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2017-2018 Regular Sessions

IN SENATE

May 10, 2017

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to establishing the recreational vehicle dealer agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. It is the intent of the legislature to protect the public health, safety, and welfare of the residents of the state by regulating the relationship between recreation vehicle dealers, manufacturers and suppliers, maintaining competition, and providing consumer protection and fair trade.

§ 2. The general business law is amended by adding a new article 42 to read as follows:

ARTICLE 42

RECREATIONAL VEHICLE DEALER AGREEMENTS

Section 1100. Definitions.

1101. Written agreements/designated territories.

1102. Manufacturer initiated termination, cancellation, and alteration of a dealership.

1103. Dealer initiated termination, cancellation, and alteration of a dealership.

1104. Repurchase of inventory.

1105. Transfer of dealership/family succession.

1106. Warranty obligations.

1107. Indemnification.

1108. Inspection and rejection by the dealer.

1109. Coercion of dealer prohibited.

1110. Preservation of consumer protection statutes.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1111. Private actions.

1112. Powers of the commissioner of motor vehicles.

1113. Construction of article.

1114. Notice requirement.

1115. Adjudicatory proceedings.

1116. Judicial review.

1117. Separability.

1118. Savings clause.

§ 1100. Definitions. As used in this article, the following terms shall have the following meanings: 1. "Area of sales responsibility" means the geographical area, agreed to by the dealer and the manufacturer or distributor in the manufacturer/dealer agreement, within which area the dealer has the exclusive right to display or sell the manufacturer's or distributor's new recreation vehicles of a particular line-make to the retail public.

2. "Dealer" means any person, firm, corporation, or business entity licensed or required to be licensed under this article to sell new recreation vehicles to the retail public and who maintains a permanent business establishment including a service and repair facility which offers mechanical services for the recreation vehicles it sells.

3. "Distributor" means any person, firm, corporation, or business entity that purchases new recreation vehicles from manufacturers for resale to dealers.

4. "Factory campaign" means an effort on the part of a warrantor to contact recreation vehicle owners or dealers in order to address a part or equipment issue.

5. "Family member" means a spouse, child, grandchild, parent, sibling, niece, or nephew, or the spouse thereof.

6. "Line-make" means a specific series of recreation 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 recreation vehicles from other recreation vehicles with substantially the same decor, equipment, features, price, and weight;

(d) belong to a single, distinct classification of recreation 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.

7. "Manufacturer" means any person, firm, corporation, or business entity that engages in the manufacturing of recreation vehicles.

8. "New recreation vehicle" means a recreation vehicle that has never been sold to the retail public nor titled nor registered in any state.

9. "Manufacturer/dealer agreement" means a written agreement or contract entered into between a manufacturer or distributor and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreation vehicles.

10. "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer or distributor.

11. "Recreational vehicle" means a motor home or trailer used for recreational camping or seasonal use, that is equipped with a cooking facility with an on-board fuel source; a potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection, a toilet with exterior evacuation, a gas or electric refrigerator, a heating or air conditioning system with an

1 on-board power or fuel source separate from the vehicle engine, and an
2 electric power system. Recreational vehicle types include the motor
3 home, travel trailer, folding camping trailer, truck camper or park
4 model RV as defined in this subdivision.

5 (a) "Motor home" means a self-propelled recreation vehicle, designed
6 to provide temporary living quarters for recreational, camping or travel
7 use that complies with all the applicable federal vehicle regulations.
8 The unit must contain at least four of the following permanently
9 installed independent life support systems which meet the National Fire
10 Protection Association (NFPA) 1192 Standard for Recreational Vehicles:

- 11 (i) a cooking facility with an on-board fuel source;
12 (ii) a potable water supply system that includes at least a sink, a
13 faucet and a water tank with an exterior service supply connection;
14 (iii) a toilet with exterior evacuation;
15 (iv) a gas or electric refrigerator;
16 (v) a heating or air conditioning system with an on-board power or
17 fuel source separate from the vehicle engine; or
18 (vi) an electric power system.

19 (b) "Travel trailer" means a recreation vehicle mounted on wheels,
20 designed to provide temporary living quarters for recreational, camping
21 or travel use that complies with all the applicable federal vehicle
22 regulations and is of such size and weight as to not require a special
23 highway movement permit when towed by a motorized vehicle.

24 (c) "Fifth wheel trailer" means a recreation vehicle mounted on
25 wheels, designed to provide temporary living quarters for recreational,
26 camping or travel use that complies with all the applicable federal
27 vehicle regulations and is of such size and weight as to not require a
28 special highway movement permit when towed by a motorized vehicle
29 equipped with a towing mechanism that is mounted above or forward of the
30 tow vehicle's rear axle.

31 (d) "Folding camping trailer" means a recreation vehicle mounted on
32 wheels, designed to provide temporary living quarters for recreational,
33 camping or travel use that complies with all the applicable federal
34 vehicle regulations and is constructed with collapsible partial side
35 walls that fold for towing by another vehicle and unfold at the camp-
36 site.

