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HB 7205, Engrossed 1

2007 Legislature

1 A bill to be entitled
2 An act relating to recreational vehicle manufacturers,
3 distributors, dealers, and importers; creating s.
4 320.3201, F.S.; providing legislative intent; creating s.
5 320.3202, F.S.; providing definitions; creating s.
6 320.3203, F.S.; providing requirements for a
7 manufacturer/dealer agreement; requiring designation of
8 the area of sales responsibility; providing conditions for
9 sales outside the dealer's area of sales responsibility;
10 creating s. 320.3205, F.S.; providing requirements and
11 procedures for termination, cancellation, or nonrenewal of
12 a manufacturer/dealer agreement by a manufacturer or a
13 dealer; providing for the repurchase by the manufacturer
14 of vehicles, accessories, parts and equipment, tools,
15 signage, and machinery; requiring notification of a
16 manufacturer when a dealer takes on an additional line-
17 make; creating s. 320.3206, F.S.; providing for change in
18 ownership by a dealer; requiring notice to the
19 manufacturer; providing requirements for objection by the
20 manufacturer; providing for a dealer to name a family
21 member as a successor in case of retirement,
22 incapacitation, or death of the dealer; providing
23 requirements for objection to the successor by the
24 manufacturer; creating s. 320.3207, F.S.; providing
25 requirements for warrantors, manufacturers, and dealers
26 with respect to warranty obligations; providing
27 requirements for compensation of the dealer; authorizing
28 warranty audits by the warrantor; requiring cause for

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29 denial of compensation; providing for disposition of
 30 warranty claims; prohibiting certain acts by the warrantor
 31 and the dealer; requiring notice of certain pending suits;
 32 creating s. 320.3208, F.S.; providing for inspection and
 33 rejection of a recreational vehicle upon delivery to a
 34 dealer; creating s. 320.3209, F.S.; prohibiting a
 35 manufacturer or distributor from coercing a dealer to
 36 perform certain acts; creating s. 320.3210, F.S.;
 37 providing for resolution when a dealer, manufacturer,
 38 distributor, or warrantor is injured by another party's
 39 violation; authorizing civil action; providing for
 40 mediation; providing for remedies; creating s. 320.3211,
 41 F.S.; providing administrative and criminal penalties for
 42 violations; providing for an administrative hearing to
 43 contest a penalty imposed by the department; amending s.
 44 320.8225, F.S.; providing licensure requirements for
 45 distributors and importers; providing for severability;
 46 providing an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Section 320.3201, Florida Statutes, is created
 51 to read:

52 320.3201 Legislative intent.--

53 (1) It is the intent of the Legislature to protect the
 54 public health, safety, and welfare of the residents of the state
 55 by regulating the relationship between recreational vehicle
 56 dealers and manufacturers, maintaining competition, and

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57 providing consumer protection and fair trade.

58 (2) It is the intent of the Legislature that the
 59 provisions of ss. 320.3201-320.3211 be applied to
 60 manufacturer/dealer agreements entered into on or after October
 61 1, 2007.

62 Section 2. Section 320.3202, Florida Statutes, is created
 63 to read:

64 320.3202 Definitions.--As used in ss. 320.3201-320.3211,
 65 the term:

66 (1) "Area of sales responsibility" means the geographical
 67 area agreed to by the dealer and the manufacturer in the
 68 manufacturer/dealer agreement within which the dealer has the
 69 exclusive right to display or sell the manufacturer's new
 70 recreational vehicles of a particular line-make.

71 (2) "Dealer" means any person, firm, corporation, or
 72 business entity licensed or required to be licensed under s.
 73 320.771.

74 (3) "Distributor" means any person, firm, corporation, or
 75 business entity that purchases new recreational vehicles for
 76 resale to dealers.

77 (4) "Factory campaign" means an effort on the part of a
 78 warrantor to contact recreational vehicle owners or dealers in
 79 order to address a part or equipment issue.

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

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

84 (a) Are identified by a common series trade name or

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85 trademark;

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

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

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

97 (e) The manufacturer/dealer agreement authorizes a dealer
98 to sell.

