

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 934

5 By: Senator D. Wyatt
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING RECREATIONAL
9 VEHICLES; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND ARKANSAS LAW CONCERNING
12 RECREATIONAL VEHICLES.
13

14
15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

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

21 (18) "Motor vehicle" means a self-propelled vehicle having two
22 (2) or more wheels that has as its primary purpose the transportation of a
23 person, including without limitation all-terrain vehicles, automobiles,
24 trucks, motorcycles, motor-driven cycles, and motor scooters, ~~and motor~~
25 ~~homes~~;
26

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30 make of a motor home", are repealed:

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

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



1 considered wholesalers because of the incidental sales; and

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

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

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

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

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

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

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

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

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

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

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

36

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) Change location of the dealership;

11 (2) Make any substantial changes,
12 alterations, or remodeling to a motor vehicle dealer's sales or service
13 facilities; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4
5 Subchapter 10 – Recreational Vehicle Franchise Act

6
7 23-112-1001. Title.

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

10
11 23-112-1002. Legislative findings.

12 The General Assembly finds that:

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

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

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

22 (B) Avoid undue control of the independent recreational
23 vehicle dealer by recreational vehicle manufacturing and distributing
24 organizations;

25 (C) Foster and keep alive vigorous and healthy
26 competition;

27 (D) Prevent the creation or perpetuation of monopolies;

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

31 (F) Prevent false and misleading advertising;

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

34 (H) Promote the public safety and welfare.

35
36 23-112-1003. Definitions.

1 As used in this subchapter:

2 (1) "Area of sales responsibility" means the geographical area
3 agreed to by the dealer and the manufacturer or distributor in a dealer
4 agreement where the dealer has the exclusive right to display or sell the
5 manufacturer or distributor's new recreational vehicles of a particular line-
6 make to the retail public;

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

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

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

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

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

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

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

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

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

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

30 (7) "Family member" means:

31 (A) A spouse;

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

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

36 (8) "Fifth wheel trailer" means a vehicle, mounted on wheels,

1 designed to provide temporary living quarters for recreational, camping, or
 2 travel use of such size and weight as not to require a special highway
 3 movement permit and designed to be towed by a motorized vehicle that contains
 4 a towing mechanism that is mounted above or forward of the tow vehicle's rear
 5 axle;

6 (9) "Folding camping trailer" means a vehicle that is mounted on
 7 wheels and constructed with collapsible partial side walls that fold for
 8 towing by another vehicle and unfold at the campsite to provide temporary
 9 living quarters for recreational, camping, or travel use;

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

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

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

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

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

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

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

26 (12) "Motor home" means a motorized vehicle designed to provide
 27 temporary living quarters for recreational, camping, or travel use of such
 28 size and weight as not to require a special highway movement permit when
 29 towed by a motorized vehicle;

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

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

34 (A) Manufactured by or for a manufacturer; and

35 (B) Sold exclusively by the manufacturer;

36 (15) "Recreational vehicle":

- 1 (A) Means a vehicle that:
2 (i) Is either self-propelled or towed by a consumer-
3 owned tow vehicle;
4 (ii) Is primarily designed to provide temporary
5 living quarters for recreational, camping, or travel use;
6 (iii) Complies with all applicable federal vehicle
7 regulations as existing on January 1, 2013;
8 (iv) Does not require a special-movement permit to
9 legally use the highways; and
10 (v) Contains at least four (4) of the following
11 permanently installed independent life support systems that meet the National
12 Fire Protection Association standard for recreational vehicles as existing on
13 January 1, 2013:
14 (a) A cooking facility with an on-board fuel
15 source;
16 (b) A potable water supply system that
17 includes at least a sink, faucet, and water tank with an exterior service
18 supply connection;
19 (c) A toilet with exterior evacuation;
20 (d) A gas or electric refrigerator;
21 (e) A heating or air conditioning system with
22 an on-board power or fuel source separate from the vehicle engine; or
23 (f) An electric power supply of one hundred
24 ten to one hundred twenty-five (110 - 125) volts; and
25 (B) Includes without limitation a:
26 (i) Motor home;
27 (ii) Travel trailer;
28 (iii) Fifth wheel trailer; and
29 (iv) Folding camping trailer;
30 (16) "Recreational vehicle salesperson" means a person who:
31 (A) Is employed by a dealer as a salesperson whose duties
32 include the selling or offering for sale of recreational vehicles;
33 (B) For compensation of any kind acts as a salesperson,
34 agent, or representative of a dealer;
35 (C) Attempts to or in fact negotiates a sale of a
36 recreational vehicle owned partially or entirely by a dealer; and