37 (e) "Truck camper" means a recreation vehicle designed to be loaded
38 onto the back of a pickup truck to provide temporary living quarters for
39 recreational, camping or travel use; provided, however, that nothing in
40 this paragraph shall authorize a dealer to sell or lease new pickup
41 trucks, or include pickup trucks within the definition of "recreation
42 vehicle", and provided, further, that nothing in this paragraph shall
43 remove a dealer of new pickup trucks from subdivision seven of section
44 four hundred sixty-two of the vehicle and traffic law.

- 45 (f) "Park model RV" means a recreation vehicle that is:
46 (i) designed and marketed as temporary living quarters for recreation-
47 al, camping, travel, or seasonal use;
48 (ii) not permanently affixed to real property for use as a permanent
49 dwelling;
50 (iii) built on a single chassis mounted on wheels; and
51 (iv) certified by the manufacturer as complying with the ANSI A119.5,
52 Park Model RV Standard.

53 12. "Supplier" means any person, firm, corporation or business entity
54 that engages in the manufacturing of recreation vehicle parts, accesso-
55 ries or components.

1 13. "Transient customer" means a customer who is temporarily traveling
2 through a dealer's area of sales responsibility.

3 14. "Warrantor" means any person, firm, corporation, or business enti-
4 ty, including any manufacturer, distributor or supplier that provides a
5 written warranty to the consumer in connection with a new recreation
6 vehicle or parts, accessories, or components thereof. The term does not
7 include service contracts, mechanical or other insurance or extended
8 warranties sold for separate consideration by a dealer or other person
9 not controlled by a manufacturer or distributor.

10 § 1101. Written agreements/designated territories. 1. A manufacturer
11 or distributor may not sell a recreation vehicle in this state to or
12 through a dealer without having first entered into a manufacturer/dealer
13 agreement with a dealer which has been signed by both parties.

14 2. The manufacturer or distributor shall designate the area of sales
15 responsibility exclusively assigned to a dealer in the
16 manufacturer/dealer agreement and may not change such area or contract
17 with another dealer for sale of the same line-make in the designated
18 area during the duration of the agreement.

19 3. The area of sales responsibility may not be reviewed or changed
20 without the consent of both parties until one year after the execution
21 of the manufacturer/dealer agreement.

22 4. A recreation vehicle dealer may not sell a new recreation vehicle
23 in this state without having first entered into a manufacturer/dealer
24 agreement with a manufacturer or distributor which has been signed by
25 both parties.

26 § 1102. Manufacturer initiated termination, cancellation, and alter-
27 ation of a dealership. 1. A manufacturer or distributor, directly or
28 through any authorized officer, agent or employee, may not terminate,
29 cancel or fail to renew a manufacturer/dealer agreement without good
30 cause. If the manufacturer or distributor terminates, cancels or fails
31 to renew the manufacturer/dealer agreement with good cause section elev-
32 en hundred four of this article does not apply.

33 2. The manufacturer or distributor has the burden of showing good
34 cause for terminating, canceling, or failing to renew a
35 manufacturer/dealer agreement with a dealer. For purposes of determining
36 whether there is good cause for the proposed action, any of the follow-
37 ing factors may be considered:

38 (a) The extent of the affected dealer's penetration in the area of
39 sales responsibility.

40 (b) The nature and extent of the dealer's investment in its business.

41 (c) The adequacy of the dealer's service facilities, equipment, parts,
42 supplies, and personnel.

43 (d) The effect of the proposed action on the community.

44 (e) The extent and quality of the dealer's service under recreation
45 vehicle warranties.

46 (f) The dealer's failure to follow agreed-upon procedures or standards
47 related to the overall operation of the dealership.

48 (g) The dealer's performance under the terms of its
49 manufacturer/dealer agreement.

50 (h) Violation of the manufacturer/dealer agreement.

51 3. Except as otherwise provided in this section, a manufacturer or
52 distributor shall provide a dealer with at least ninety days prior writ-
53 ten notice of termination, cancellation, or nonrenewal of the
54 manufacturer/dealer agreement in the event the dealer is being termi-
55 nated for good cause.

1 (a) The notice must state all reasons for the proposed termination,
2 cancellation, or nonrenewal and if the termination, cancellation or
3 nonrenewal is based on lack of performance, the dealer's stocking histo-
4 ry and reasonable market performance must be given consideration. A
5 dealer's duty to cure and evaluation of same will include consideration
6 of seasonal volatility of the market. The notice must further state that
7 if, within thirty days following receipt of the notice, the dealer
8 provides to the manufacturer or distributor a written notice of intent
9 to cure all claimed deficiencies, the dealer will then have ninety days
10 following receipt of the original notice to rectify the deficiencies.