99 (7) "Manufacturer" means any person, firm, corporation, or
100 business entity that engages in the manufacturing of
101 recreational vehicles.

102 (8) "Manufacturer/dealer agreement" means a written
103 agreement or contract entered into between a manufacturer and a
104 dealer that fixes the rights and responsibilities of the parties
105 and pursuant to which the dealer sells new recreational
106 vehicles.

107 (9) "Proprietary part" means any part manufactured by or
108 for and sold exclusively by the manufacturer.

109 (10) "Recreational vehicle" means the category of motor
110 vehicle described in s. 320.01(1)(b).

111 (11) "Transient customer" means a customer who is
112 temporarily traveling through a dealer's area of sales

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113 responsibility.

114 (12) "Warrantor" means any person, firm, corporation, or
115 business entity that gives a warranty in connection with a new
116 recreational vehicle or parts, accessories, or components
117 thereof. The term does not include service contracts, mechanical
118 or other insurance, or extended warranties sold for separate
119 consideration by a dealer or other person not controlled by a
120 manufacturer.

121 Section 3. Section 320.3203, Florida Statutes, is created
122 to read:

123 320.3203 Requirement for a written manufacturer/dealer
124 agreement; area of sales responsibility.--

125 (1) A manufacturer or distributor may not sell a
126 recreational vehicle in this state to or through a dealer
127 without having first entered into a manufacturer/dealer
128 agreement with a dealer which has been signed by both parties.

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

134 (3) The area of sales responsibility may not be reviewed
135 or changed until 1 year after the execution of the
136 manufacturer/dealer agreement.

137 (4) A motor vehicle dealer may not sell a new recreational
138 vehicle in this state without having first entered into a
139 manufacturer/dealer agreement with a manufacturer or distributor
140 and may not sell outside of the area of sales responsibility

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141 designated in the agreement.

142 (5) Notwithstanding subsection (4), a dealer may sell
 143 outside of its designated area of sales responsibility if the
 144 dealer obtains an offsite/supplemental license pursuant to s.
 145 320.771(7) and meets any one of the following conditions:

146 (a) For sales of the same line-make within another
 147 dealer's designated area of sales responsibility, the dealer
 148 must obtain in advance of the off-premise sale a written
 149 agreement signed by the dealer, the manufacturer of the
 150 recreational vehicles to be sold at the off-premise sale, and
 151 the dealer in whose designated area of sales responsibility the
 152 off-premise sale will occur which:

153 1. Designates the line-make of the recreational vehicles
 154 to be sold;

155 2. Sets forth the time period for the off-premise sale;
 156 and

157 3. Affirmatively authorizes the sale of the same line-make
 158 of the recreational vehicles.

159 (b) The off-premise sale is not located within any
 160 dealer's designated area of sales responsibility and is in
 161 conjunction with a public vehicle show.

162 (c) The off-premise sale is in conjunction with a public
 163 vehicle show in which more than 35 dealers are participating and
 164 the show is predominantly funded by manufacturers. For the
 165 purposes of this subsection, the term "public vehicle show"
 166 means an event sponsored by an organization approved under s.
 167 501(c)(6) of the Internal Revenue Code which has the purpose of
 168 promoting the welfare of the recreational vehicle industry and

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- 169 is located at a site that:
 170 1. Will be used to display and sell recreational vehicles;
 171 2. Is not used for off-premise sales for more than 10 days
 172 in a calendar year; and
 173 3. Is not the location set forth on any dealer's license
 174 as its place of business.

175 Section 4. Section 320.3205, Florida Statutes, is created
 176 to read:

177 320.3205 Termination, cancellation, and nonrenewal of a
 178 manufacturer/dealer agreement.--

179 (1) A manufacturer or distributor, directly or through any
 180 officer, agent, or employee, may not terminate, cancel, or fail
 181 to renew a manufacturer/dealer agreement without good cause,
 182 and, upon renewal, may not require additional inventory stocking
 183 requirements or increased retail sales targets in excess of the
 184 market growth in the dealer's area of sales responsibility.

