

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
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As Engrossed: S3/21/13
A Bill

SENATE BILL 934

By: Senator D. Wyatt

For An Act To Be Entitled

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

Subtitle

TO AMEND ARKANSAS LAW CONCERNING
RECREATIONAL VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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

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are amended to read as follows, and § 23-112-103(35), concerning the definition of "line make of a motor home", are repealed:

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

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



considered wholesalers because of the incidental sales; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Change location of the dealership;
- (2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or
- (3) Replace a motor vehicle dealer's sales or service facilities.

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

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

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

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

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

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

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

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

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

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

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

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

~~(c)(iii) Establish exclusive facilities; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter 10 – Recreational Vehicle Franchise Act

23-112-1001. Title.

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

23-112-1002. Legislative findings.

The General Assembly finds that:

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

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

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

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

(C) Prevent the creation or perpetuation of monopolies;

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

(E) Prevent false and misleading advertising;

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

(G) Promote the public safety and welfare.

23-112-1003. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Family member" means:

(A) A spouse;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A toilet with exterior evacuation;

(D) A gas or electric refrigerator;

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

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

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

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

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

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

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

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

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

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

(a) The following acts are unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

commission.

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

23-112-1005. Application for license.

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

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

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

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

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

(1) Information relating to:

(A) The applicant's business integrity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A dealer shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-112-1009. Expiration of license.

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

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

(2) Recreational vehicle dealers and salespersons expire

December 31 following the date of issue.

23-112-1010. Area of sales responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The notice shall state:

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

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

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

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

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

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

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

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

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

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

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

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

(A) The dealer's insolvency;

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

(C) Bankruptcy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-112-1013. Repurchase of inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The dealer shall:

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

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

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

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

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

(C) The prospective transferee does not have:

(i) An application for a recreational vehicle

dealer's license pending; or

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

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

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

(i) Bankruptcy;

(ii) Insolvency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) The lack of:

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

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

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

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

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

23-112-1016. Warranty obligation.

(a) Each warrantor shall:

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

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

(3)(A) Provide the dealer:

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

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

(B) The schedule of compensation shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Performance of nonwarranty repairs;

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

(C) Lack of material documentation;

(D) Fraud; or

(E) Misrepresentation.

(c) A dealer shall:

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

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

(d)(1) A warrantor shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Fail to accurately document the:

(i) Time spent completing each repair;

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

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

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

(E) Make fraudulent warranty claims; or

(F) Misrepresent the terms of a warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The unlawful sale or solicitation of each recreational

vehicle constitutes a separate offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The following apply to a civil penalty:

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

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

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

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

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

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

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

23-112-1021. Enforcement.

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

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

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

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

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

23-112-1022. Civil action and mediation.

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

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

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

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

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

(2) The demand for mediation shall:

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

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

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

for mediation is served, the parties shall:

(i) Mutually select an independent certified mediator; and

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

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

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

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

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

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

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

(5) The parties to the mediation shall:

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

(B) Divide equally the cost of the mediator.

23-112-1023. Injunction.

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

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

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

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

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

(c) The commission shall not be required to:

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

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

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

/s/D. Wyatt