11 (b) If the deficiencies are rectified within ninety days, the manufac-
12 turer's or distributor's notice is voided. If the dealer fails to
13 provide the notice of intent to cure the deficiencies or fails to cure
14 the deficiencies in the prescribed time period, the termination, cancel-
15 lation, or nonrenewal takes effect as provided in the original notice.

16 (c) The notice period may be reduced to thirty days if the manufactur-
17 er's or distributor's grounds for termination, cancellation, or nonrene-
18 wal are due to any of the following good cause factors:

19 (i) a dealer or one of its owners being convicted of, or entering a
20 plea of nolo contendere to, a felony;

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

25 (iii) a significant misrepresentation by the dealer materially affect-
26 ing the business relationship;

27 (iv) a suspension or revocation of the dealer's license, or refusal to
28 renew the dealer's license, by the department;

29 (v) a material violation of this article which is not cured within
30 thirty days after the written notice by the manufacturer; or

31 (vi) a declaration by the dealer of bankruptcy, insolvency or the
32 occurrence of an assignment for the benefit of creditors or bankruptcy.

33 § 1103. Dealer initiated termination, cancellation, and alteration of
34 a dealership. 1. A dealer may terminate or cancel its
35 manufacturer/dealer agreement with a manufacturer or distributor with or
36 without good cause by giving thirty days written notice. If the termi-
37 nation or cancellation is for good cause, the notice must state all
38 reasons for the proposed termination or cancellation and must further
39 state that if, within thirty days following receipt of the notice, the
40 manufacturer or distributor provides to the dealer a written notice of
41 intent to cure all claimed deficiencies, the manufacturer or distributor
42 will then have ninety days following receipt of the original notice to
43 rectify the deficiencies. If the deficiencies are rectified within nine-
44 ty days, the dealer's notice is voided. If the manufacturer or distribu-
45 tor fails to provide the notice of intent to cure the deficiencies or
46 fails to cure the deficiencies in the time period prescribed, the pend-
47 ing termination or cancellation shall take as provided in the original
48 notice.

49 2. If the dealer terminates, cancels or fails to renew the
50 manufacturer/dealer agreement without good cause, the terms of section
51 eleven hundred four of this article do not apply. If the dealer termi-
52 nates, cancels or fails to renew the manufacturer/dealer agreement with
53 good cause, section eleven hundred four of this article would apply.

54 3. If the dealer terminates for cause and has new and untitled inven-
55 tory on hand subject to the termination, that inventory may be sold

1 pursuant to subdivision two of section eleven hundred four of this arti-
2 cle.

3 4. The dealer has the burden of showing good cause. The term "good
4 cause" for the proposed termination, cancellation or nonrenewal action
5 by a dealer includes, but is not limited to:

6 (a) A manufacturer or distributor being convicted of, or entering a
7 plea of nolo contendere to, a felony.

8 (b) The business operations of the manufacturer or distributor have
9 been abandoned or closed for ten consecutive business days, unless the
10 closing is due to an act of God, strike, labor difficulty, or other
11 cause over which the manufacturer or distributor has no control.

12 (c) A significant misrepresentation by the manufacturer or distributor
13 materially affecting the business relationship.

14 (d) A material violation of this article which is not cured within
15 thirty days after written notice by the dealer.

16 (e) A material violation of the dealer agreement by the manufacturer
17 or distributor.

18 (f) A declaration by the manufacturer or distributor of bankruptcy,
19 insolvency, or the occurrence of an assignment for the benefit of credi-
20 tors or bankruptcy.

21 § 1104. Repurchase of inventory. 1. If the manufacturer/dealer agree-
22 ment is terminated, canceled, or not renewed by the manufacturer or
23 distributor as defined in section eleven hundred two of this article
24 without good cause or if the dealer terminates or cancels the
25 manufacturer/dealer agreement for good cause as defined in section elev-
26 en hundred three of this article, and the manufacturer or distributor
27 fails to cure the claimed deficiencies as provided in such section, the
28 manufacturer shall, at the election of the dealer and within forty-five
29 days after termination, cancellation, or nonrenewal, repurchase:

30 (a) all new, untitled recreation vehicles to which the dealer can show
31 clear title and that were acquired from the manufacturer or distributor
32 within eighteen months before the effective date of the notice of termi-
33 nation, cancellation, or nonrenewal that have not been used, except for
34 demonstration purposes, and that have not been altered or damaged, at
35 one hundred percent of the net invoice cost, including transportation,
36 less applicable rebates and discounts to the dealer. In the event any of
37 the vehicles repurchased pursuant to this subdivision are damaged, but
38 do not trigger a consumer disclosure requirement, the amount due the
39 dealer shall be reduced by the cost to repair the vehicle. Damage prior
40 to delivery to dealer that is disclosed at the time of delivery will not
41 disqualify repurchase under this provision;

42 (b) all undamaged accessories and proprietary parts sold to the dealer
43 for resale within the twelve months prior to termination, cancellation,
44 or nonrenewal, if accompanied by the original invoice, at one hundred
45 five percent of the original net price paid to the manufacturer or
46 distributor to compensate the dealer for handling, packing, and shipping
47 the parts; and

48 (c) any properly functioning diagnostic equipment, special tools,
49 current signage, or other equipment and machinery which was purchased by
50 the dealer upon the manufacturer or distributor's request within five
51 years prior to the termination, cancellation, or nonrenewal and which
52 can no longer be used in the normal course of the dealer's ongoing busi-
53 ness.