185 (a) The manufacturer or distributor has the burden of
 186 showing good cause for terminating, canceling, or failing to
 187 renew a manufacturer/dealer agreement with a dealer. For
 188 purposes of determining whether there is good cause for the
 189 proposed action, any of the following factors may be considered:

- 190 1. The extent of the affected dealer's penetration in the
 191 relevant market area.
 192 2. The nature and extent of the dealer's investment in its
 193 business.
 194 3. The adequacy of the dealer's service facilities,
 195 equipment, parts, supplies, and personnel.
 196 4. The effect of the proposed action on the community.

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197 5. The extent and quality of the dealer's service under
 198 recreational vehicle warranties.

199 6. The failure to follow agreed-upon procedures or
 200 standards related to the overall operation of the dealership.

201 7. The dealer's performance under the terms of its
 202 manufacturer/dealer agreement.

203 (b) Except as otherwise provided in this section, a
 204 manufacturer or distributor shall provide a dealer with at least
 205 120 days' prior written notice of termination, cancellation, or
 206 nonrenewal of the manufacturer/dealer agreement.

207 1. The notice must state all reasons for the proposed
 208 termination, cancellation, or nonrenewal and must further state
 209 that if, within 30 days following receipt of the notice, the
 210 dealer provides to the manufacturer or distributor a written
 211 notice of intent to cure all claimed deficiencies, the dealer
 212 will then have 120 days following receipt of the notice to
 213 rectify the deficiencies. If the deficiencies are rectified
 214 within 120 days, the manufacturer's or distributor's notice is
 215 voided. If the dealer fails to provide the notice of intent to
 216 cure the deficiencies in the prescribed time period, the
 217 termination, cancellation, or nonrenewal takes effect 30 days
 218 after the dealer's receipt of the notice unless the dealer has
 219 new and untitled inventory on hand that may be disposed of
 220 pursuant to subsection (3).

221 2. The notice period may be reduced to 30 days if the
 222 grounds for termination, cancellation, or nonrenewal are due to:

223 a. A dealer or one of its owners being convicted of, or
 224 entering a plea of nolo contendere to, a felony;

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225 b. The abandonment or closing of the business operations
 226 of the dealer for 10 consecutive business days unless the
 227 closing is due to an act of God, strike, labor difficulty, or
 228 other cause over which the dealer has no control;

229 c. A significant misrepresentation by the dealer
 230 materially affecting the business relationship; or

231 d. A suspension or revocation of the dealer's license, or
 232 refusal to renew the dealer's license, by the department.

233 3. The notice provisions of this paragraph do not apply if
 234 the reason for termination, cancellation, or nonrenewal is
 235 insolvency, the occurrence of an assignment for the benefit of
 236 creditors, or bankruptcy.

237 (2) A dealer may terminate, cancel, or not renew its
 238 manufacturer/dealer agreement with a manufacturer or distributor
 239 with or without cause at any time by giving 30 days' written
 240 notice to the manufacturer. If the termination, cancellation, or
 241 nonrenewal is for cause, the dealer has the burden of showing
 242 good cause. Any of the following items shall be deemed good
 243 cause for the proposed action by a dealer:

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

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

250 (c) A significant misrepresentation by the manufacturer
 251 materially affecting the business relationship.

252 (d) A material violation of ss. 320.3201-320.3211 which is

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253 not cured within 30 days after written notice by the dealer.

254 (e) A declaration by the manufacturer of bankruptcy,
255 insolvency, or the occurrence of an assignment for the benefit
256 of creditors or bankruptcy.

257 (3) If the manufacturer/dealer agreement is terminated,
258 canceled, or not renewed by the manufacturer or distributor
259 without cause or by the dealer for cause, the manufacturer
260 shall, at the election of the dealer and within 45 days after
261 termination, cancellation, or nonrenewal, repurchase:

262 (a) All new, untitled recreational vehicles that were
263 acquired from the manufacturer or distributor within 18 months
264 before the date of the notice of termination, cancellation, or
265 nonrenewal that have not been used, except for demonstration
266 purposes, and that have not been altered or damaged, at 100
267 percent of the net invoice cost, including transportation, less
268 applicable rebates and discounts to the dealer. If any of the
269 vehicles repurchased is damaged, the amount due to the dealer
270 shall be reduced by the cost to repair the damaged vehicle.
271 Damage prior to delivery to the dealer will not disqualify
272 repurchase under this subsection;

