STATE OF NEW YORK

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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

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

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

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

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

(iii) a toilet with exterior evacuation;

(iv) a gas or electric refrigerator;

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

(vi) an electric power system.

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

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

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

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

(f) "Park model RV" means a recreation vehicle that is:

(i) designed and marketed as temporary living quarters for recreation-al, camping, travel, or seasonal use;

(ii) not permanently affixed to real property for use as a permanent dwelling;

(iii) built on a single chassis mounted on wheels; and

(iv) certified by the manufacturer as complying with the ANSI A119.5, Park Model RV Standard.

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

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

14. "Warrantor" means any person, firm, corporation, or business entity, including any manufacturer, distributor or supplier that provides a written warranty to the consumer in connection with a new recreation vehicle or parts, accessories, or components thereof. The term 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 or distributor.

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

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

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

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

§ 1102. Manufacturer initiated termination, cancellation, and alteration of a dealership. 1. A manufacturer or distributor, directly or through any authorized officer, agent or employee, may not terminate, cancel or fail to renew a manufacturer/dealer agreement without good cause. If the manufacturer or distributor terminates, cancels or fails to renew the manufacturer/dealer agreement with good cause section eleven hundred four of this article does not apply.

2. The manufacturer or distributor has the burden of showing good cause for terminating, canceling, or failing to renew a manufacturer/dealer agreement with a dealer. 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 recreation vehicle warranties.

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

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

(h) Violation of the manufacturer/dealer agreement.

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

(a) The notice must state all reasons for the proposed termination, cancellation, or nonrenewal and if the termination, cancellation or nonrenewal is based on lack of performance, the dealer's stocking history and reasonable market performance must be given consideration. A dealer's duty to cure and evaluation of same will include consideration of seasonal volatility of the market. The notice must further state that if, within thirty 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 days following receipt of the original notice to rectify the deficiencies.

(b) If the deficiencies are rectified within ninety days, the manufacturer's or distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies or fails to cure the deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal takes effect as provided in the original notice.

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

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

(ii) the abandonment or closing of the business operations of the dealer for ten 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;

(iii) a significant misrepresentation by the dealer materially affecting the business relationship;

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

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

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

§ 1103. Dealer initiated termination, cancellation, and alteration of a dealership. 1. A dealer may terminate or cancel its manufacturer/dealer agreement with a manufacturer or distributor with or without good cause by giving thirty days written notice. If the termination or cancellation is for good cause, the notice must state all reasons for the proposed termination or cancellation and must further state that if, within thirty 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 days following receipt of the original notice to rectify the deficiencies. If the deficiencies are rectified within ninety days, the dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies or fails to cure the deficiencies in the time period prescribed, the pending termination or cancellation shall take as provided in the original notice.

2. If the dealer terminates, cancels or fails to renew the manufacturer/dealer agreement without good cause, the terms of section eleven hundred four of this article do not apply. If the dealer terminates, cancels or fails to renew the manufacturer/dealer agreement with good cause, section eleven hundred four of this article would apply.

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

pursuant to subdivision two of section eleven hundred four of this article.

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

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

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

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

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

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

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

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

(a) all new, untitled recreation vehicles to which the dealer can show clear title and that were acquired from the manufacturer or distributor within eighteen 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 of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. In the event any of the vehicles repurchased pursuant to this subdivision 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. Damage prior to delivery to dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision;

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

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

2. Sale of remaining inventory after termination.

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

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

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

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

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

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

(c) lacks any license required by law;

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

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

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

3. It is unlawful for a manufacturer or distributor to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired dealer unless the manufacturer or distributor has provided to the dealer written notice of its objections within ten days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the dealer agreement, the manufacturer or distributor may object to the succession for the following reasons only:

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

(b) bankruptcy or insolvency of the successor during the past ten 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 or distributor's product; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) fail to include, in written notices of factory campaigns to recreation 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 campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts

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

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

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

(e) intentionally misrepresent in any way to purchasers of recreation 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 recreation vehicle.

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

(a) fail to perform pre-delivery 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 reasonably competent and timely manner on any transient customer's vehicle of the same line-make;

(c) fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the 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; or

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

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

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

1. A warrantor to fail to indemnify and hold harmless its new recreation 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. A new recreation vehicle dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreation vehicle or new recreation trailer. A new recreation vehicle dealer may be denied indemnification if the new recreation vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreation vehicle dealer is obligated to perform warranty service. A new recreation vehicle dealer shall provide to a warrantor a copy of any pending lawsuit in which allegations are made that are covered by the provisions of this subdivision within ten days after receiving such suit. Notwithstanding anything to the contrary, this subdivision shall continue to apply even after the new recreation vehicle or new recreation trailer is titled.

2. A new recreation 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 recreation vehicle dealer. A warrantor shall provide to a new

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

§ 1108. Inspection and rejection by the dealer. 1. Whenever a new recreation vehicle is damaged prior to 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, the dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer/dealer agreement and:

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

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

2. If the manufacturer or distributor refuses or fails to authorize repair of such damage within ten days after receipt of notification, or if the dealer rejects the recreation vehicle because of damage, ownership of the new recreation vehicle shall revert to the manufacturer or distributor.

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

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

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

§ 1109. Coercion of dealer prohibited. 1. A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

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

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

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

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

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

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

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

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

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

2. The commissioner of motor vehicles shall prescribe such rules and regulations as such commissioner shall deem necessary for the implementation of this section and section eleven hundred fifteen of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Presiding officer decision. The presiding officer shall render a decision upon the conclusion of the hearing or without a hearing pursuant to subdivision three of this section not later than ninety days after the close of the hearing or the granting of the request for resolution without a hearing. The decision of the presiding officer shall be based on the preponderance of the evidence. The presiding officer shall prepare a decision which shall include: (a) findings of fact; (b) a determination on each charge; and (c) in the event of a determination of a violation of this article, the remedy to be ordered. The decision of the presiding officer shall be deemed the determination of the commissioner of motor vehicles.

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

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

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

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

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

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

1. The business activities (including, without limitation, the dealings with manufacturers or distributors and their representatives and affiliates) of any person that is primarily engaged in the business of rental of recreation vehicles and activities incidental to that business provided that (a) any recreation vehicles sold by such person are limited to used recreation vehicles that have been previously used exclusively and regularly by such person in the conduct of business and used recreation vehicles traded in on recreation vehicles sold by such person, (b) warranty repairs performed by such person on recreation vehicles are limited to those recreation vehicles that it owns, previously owned or takes in trade, and (c) recreation vehicle financing provided by such person to retail consumers for recreation vehicles is limited to vehicles sold by such person in the conduct of business; or

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

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