54 2. Sale of remaining inventory after termination.

55 (a) The department shall not prohibit a new recreation vehicle dealer
56 from selling the remaining in-stock recreation vehicles of a line-make

1 subject to a dealer agreement after that dealer agreement has been
2 terminated or not renewed pursuant to the provisions of section eleven
3 hundred two or eleven hundred three of this article.

4 (b) If recreation vehicles of a line-make that was subject to a termi-
5 nated dealer agreement are not repurchased or required to be repurchased
6 by the manufacturer or distributor, the dealer may continue to sell all
7 recreation vehicles that were subject to the terminated dealer agreement
8 and were in the dealer's inventory on the effective date of the termi-
9 nation until those recreation vehicles are no longer in the dealer's
10 inventory.

11 § 1105. Transfer of dealership/family succession. 1. If a dealer
12 desires to make a change in ownership by the sale of the business
13 assets, stock transfer, or otherwise, the dealer shall give the manufac-
14 turer or distributor written notice at least fifteen business days
15 before the closing, including all supporting documentation as may be
16 reasonably required by the manufacturer or distributor to determine if
17 an objection to the sale may be made. In the absence of a breach by the
18 selling dealer of its dealer agreement or this chapter, the manufacturer
19 or distributor shall not object to the proposed change in ownership
20 unless the prospective transferee:

21 (a) has previously been terminated by the manufacturer or distributor
22 for breach of its dealer agreement;

23 (b) has been convicted of a felony or any crime of fraud, deceit, or
24 moral turpitude;

25 (c) lacks any license required by law;

26 (d) does not have an active line of credit sufficient to purchase a
27 manufacturer's or distributor's product; or

28 (e) has undergone in the last ten years bankruptcy, insolvency, a
29 general assignment for the benefit of creditors, or the appointment of a
30 receiver, trustee, or conservator to take possession of the transferee's
31 business or property.

32 2. If the manufacturer or distributor objects to a proposed change of
33 ownership, the manufacturer or distributor shall give written notice of
34 its reasons to the dealer within ten business days after receipt of the
35 dealer's notification and complete documentation. The manufacturer or
36 distributor has the burden of proof with regard to its objection. If the
37 manufacturer or distributor does not give timely notice of its
38 objection, the change or sale shall be deemed approved.

39 3. It is unlawful for a manufacturer or distributor to fail to provide
40 a dealer an opportunity to designate, in writing, a family member as a
41 successor to the dealership in the event of the death, incapacity, or
42 retirement of the dealer. It is unlawful to prevent or refuse to honor
43 the succession to a dealership by a family member of the deceased, inca-
44 pacitated, or retired dealer unless the manufacturer or distributor has
45 provided to the dealer written notice of its objections within ten days
46 after receipt of the dealer's modification of the dealer's succession
47 plan. In the absence of a breach of the dealer agreement, the manufac-
48 turer or distributor may object to the succession for the following
49 reasons only:

50 (a) conviction of the successor of a felony or any crime of fraud,
51 deceit, or moral turpitude;

52 (b) bankruptcy or insolvency of the successor during the past ten
53 years;

54 (c) prior termination by the manufacturer or distributor of the
55 successor for breach of a dealer agreement;

1 (d) the lack of an active line of credit for the successor sufficient
2 to purchase the manufacturer's or distributor's product; or

3 (e) the lack of any license for the successor required by law.

4 4. The manufacturer or distributor has the burden of proof regarding
5 its objection. However, a family member may not succeed to a dealership
6 if the succession involves, without the manufacturer's or distributor's
7 consent, a relocation of the business or an alteration of the terms and
8 conditions of the manufacturer/dealer agreement.

9 § 1106. Warranty obligations. 1. Each warrantor shall:

10 (a) specify in writing to each of its dealers obligations, if any, for
11 preparation, delivery, and warranty service on its products;

12 (b) compensate the dealer for warranty service required of the dealer
13 by the warrantor; and

14 (c) provide the dealer the schedule of compensation to be paid and the
15 time allowances for the performance of any work and service. The sched-
16 ule of compensation must include reasonable compensation for diagnostic
17 work as well as warranty labor.

18 2. Time allowances for the diagnosis and performance of warranty labor
19 must be reasonable for the work to be performed. In the determination of
20 what constitutes reasonable compensation under this section, the princi-
21 pal factors to be given consideration shall be the actual wage rates
22 being paid by the dealer, and the actual retail labor rate being charged
23 by the dealers in the community in which the dealer is doing business.
24 Such comparisons shall be with dealers of similar size, capability and
25 investment. The compensation of a dealer for warranty labor may not be
26 less than the lowest retail labor rates actually charged by the dealer
27 for like non-warranty labor as long as such rates are reasonable.

