36 (B) The unlawful sale or solicitation of each recreational

1 vehicle constitutes a separate offense;

2 (2) On satisfactory proof of the unfitness of the applicant or
3 the licensee, as the case may be, under the standards established and set out
4 in this subchapter;

5 (3) Fraud practiced or any material misstatement made by an
6 applicant in an application for license under this subchapter;

7 (4) Failure to comply with any provision of this subchapter or
8 with any rule promulgated by the commission under authority vested in it by
9 this subchapter;

10 (5) Change of condition after a license is granted or failure to
11 maintain the qualifications for license;

12 (6) Continued violation of any of the provisions of this
13 subchapter or of any of the rules of the commission;

14 (7) Violation of any law relating to the sale, distribution, or
15 financing of recreational vehicles;

16 (8) Defrauding a retail buyer to the buyer's damage;

17 (9) Failure to perform a written agreement with a retail buyer;

18 (10) Selling, attempting to sell, or advertising for sale
19 vehicles from a location other than that set forth on the license except as
20 provided under § 23-112-901;

21 (11) Falsifying, altering, or neglecting to endorse or deliver a
22 certificate of title to a transferee or lawful owner or failing to properly
23 designate a transferee on a document of assignment or certificate of title;

24 (12) Knowingly purchasing, selling, or otherwise acquiring or
25 disposing of a stolen recreational vehicle;

26 (13) Submitting a false affidavit setting forth that a title has
27 been lost or destroyed;

28 (14) Passing title or reassigning title as a dealer without a
29 dealer's license or when the dealer's license has been suspended or revoked;

30 (15) For a person representing that he or she is a dealer or
31 salesperson, either verbally or in an advertisement, when the person is not
32 licensed as a dealer or salesperson;

33 (16) Assisting a person in the sale of a recreational vehicle
34 who is not licensed as a dealer by the commission;

35 (17) Being a manufacturer who fails to specify the delivery and
36 preparation obligations of its recreational vehicle dealers, as is required

1 for the protection of the buying public, before delivery of new recreational
2 vehicles to retail buyers;

3 (18) On satisfactory proof that a manufacturer, distributor,
4 distributor branch or division, or factory branch or division has unfairly
5 and without due regard to the equities of the parties or to the detriment of
6 the public welfare failed to properly fulfill a warranty agreement or to
7 adequately and fairly compensate any of its recreational vehicle dealers for
8 labor or parts expenses incurred by the dealer with regard to factory
9 warranty agreements performed by the dealer;

10 (19) For the commission of any act prohibited by this
11 subchapter, or the failure to perform any of the requirements of this
12 subchapter;

13 (20) Using or permitting the use of special license plates
14 assigned to a licensee for any other purpose than those permitted by law;

15 (21) Disconnecting, turning back, or resetting the odometer of a
16 motorhome in violation of state or federal law;

17 (22) Accepting an open assignment of title or bill of sale for a
18 recreational vehicle that does not identify the licensee as the purchaser or
19 assignee of the recreational vehicle;

20 (23)(A) Failing to notify the commission of a change in
21 ownership, location, or dealer agreement or any other matters the commission
22 may require by rule.

23 (B) The notification shall be in writing and submitted to
24 the commission at least fifteen (15) days before the effective date of the
25 change;

26 (24) Failing to endorse and deliver an assignment and warranty
27 of title to the buyer under § 27-14-902;

28 (25) Using or permitting the use of a temporary cardboard
29 buyer's tag assigned to the dealer for any purpose other than what is
30 permitted under § 27-14-1705; and

31 (26) Failure of a dealer to submit or deliver a certificate of
32 title or manufacturer's certificate of origin to a buyer within a reasonable
33 period of time.

34 (b) The revocation or suspension of the license of a manufacturer,
35 factory branch or division, distributor, or distributor branch or division
36 may be limited to:

1 (1) One (1) or more municipalities or counties; or

2 (2)(A) The sales area of a dealer whose franchise is unfairly
3 cancelled or terminated under this subchapter or whose franchise is not
4 renewed in violation of this subchapter.