1 (D) Uses the financial resources, line of credit, or floor
2 plan of a dealer to purchase, sell, or exchange an interest in a recreational
3 vehicle;

4 (17) "Supplier" means a person, firm, corporation, or business
5 entity that engages in the manufacturing of recreational vehicle parts,
6 accessories, or components;

7 (18) "Transient customer" means a person who:

8 (A) Owns a recreational vehicle;

9 (B) Is temporarily traveling through a dealer's area of
10 sales responsibility;

11 (C) Engages a dealer to perform service work on that
12 recreational vehicle; and

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

16 (19) "Travel trailer" means a vehicle, mounted on wheels,
17 designed to provide temporary living quarters for recreational, camping, or
18 travel use of such size and weight as not to require a special highway
19 movement permit when towed by a motorized vehicle; and

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

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

28
29 23-112-1004. License requirements and application fees.

30 (a) The following acts are unlawful:

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

32 (2) Engaging in the business as, serving in the capacity of, or
33 acting as a new recreational vehicle dealer, recreational vehicle
34 salesperson, recreational vehicle manufacturer, recreational vehicle
35 distributor, recreational vehicle factory representative, or recreational
36 vehicle manufacturer representative in this state without first obtaining a

1 license as provided in this subchapter; or

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

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

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

14 (A) Holds a valid license issued by the Arkansas Motor
15 Vehicle Commission for the make of recreational vehicles being bought, sold,
16 or exchanged; or

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

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

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

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

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

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

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

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

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

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

36 (C) For each recreational vehicle dealer, one hundred

1 dollars (\$100);

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

4 (E) For each branch location, twenty-five dollars
5 (\$25.00); and

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

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

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

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

18
19 23-112-1005. Application for license.

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

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

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

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

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

29 (1) Information relating to:

30 (A) The applicant's business integrity;

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

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

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

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

8 (B) In each instance that a branch license is applied for,
9 each application shall be accompanied by the filing with the commission of a
10 corporate surety bond in the penal sum of twenty-five thousand dollars
11 (\$25,000) on a bond form approved by the commission.

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

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

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

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

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

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

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

35 (2) However, if the dealer agreement has already been filed with
36 the commission in connection with a previous application made by the

1 applicant, the applicant, in lieu of again filing the dealer agreement, shall
2 identify the contract or franchise by appropriate reference and file all
3 revisions and additions, if any, that have been made to the contract or
4 franchise.

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

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

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

13 (3) Will perform repair and warranty services on recreational
14 vehicles at the licensed location.

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

17 (2) A dealer shall:

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

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

26
27 23-112-1006. Issuance of license – Change of location – Change of
28 business or corporate name, structure, or DBA name – Dealers, manufacturers,
29 and distributors.

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

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

1 within this state for a manufacturer or distributor.

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

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

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

12
13 23-112-1007. Display of license – Change of employer – Factory
14 representative and distributor representative.

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

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

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

23
24 23-112-1008. Display of license – Change of employer – Salesperson.

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

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

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

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

36 (2) Within three (3) days following the termination of

1 employment of the licensee, the last employer of the licensee shall make a
2 report to the commission setting forth the reasons that the services of the
3 licensee were terminated and such other information as may be required by the
4 commission;

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

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

14 (C) The hearing and any appeal by the licensee with
15 respect to the hearing shall comply with § 23-112-501 et seq.; and

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

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

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

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

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

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

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

1 suspended.

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

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

8
9 23-112-1009. Expiration of license.