28 3. The warrantor shall reimburse the dealer for any warranty part,
29 accessory or complete component at actual wholesale cost plus a minimum
30 thirty percent handling charge up to a maximum of one hundred fifty
31 dollars and the cost, if any, of freight to return such parts, compo-
32 nents, or accessories to the warrantor.

33 4. Warranty audits of dealer records may be conducted by the warrantor
34 on a reasonable basis, and dealer claims for warranty compensation may
35 not be denied except for cause, such as performance of non-warranty
36 repairs, material noncompliance with the warrantor's published policies
37 and procedures, lack of material documentation, fraud, or misrepresen-
38 tation.

39 5. The dealer shall submit warranty claims within forty-five days
40 after completing work.

41 6. The dealer shall immediately notify the warrantor in writing upon
42 receipt of any written complaints from a consumer regarding any warranty
43 repairs.

44 7. The warrantor shall disapprove warranty claims in writing within
45 forty-five days after the date of submission by the dealer in the manner
46 and form prescribed by the warrantor. Claims not specifically disap-
47 proved in writing within forty-five days shall be construed to be
48 approved and must be paid within sixty days of submission.

49 8. It is a violation of this article for any warrantor to:

50 (a) fail to perform any of its warranty obligations with respect to
51 its warranted products;

52 (b) fail to include, in written notices of factory campaigns to recre-
53 ation vehicle owners and dealers, the expected date by which necessary
54 parts and equipment, including tires and chassis or chassis parts, will
55 be available to dealers to perform the campaign work. The warrantor may
56 ship parts to the dealer to effect the campaign work, and, if such parts

1 are in excess of the dealer's requirements, the dealer may return unused
2 parts to the warrantor for credit after completion of the campaign;

3 (c) fail to compensate any of its dealers for authorized repairs
4 effected by the dealer on recreation vehicles or products damaged in
5 manufacture or transit to the dealer, if the carrier is designated by
6 the warrantor, factory branch, distributor, or distributor branch;

7 (d) fail to compensate any of its dealers in accordance with the sche-
8 dule of compensation provided to the dealer pursuant to this section if
9 performed in a timely and competent manner;

10 (e) intentionally misrepresent in any way to purchasers of recreation
11 vehicles that warranties with respect to the manufacture, performance,
12 or design of the vehicle are made by the dealer as warrantor or co-war-
13 rantor; or

14 (f) require the dealer to make warranties to customers in any manner
15 related to the manufacture of the recreation vehicle.

16 9. It is a violation of this article for any dealer to:

17 (a) fail to perform pre-delivery inspection functions, as specified by
18 the warrantor, in a competent and timely manner;

19 (b) fail to perform warranty service work authorized by the warrantor
20 in a reasonably competent and timely manner on any transient customer's
21 vehicle of the same line-make;

22 (c) fail to accurately document the time spent completing each repair,
23 the total number of repair attempts conducted on a single unit, and the
24 number of repair attempts for the same repair conducted on a single
25 vehicle;

26 (d) fail to maintain written records, including a consumer's signa-
27 ture, regarding the amount of time a unit is stored for the consumer's
28 convenience during a repair; or

29 (e) make fraudulent warranty claims or misrepresent the terms of any
30 warranty.

31 10. A dealer shall take reasonable steps to notify a warrantor of a
32 second repair attempt, if the dealer has knowledge of both attempts,
33 which impairs the use or safety of the vehicle. Failure to make such
34 notification is not a cause for termination.

35 § 1107. Indemnification. Notwithstanding the terms of any manufactur-
36 er-dealer agreement, it is a violation of this article for:

37 1. A warrantor to fail to indemnify and hold harmless its new recre-
38 ation vehicle dealer against any losses or damages to the extent that
39 the losses or damages are caused by the negligence or willful misconduct
40 of the warrantor. A new recreation vehicle dealer may not be denied
41 indemnification for failing to discover, disclose, or remedy a defect in
42 the design or manufacturing of a new recreation vehicle or new recre-
43 ation trailer. A new recreation vehicle dealer may be denied indemnifi-
44 cation if the new recreation vehicle dealer fails to remedy a known and
45 announced defect in accordance with the written instructions of a
46 warrantor for whom the new recreation vehicle dealer is obligated to
47 perform warranty service. A new recreation vehicle dealer shall provide
48 to a warrantor a copy of any pending lawsuit in which allegations are
49 made that are covered by the provisions of this subdivision within ten
50 days after receiving such suit. Notwithstanding anything to the contra-
51 ry, this subdivision shall continue to apply even after the new recre-
52 ation vehicle or new recreation trailer is titled.