273 (b) All undamaged accessories and proprietary parts sold
274 to the dealer for resale within the 12 months prior to
275 termination, cancellation, or nonrenewal, if accompanied by the
276 original invoice, at 105 percent of the original net price paid
277 to the manufacturer or distributor to compensate the dealer for
278 handling, packing, and shipping the parts; and

279 (c) Any properly functioning diagnostic equipment, special
280 tools, current signage, and other equipment and machinery at 100

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281 percent of the dealer's net cost plus freight, destination,
 282 delivery, and distribution charges and sales taxes, if any, if
 283 it was purchased by the dealer within 5 years before
 284 termination, cancellation, or nonrenewal and upon the
 285 manufacturer's or distributor's request and can no longer be
 286 used in the normal course of the dealer's ongoing business.

287
 288 The manufacturer or distributor shall pay the dealer within 30
 289 days after receipt of the returned items.

290 (4) When taking on an additional line-make of recreational
 291 vehicle, a dealer shall notify in writing any manufacturer with
 292 whom the dealer has a manufacturer/dealer agreement of the same
 293 line-make at least 30 days prior to entering into a
 294 manufacturer/dealer agreement with the manufacturer of the
 295 additional line-make.

296 Section 5. Section 320.3206, Florida Statutes, is created
 297 to read:

298 320.3206 Transfer of ownership; family succession.--

299 (1) If a dealer desires to make a change in ownership by
 300 the sale of the business assets, stock transfer, or otherwise,
 301 the dealer shall give the manufacturer or distributor written
 302 notice at least 10 business days before the closing, including
 303 all supporting documentation as may be reasonably required by
 304 the manufacturer or distributor to determine if an objection to
 305 the sale may be made. In the absence of a breach by the selling
 306 dealer of its dealer agreement or this chapter, the manufacturer
 307 or distributor shall not object to the proposed change in
 308 ownership unless the prospective transferee:

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309 (a) Has previously been terminated by the manufacturer for
310 breach of its dealer agreement;

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

313 (c) Lacks any license required by law;

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

316 (e) Has undergone in the last 10 years bankruptcy,
317 insolvency, a general assignment for the benefit of creditors,
318 or the appointment of a receiver, trustee, or conservator to
319 take possession of the transferee's business or property.

320 (2) If the manufacturer or distributor objects to a
321 proposed change of ownership, the manufacturer or distributor
322 shall give written notice of its reasons to the dealer within 7
323 business days after receipt of the dealer's notification and
324 complete documentation. The manufacturer or distributor has the
325 burden of proof with regard to its objection. If the
326 manufacturer or distributor does not give timely notice of its
327 objection, the change or sale shall be deemed approved.

328 (3) (a) It is unlawful for a manufacturer or distributor to
329 fail to provide a dealer an opportunity to designate, in
330 writing, a family member as a successor to the dealership in the
331 event of the death, incapacity, or retirement of the dealer. It
332 is unlawful to prevent or refuse to honor the succession to a
333 dealership by a family member of the deceased, incapacitated, or
334 retired dealer unless the manufacturer or distributor has
335 provided to the dealer written notice of its objections within
336 10 days after receipt of the dealer's modification of the

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337 dealer's succession plan. In the absence of a breach of the
338 dealer agreement, the manufacturer may object to the succession
339 for the following reasons only:

340 1. Conviction of the successor of a felony or any crime of
341 fraud, deceit, or moral turpitude;

342 2. Bankruptcy or insolvency of the successor during the
343 past 10 years;

344 3. Prior termination by the manufacturer of the successor
345 for breach of a dealer agreement;

346 4. The lack of an active line of credit for the successor
347 sufficient to purchase the manufacturer's product; or

348 5. The lack of any license for the successor required by
349 law.

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

356 Section 6. Section 320.3207, Florida Statutes, is created
357 to read:

358 320.3207 Warranty obligations.--

359 (1) Each warrantor shall:

360 (a) Specify in writing to each of its dealer obligations,
361 if any, for preparation, delivery, and warranty service on its
362 products;

363 (b) Compensate the dealer for warranty service required of
364 the dealer by the warrantor; and

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365 (c) Provide the dealer the schedule of compensation to be
366 paid and the time allowances for the performance of any work and
367 service.