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

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

14 (2) Recreational vehicle dealers and salespersons expire
15 December 31 following the date of issue.

16
17 23-112-1010. Area of sales responsibility.

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

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

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

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

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

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

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

35
36 23-112-1011. Renewal of a dealer agreement – Stocking and sales.

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

5 (b) If subsequent to entering into a dealer agreement a dealer enters
6 into an agreement to sell any competing recreational vehicle products or
7 enters into an agreement to increase its preexisting commitment to sell any
8 competing recreational vehicle products, a manufacturer may revise the area
9 of sales responsibility designated in the dealer agreement if the market
10 penetration of the manufacturer's products is jeopardized by the dealer's
11 subsequent agreements.

12
13 23-112-1012. Termination, cancellation, or nonrenewal of dealer
14 agreement.

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

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

21 (3) If the manufacturer or distributor terminates, cancels or
22 fails to renew the dealer agreement with good cause, the terms of § 23-112-
23 1013 do not apply.

24 (b)(1) The manufacturer or distributor has the burden of showing good
25 cause for terminating, canceling, or not renewing a dealer agreement with a
26 dealer.

27 (2) For purposes of determining whether there is good cause for
28 the proposed action, all of the following factors shall be considered:

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

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

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

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

36 (E) The extent and quality of the dealer's service under

1 warranties associated with recreational vehicles;

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

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

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

10 (2) The notice shall state:

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

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

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

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

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

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

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

36 (C) A significant misrepresentation by the dealer

1 materially affecting the business relationship;

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

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

6 (4) When taking on an additional line-make of recreational
7 vehicle, a dealer shall notify in writing any manufacturer with whom the
8 dealer has a dealer agreement of a competing similar product line at least
9 thirty (30) days before entering into a dealer agreement with the
10 manufacturer of the competing line-make.

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

13 (A) The dealer's insolvency;

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

16 (C) Bankruptcy.

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

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

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

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

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

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

36 (4)(A) If the dealer terminates, cancels, or fails to renew the

1 dealer agreement without good cause, the terms of § 23-112-1013 do not apply.

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

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

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

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

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

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

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

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

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

26
27 23-112-1013. Repurchase of inventory.

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

34 (1)(A) All new, untitled recreational vehicles that were
35 acquired from the manufacturer or distributor within twelve (12) months
36 before the effective date of the notice of termination, cancellation, or

1 nonrenewal that have not been used, except for demonstration purposes, and
2 that have not been altered or damaged, at one hundred percent (100%) of the
3 net invoice cost, including transportation, less applicable rebates and
4 discounts to the dealer.

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

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

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

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

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

25 (ii) The dealer meets the burden of establishing
26 that the diagnostic equipment, special tools, current signage, and other
27 equipment and machinery can no longer be used in the normal course of the
28 dealer's ongoing business.

29 (b) The manufacturer or distributor shall pay the dealer within thirty
30 (30) days after receipt of the returned items.

31
32 23-112-1014. Sale of remaining inventory after termination.

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

36 (b) If recreational vehicles of a line-make are not returned or

1 required to be returned to the manufacturer or distributor, the dealer may
2 continue to sell all line-makes that were subject to the dealer agreement and
3 are currently in stock until those line-makes are no longer in the dealer's
4 inventory.

5
6 23-112-1015. Change of ownership of dealer – Family succession.

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

11 (1) The dealer shall:

12 (A) Provide written notice to the manufacturer at least
13 fifteen (15) days before the proposed closing of the transaction; and

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

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

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

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

27 (C) The prospective transferee does not have:

28 (i) An application for a recreational vehicle
29 dealer's license pending; or

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

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

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

1 (i) Bankruptcy;
2 (ii) Insolvency;
3 (iii) A general assignment for the benefit of
4 creditors; or

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

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

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

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

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

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

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

20 (B) To prevent or refuse to honor the succession to a
21 dealership by a family member unless the manufacturer or distributor has
22 provided to the dealer written notice of its objections within ten (10) days
23 after receipt of the dealer’s modification of the dealer’s succession plan;

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

27 (A) Conviction of the successor of a felony or any crime
28 of fraud, deceit, or moral turpitude in the preceding ten (10) years;

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

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

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

35 (E) The lack of:

36 (i) A pending application for a recreational vehicle

1 dealer's license; or

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

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

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

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

14
15 23-112-1016. Warranty obligation.