53 2. A new recreation vehicle dealer to fail to indemnify and hold harm-
54 less its warrantor against any losses or damages to the extent that the
55 losses or damages are caused by the negligence or willful misconduct of
56 the new recreation vehicle dealer. A warrantor shall provide to a new

1 recreation vehicle dealer a copy of any pending lawsuit or similar
2 proceeding in which allegations are made that come within the provisions
3 of this section within ten days after receiving such suit. Notwith-
4 standing anything to the contrary, this subdivision shall continue to
5 apply even after the new recreation vehicle or new recreation trailer is
6 titled.

7 § 1108. Inspection and rejection by the dealer. 1. Whenever a new
8 recreation vehicle is damaged prior to transit to the dealer or is
9 damaged in transit to the dealer when the carrier or means of transpor-
10 tation has been selected by the manufacturer or distributor, the dealer
11 shall notify the manufacturer or distributor of the damage within the
12 timeframe specified in the manufacturer/dealer agreement and:

13 (a) request from the manufacturer or distributor authorization to
14 replace the components, parts, and accessories damaged or otherwise
15 correct the damage; or

16 (b) reject the vehicle within the timeframe set forth in subdivision
17 four of this section.

18 2. If the manufacturer or distributor refuses or fails to authorize
19 repair of such damage within ten days after receipt of notification, or
20 if the dealer rejects the recreation vehicle because of damage, owner-
21 ship of the new recreation vehicle shall revert to the manufacturer or
22 distributor.

23 3. The dealer shall exercise due care in custody of the damaged recre-
24 ation vehicle, but the dealer shall have no other obligations, financial
25 or otherwise, with respect to that recreational vehicle.

26 4. The timeframe for inspection and rejection by the dealer must be
27 part of the manufacturer/dealer agreement and may not be less than two
28 business days after the physical delivery of the recreation vehicle.

29 5. Any recreation vehicle that has, at the time of delivery to the
30 dealer, an unreasonable amount of miles on its odometer, as determined
31 by the dealer, may be subject to rejection by the dealer and reversion
32 of the recreation vehicle to the manufacturer or distributor. In no
33 instance shall a dealer deem an amount less than the distance between
34 the dealer and the manufacturer's factory or a distributor's point of
35 distribution, plus one hundred miles, as unreasonable.

36 § 1109. Coercion of dealer prohibited. 1. A manufacturer or distribu-
37 tor may not coerce or attempt to coerce a dealer to:

38 (a) purchase a product that the dealer did not order;

39 (b) enter into an agreement with the manufacturer or distributor; or

40 (c) enter into an agreement that requires the dealer to submit its
41 disputes to binding arbitration or otherwise waive rights or responsi-
42 bilities provided under this article.

43 2. As used in this section, the term "coerce" includes, but is not
44 limited to, threatening to terminate, cancel, or not renew a
45 manufacturer/dealer agreement without good cause or threatening to with-
46 hold product lines the dealer is entitled to purchase pursuant to the
47 manufacturer/dealer agreement or delay product delivery as an inducement
48 to amending the manufacturer/dealer agreement.

49 § 1110. Preservation of consumer protection statutes. Nothing
50 contained in this article shall in any way be construed or interpreted
51 to modify, limit or affect the full powers and duties heretofore or
52 hereafter granted to consumer protection agencies created by statute or
53 regulation enacted by state, city, county or local municipalities and
54 the rights of consumers to make complaints thereto, it being the intent
55 of this article to provide for the settlement and/or determination of

1 disputes under this article as between dealers and distributors as
2 defined in section eleven hundred of this article.

3 § 1111. Private actions. 1. A dealer who is or may be aggrieved by a
4 violation of this article shall be entitled to request an adjudicatory
5 proceeding, as prescribed in section eleven hundred fifteen of this
6 article, or in lieu thereof, sue for, and have, injunctive relief and
7 damages in any court of the state having jurisdiction over the parties.
8 In any such judicial action or proceeding, the court may award necessary
9 costs and disbursements plus a reasonable attorney's fee to any party.

10 2. Whenever a dealer provides for the use of arbitration to resolve a
11 controversy arising out of or relating to such contract, arbitration may
12 be used to settle such controversy only if after such controversy arises
13 all parties to such controversy consent in writing to use arbitration to
14 settle such controversy.

15 § 1112. Powers of the commissioner of motor vehicles. 1. In addition
16 to any other powers and duties of the commissioner of motor vehicles set
17 forth in the vehicle and traffic law, such commissioner shall have the
18 power to enforce the provisions of this article, in accordance with
19 section eleven hundred fifteen of this article.

20 2. The commissioner of motor vehicles shall prescribe such rules and
21 regulations as such commissioner shall deem necessary for the implemen-
22 tation of this section and section eleven hundred fifteen of this arti-
23 cle.

24 § 1113. Construction of article. The provisions of this article shall
25 be in addition to and not in lieu of those contained in the uniform
26 commercial code.