5 (B) However, when a franchise is unfairly cancelled or
6 terminated under this subchapter or is not renewed in violation of this
7 subchapter in a metropolitan area serviced by several recreational vehicle
8 dealers handling the same recreational vehicles, the revocation or suspension
9 does not apply to the remaining recreational vehicle dealers in the
10 metropolitan area.

11
12 23-112-1020. Monetary penalty in lieu of suspension or revocation of
13 license – Civil penalty.

14 (a) For a monetary penalty in lieu of suspension or revocation of a
15 license, the following apply:

16 (1)(A) If after alternative proceedings or notice and hearing
17 the Arkansas Motor Vehicle Commission finds that a person holding a license
18 under this subchapter is guilty of a violation of this subchapter or rules
19 promulgated under this subchapter, the commission may impose a monetary
20 penalty upon the licensee in lieu of suspension or revocation of a license.

21 (B)(i) The commission may require the licensee to pay the
22 monetary penalty with the sanction that the license shall be suspended until
23 the penalty is paid.

24 (ii) The period of suspension shall not exceed
25 ninety (90) days from entry of the commission's order or final order on
26 appeal.

27 (C) The penalty in lieu of suspension or revocation of a
28 license may be imposed only if the commission formally finds that the public
29 interest would not be impaired by the imposition of the penalty and the
30 payment of the penalty will achieve the desired disciplinary results;

31 (2)(A) If the commission finds that there is sufficient cause
32 upon which to base the revocation of a license, the amount of the monetary
33 penalty in lieu of revocation shall not exceed ten thousand dollars
34 (\$10,000).

35 (B)(i) If the commission finds that there is sufficient
36 cause upon which to base the suspension of a license, the amount of the

1 monetary penalty in lieu of suspension shall not be less than fifty dollars
2 (\$50.00) nor more than five hundred dollars (\$500) per day for each day the
3 license would otherwise be suspended.

4 (ii) However, the amount of the penalty shall not
5 exceed the aggregate of five thousand dollars (\$5,000);

6 (3) If the commission has revoked the license because of the
7 violation, the commission shall not impose a penalty;

8 (4) Each instance when this subchapter or a rule is violated
9 constitutes a separate violation; and

10 (5) Unless the penalty assessed under this section is paid
11 within fifteen (15) days following the date for an appeal from the order, the
12 commission shall have the power to file suit in Pulaski County Circuit Court
13 to obtain a judgment for the amount of penalty not paid.

14 (b) The following apply to a civil penalty:

15 (1) If after request for alternative proceedings or notice and
16 hearing the Arkansas Motor Vehicle Commission finds that a person not holding
17 a license under this subchapter is guilty of a violation of this subchapter
18 or rules promulgated under this subchapter, the commission may impose a
19 monetary penalty upon the person not to exceed one thousand dollars (\$1,000)
20 per violation;

21 (2) Each day of violation of this subchapter or of a rule
22 constitutes a separate violation subjecting the person to a separate civil
23 penalty;

24 (3) Unless the penalty assessed under this section is paid
25 within fifteen (15) days following the date for an appeal from the order, the
26 commission may file suit in Pulaski County Circuit Court to obtain a judgment
27 for the amount of the penalty not paid; and

28 (4)(A) Repeated violations by a person not holding a license
29 under this subchapter shall result in an increase in the penalty assessed by
30 the commission.

31 (B) As used in this subdivision (b)(4), "second violation"
32 and "subsequent violation" mean a violation of the same nature as a
33 previously remedied violation that occurs within five (5) years of the
34 remedied violation by a person not holding a license under this subchapter.

35 (C) The commission may impose a penalty not to exceed two
36 thousand five hundred dollars (\$2,500) for a second violation, with the

1 penalty increasing in increments of two thousand five hundred dollars
2 (\$2,500) for each subsequent violation.

3
4 23-112-1021. Enforcement.