16 (a) Each warrantor shall:

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

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

21 (3)(A) Provide the dealer:

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

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

25 (B) The schedule of compensation shall include:

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

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

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

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

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

1 doing business;

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

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

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

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

15 (B) Claims not specifically disapproved in writing within
16 thirty (30) days shall be:

17 (i) Considered to be approved; and

18 (ii) Paid within sixty (60) days of submission.

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

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

23 (A) Performance of nonwarranty repairs;

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

26 (C) Lack of material documentation;

27 (D) Fraud; or

28 (E) Misrepresentation.

29 (c) A dealer shall:

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

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

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

36 (A) Fail to perform any of its warranty obligations with

1 respect to its warranted products;

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

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

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

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

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

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

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

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

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

36 (D) A new recreational vehicle dealer shall provide to a

1 warrantor a copy of any pending lawsuit in which allegations are made that
 2 are covered by this subsection within ten (10) days after receiving notice of
 3 the lawsuit.

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

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

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

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

13 (C) Fail to accurately document the:

14 (i) Time spent completing each repair;

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

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

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

22 (E) Make fraudulent warranty claims; or

23 (F) Misrepresent the terms of a warranty.

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

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

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

35
 36 23-112-1017. Damage to recreational vehicles before arrival at

1 dealership.

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

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

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

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

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

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

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

23 (2) The time frame may not be less than two (2) business days
24 after the physical delivery of the recreational vehicle.

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

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

34
35 23-112-1018. Prohibited activity of a manufacturer or distributor -
36 Coercion.

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

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

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

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

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

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

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

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

16
17 23-112-1019. License – Denial, revocation, and suspension.

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

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

23 (B) The unlawful sale or solicitation of each recreational
24 vehicle constitutes a separate offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (17) Being a manufacturer who fails to specify the delivery and
23 preparation obligations of its recreational vehicle dealers, as is required
24 for the protection of the buying public, before delivery of new recreational
25 vehicles to retail buyers;

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

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

36 (20) Using or permitting the use of special license plates

1 assigned to a licensee for any other purpose than those permitted by law;

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

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

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

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

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

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

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

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

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

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

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

34
35 23-112-1020. Monetary penalty in lieu of suspension or revocation of
36 license – Civil penalty.

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

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

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

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

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

18 (2)(A) If the commission finds that there is sufficient cause
19 upon which to base the revocation of a license, the amount of the monetary
20 penalty in lieu of revocation shall not exceed ten thousand dollars
21 (\$10,000).

22 (B)(i) If the commission finds that there is sufficient
23 cause upon which to base the suspension of a license, the amount of the
24 monetary penalty in lieu of suspension shall not be less than fifty dollars
25 (\$50.00) nor more than five hundred dollars (\$500) per day for each day the
26 license would otherwise be suspended.

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

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

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

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

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

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

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

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

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

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

22 (C) The commission may impose a penalty not to exceed two
23 thousand five hundred dollars (\$2,500) for a second violation, with the
24 penalty increasing in increments of two thousand five hundred dollars
25 (\$2,500) for each subsequent violation.

26
27 23-112-1021. Enforcement.

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

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

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

36 (3) The commission finds that the current civil or

1 administrative penalties are insufficient.

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

4
5 23-112-1022. Civil action and mediation.

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

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

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

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

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

18 (2) The demand for mediation shall:

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

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

23 (3)(A) Within twenty (20) days after the date on which a demand
24 for mediation is served, the parties shall:

25 (i) Mutually select an independent certified
26 mediator; and

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

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

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

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

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

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

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

9 (5) The parties to the mediation shall:

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

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

12
13 23-112-1023. Injunction.

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

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

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

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

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

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

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

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

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