27 § 1114. Notice requirement. 1. A dealer shall not display for sale,
28 exchange or sell any new recreation vehicle, or any used recreation
29 vehicle, that was originally sold by a manufacturer or distributor for
30 distribution outside the United States without prominently displaying a
31 label on such recreation vehicle stating that "This recreation vehicle
32 was not sold by the manufacturer or distributor for distribution within
33 the United States. It may not have the same standard features, emissions
34 equipment, safety equipment, optional equipment, specifications and
35 warranty, or otherwise be identical to other recreation vehicles which
36 are sold by the manufacturer or distributor for distribution in the
37 United States".

38 2. Any person who violates this section and any person who knowingly
39 aids and abets any such violation of this section shall be liable to any
40 person aggrieved to the extent of any additional margin obtained or
41 obtainable on such purchase and resale.

42 § 1115. Adjudicatory proceedings. 1. Request for an adjudicatory
43 proceeding. (a) Any dealer who is or may be aggrieved by a violation of
44 this article may request mediation with the manufacturer or distributor.
45 The request for mediation shall be served by certified mail, or in such
46 manner as the dealer and the manufacturer or distributor have agreed. If
47 the dealer agrees to mediation, such mediation shall proceed in accord-
48 ance with the terms as agreed upon by the dealer and manufacturer or
49 distributor; provided, however, that if the dealer and manufacturer or
50 distributor have not agreed upon the terms of mediation (i) the dealer
51 and the manufacturer or distributor shall select a mediator within seven
52 days of service by the manufacturer or distributor of the request for
53 mediation; (ii) the mediation shall be completed within twenty-one days
54 of selection of the mediator, or within such period as the dealer and
55 the manufacturer or distributor shall agree; and (iii) the cost of medi-
56 ation shall be shared equally by the parties. If the matter is resolved

1 by mediation, a written memorandum of the agreement shall be executed by
2 the mediator, the dealer, and the manufacturer or distributor.

3 (b) If the matter has not been resolved by mediation, the dealer and
4 the manufacturer or distributor have not agreed to mediation, or the
5 mediation has not been completed within the period set forth in subpara-
6 graph (ii) of paragraph (a) of this subdivision, the manufacturer or
7 distributor may file with the commissioner of motor vehicles a request
8 for an adjudicatory proceeding pursuant to this section. The request
9 shall be in writing and contain a short and plain statement of the facts
10 relied upon by the dealer to support a claim that the manufacturer or
11 distributor has violated one or more specific provisions of this article
12 together with a request for a specific remedy other than damages. The
13 request shall be accompanied by copies of all correspondence between the
14 dealer and the manufacturer or distributor and other documents relevant
15 to the claims made in the request. The request shall be accompanied by a
16 non-refundable filing fee of two thousand dollars.

17 (c) A true copy of the request with copies of all documents filed with
18 the request shall be served upon the manufacturer or distributor at the
19 same time as the request is filed with the commissioner of motor vehi-
20 cles by transmitting such documents in any manner specifically permitted
21 under the terms of the agreement or, if no such manner is specified in
22 such agreement, then by certified mail, return receipt requested,
23 addressed to the officer or employee of the manufacturer or distributor
24 from whom the dealer has received correspondence relevant to the claims
25 made in the request. A certificate of service shall accompany the
26 request.

27 (d) The hearing shall be at such time and place as the commissioner of
28 motor vehicles shall prescribe. The commissioner of motor vehicles shall
29 mail to the dealer and the manufacturer or distributor a notice stating
30 the name of the presiding officer assigned to the matter, and the place
31 and time of the hearing. The hearing shall be commenced as soon as prac-
32 ticable, but in no event sooner than sixty days from the date of the
33 notice.

34 (e) The notice shall be sent by ordinary mail to the address of the
35 dealer or attorney shown in the request and to the address to which the
36 copy of the request was sent as shown in the certificate of service or
37 such other address as the manufacturer or distributor has designated for
38 receiving such notices. The notice shall advise the manufacturer or
39 distributor of the right to submit within twenty days of receipt of such
40 notice a short and plain statement of answers to the allegations of the
41 request and of facts on which the manufacturer or distributor relies in
42 defense of such allegations. Such answering statement shall be mailed to
43 the commissioner of motor vehicles or his or her designee and the dealer
44 at addresses shown on the notice.

45 (f) The dealer may submit within twenty days of receipt of the
46 manufacturer's or distributor's answering statement and additional
47 statement of facts and documentary material only to the extent of
48 answering new matter raised by the manufacturer or distributor. Except
49 as set forth in paragraph (g) of this subdivision, after receipt by a
50 party of the notice from the commissioner of motor vehicles, all corre-
51 spondence and other communications relating to the dispute shall be with
52 the presiding officer with copies to the opposing party.

53 (g) In accordance with the rules and regulations prescribed by the
54 commissioner of motor vehicles, each party shall disclose to the other
55 all documents or other materials, including those that may have been

1 maintained in electronic form, that the party intends to introduce at
2 the hearing.