5 (a) The Arkansas Motor Vehicle Commission may enter orders that direct
6 compliance with this subchapter and rules under this subchapter if any of the
7 following conditions have been met:

8 (1) The commission has conducted a hearing within sixty (60)
9 days on the matter;

10 (2) The commission has made written findings that the public
11 interest and welfare require the person or entity against whom the commission
12 is acting to take the specified action; or

13 (3) The commission finds that the current civil or
14 administrative penalties are insufficient.

15 (b) The commission may enforce its findings and conclusions upon entry
16 of an order under subsection (a) of this section.

17
18 23-112-1022. Civil action and mediation.

19 (a)(1) A dealer, manufacturer, distributor, or warrantor injured by
20 another party's violation of this subchapter may bring a civil action in
21 circuit court to recover actual damages.

22 (2) The court shall award attorney's fees and costs to the
23 prevailing party in such an action.

24 (b)(1) Venue for a civil action under this section is in the county in
25 which the dealer's business is located.

26 (2) In an action involving more than one (1) dealer, venue may
27 be in any county in which any dealer that is party to the action is located.

28 (c)(1) Before bringing suit under this section, the party bringing
29 suit for an alleged violation shall serve a written demand for mediation upon
30 the offending party.

31 (2) The demand for mediation shall:

32 (A) Be served upon the other party via certified mail at
33 the address stated within the dealer agreement between the parties; and

34 (B) Contain a brief statement of the dispute and the
35 relief sought by the party filing the demand.

36 (3)(A) Within twenty (20) days after the date on which a demand

1 for mediation is served, the parties shall:

2 (i) Mutually select an independent certified
3 mediator; and

4 (ii) Meet with the mediator to attempt to resolve
5 the dispute.

6 (B) The meeting place shall be in this state in a location
7 selected by the mediator.

8 (C) The mediator may extend the date of the meeting for
9 good cause shown by either party or upon stipulation of both parties.

10 (4)(A) The service of a demand for mediation under this section
11 tolls the time for the filing of a complaint, petition, protest, or other
12 action under this subchapter until representatives of both parties have met
13 with a mutually selected mediator to attempt to resolve the dispute.

14 (B) If a complaint, petition, protest, or other action is
15 filed before that meeting, the court:

16 (i) Shall enter an order suspending the proceeding
17 or action until the mediation meeting has occurred; and

18 (ii) Upon written stipulation of all parties to the
19 proceeding or action that they wish to continue to mediate under this
20 section, may enter an order suspending the proceeding or action for as long
21 as the court considers appropriate.

22 (5) The parties to the mediation shall:

23 (A) Bear their own costs for attorney's fees; and

24 (B) Divide equally the cost of the mediator.

25
26 23-112-1023. Injunction.

27 (a) In addition to any remedy provided in this subchapter or otherwise
28 available by law, a manufacturer, distributor, warrantor, or a dealer may
29 apply to a court of competent jurisdiction for the issuance, upon a hearing
30 and for cause shown, of a temporary or permanent injunction or other
31 equitable relief restraining a person from doing any of the following:

32 (1) Acting as a dealer without being properly licensed;

33 (2) Committing a single act or multiple acts in violation of
34 this subchapter; or

35 (3) Failing or refusing to comply with any requirement of this
36 subchapter.

1 (b) The Arkansas Motor Vehicle Commission may seek an injunction upon
2 affidavit in the circuit court for the county in which the commission's
3 office is located to prevent a person, firm, partnership, association,
4 corporation, or legal entity from violating a provision of this subchapter or
5 a rule promulgated by the commission.

6 (c) The commission shall not be required to:

7 (1) Execute or give bond for costs, indemnity, or stay; or

8 (2) Give security as a condition to the issuance of a
9 restraining order or injunction, either temporary or permanent.

10
11 *SECTION 11. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on*
12 *and after January 1, 2014.*

13
14 */s/D. Wyatt*

15
16
17 **APPROVED: 04/10/2013**