3 2. Hearings and other proceedings and presiding officers. Except as
4 otherwise set forth in this section, hearings and other proceedings
5 authorized under this article shall comply with article three of the
6 state administrative procedure act and shall be presided over by the
7 presiding officer appointed by the commissioner of motor vehicles. The
8 presiding officer shall be admitted to practice as an attorney in the
9 state of New York and shall rule on all motions, procedures and other
10 legal objections.

11 3. Resolution without a hearing. Either party may request resolution
12 of the dispute without a hearing. A request for a resolution without a
13 hearing shall be accompanied by sufficient information to permit a
14 determination of whether any unresolved material issue of fact exists,
15 and may be accompanied by a legal memorandum. The other party shall have
16 an opportunity to respond. Such a request shall be granted if the
17 presiding officer determines that no unresolved material issue of fact
18 is presented in the matter. No hearing shall be conducted until the
19 request for a resolution without a hearing has been determined.

20 4. Presiding officer decision. The presiding officer shall render a
21 decision upon the conclusion of the hearing or without a hearing pursu-
22 ant to subdivision three of this section not later than ninety days
23 after the close of the hearing or the granting of the request for resol-
24 ution without a hearing. The decision of the presiding officer shall be
25 based on the preponderance of the evidence. The presiding officer shall
26 prepare a decision which shall include: (a) findings of fact; (b) a
27 determination on each charge; and (c) in the event of a determination of
28 a violation of this article, the remedy to be ordered. The decision of
29 the presiding officer shall be deemed the determination of the commis-
30 sioner of motor vehicles.

31 5. Litigation costs. In any administrative proceeding pursuant to this
32 section, each party shall bear its own litigation costs and attorneys'
33 fees.

34 6. Penalties. Any party to a proceeding held pursuant to this section
35 shall comply with the commissioner of motor vehicle's decision in such
36 proceeding, unless a stay or extension of the date for compliance is
37 granted by such commissioner or a court of competent jurisdiction. If,
38 after notice to such party and an opportunity to respond, such commis-
39 sioner finds that a party has not complied with such commissioner's
40 decision by the designated date of compliance, unless a stay or exten-
41 sion of such date has been granted, such commissioner, in addition to
42 any other enforcement powers such commissioner holds, may assess such
43 party a civil penalty not to exceed one thousand dollars per day of
44 noncompliance. Civil penalties assessed under this section shall be paid
45 to such commissioner for deposit in the state treasury, and unpaid civil
46 penalties may be recovered by such commissioner in a civil action in the
47 name of such commissioner. In addition, as an alternative to such civil
48 action and provided that no proceeding for judicial review shall then be
49 pending and the time for initiation of such proceeding shall have
50 expired, such commissioner may file with the county clerk of the county
51 in which the dealer, manufacturer or distributor is located a final
52 order of such commissioner containing the amount of the penalty
53 assessed. The filing of such final order shall have the full force and
54 effect of a judgment duly docketed in the office of such clerk and may
55 be enforced in the same manner and with the same effect as that provided

1 by law in respect to executions issued against property upon judgments
2 by a court of record.

3 § 1116. Judicial review. A decision of the presiding officer under
4 section eleven hundred fifteen of this article shall be subject to
5 review by the supreme court in the manner provided by article seventy-
6 eight of the civil practice law and rules.

7 § 1117. Separability. If any part or provision of this article or the
8 application thereof to any person or circumstance be adjudged invalid by
9 any court of competent jurisdiction, such judgment shall be confined in
10 its operation to the part, provision or application directly involved in
11 the controversy in which such judgment shall have been rendered and
12 shall not affect or impair the validity of the remainder of this article
13 or the application thereof to other persons or circumstances.

14 § 1118. Savings clause. Nothing in this article shall prohibit, limit,
15 restrict or impose conditions on:

16 1. The business activities (including, without limitation, the deal-
17 ings with manufacturers or distributors and their representatives and
18 affiliates) of any person that is primarily engaged in the business of
19 rental of recreation vehicles and activities incidental to that business
20 provided that (a) any recreation vehicles sold by such person are limit-
21 ed to used recreation vehicles that have been previously used exclusive-
22 ly and regularly by such person in the conduct of business and used
23 recreation vehicles traded in on recreation vehicles sold by such
24 person, (b) warranty repairs performed by such person on recreation
25 vehicles are limited to those recreation vehicles that it owns, previ-
26 ously owned or takes in trade, and (c) recreation vehicle financing
27 provided by such person to retail consumers for recreation vehicles is
28 limited to vehicles sold by such person in the conduct of business; or

29 2. The direct or indirect ownership, affiliation or control of a
30 person described in subdivision one of this section.

31 § 3. This act shall take effect on the one hundred eightieth day after
32 it shall have become a law and shall apply to any and all
33 manufacturer/dealer agreements entered into on or after such effective
34 date.