368
369 The schedule of compensation must include reasonable
370 compensation for diagnostic work as well as warranty labor.

371 (2) Time allowances for the diagnosis and performance of
372 warranty labor must be reasonable for the work to be performed.
373 The compensation of a dealer for warranty labor may not be less
374 than the lowest retail labor rates actually charged by the
375 dealer for like nonwarranty labor as long as such rates are
376 reasonable.

377 (3) The warrantor shall reimburse the dealer for warranty
378 parts at actual wholesale cost plus a minimum 30-percent
379 handling charge and the cost, if any, of freight to return
380 warranty parts to the warrantor.

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

387 (5) The dealer shall submit warranty claims within 45 days
388 after completing work.

389 (6) The dealer shall notify the warrantor verbally or in
390 writing if the dealer is unable to perform material or
391 repetitive warranty repairs as soon as is reasonably possible.

392 (7) The warrantor shall disapprove warranty claims in

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393 writing within 45 days after the date of submission by the
 394 dealer in the manner and form prescribed by the warrantor.
 395 Claims not specifically disapproved in writing within 45 days
 396 shall be construed to be approved and must be paid within 60
 397 days.

398 (8) It is a violation of ss. 320.3201-320.3211 for any
 399 warrantor to:

400 (a) Fail to perform any of its warranty obligations with
 401 respect to its warranted products;

402 (b) Fail to include, in written notices of factory
 403 campaigns to recreational vehicle owners and dealers, the
 404 expected date by which necessary parts and equipment, including
 405 tires and chassis or chassis parts, will be available to dealers
 406 to perform the campaign work. The warrantor may ship parts to
 407 the dealer to effect the campaign work, and, if such parts are
 408 in excess of the dealer's requirements, the dealer may return
 409 unused parts to the warrantor for credit after completion of the
 410 campaign;

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

416 (d) Fail to compensate any of its dealers for authorized
 417 warranty service in accordance with the schedule of compensation
 418 provided to the dealer pursuant to this section if performed in
 419 a timely and competent manner;

420 (e) Intentionally misrepresent in any way to purchasers of

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421 recreational vehicles that warranties with respect to the
 422 manufacture, performance, or design of the vehicle are made by
 423 the dealer as warrantor or cowarrantor; or

424 (f) Require the dealer to make warranties to customers in
 425 any manner related to the manufacture of the recreational
 426 vehicle.

427 (9) It is a violation of ss. 320.3201-320.3211 for any
 428 dealer to:

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

431 (b) Fail to perform warranty service work authorized by
 432 the warrantor in a reasonably competent and timely manner on any
 433 transient customer's vehicle of the same line-make; or

434 (c) Misrepresent the terms of any warranty.

435 (10) Notwithstanding the terms of any manufacturer/dealer
 436 agreement, it is a violation of ss. 320.3201-320.3211 for:

437 (a) A warrantor to fail to indemnify and hold harmless its
 438 dealer against any losses or damages to the extent such losses
 439 or damages are caused by the negligence or willful misconduct of
 440 the warrantor. The dealer may not be denied indemnification for
 441 failing to discover, disclose, or remedy a defect in the design
 442 or manufacturing of the recreational vehicle. The dealer shall
 443 provide to the warrantor a copy of any suit in which allegations
 444 are made that come within this subsection within 10 days after
 445 receiving such suit.

446 (b) A dealer to fail to indemnify and hold harmless its
 447 warrantor against any losses or damages to the extent such
 448 losses or damages are caused by the negligence or willful

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449 misconduct of the dealer. The warrantor shall provide to the
 450 dealer a copy of any suit in which allegations are made that
 451 come within this subsection within 10 days after receiving such
 452 suit.

453 Section 7. Section 320.3208, Florida Statutes, is created
 454 to read:

455 320.3208 Inspection and rejection by the dealer.--

456 (1) Whenever a new recreational vehicle is damaged prior
 457 to transit to the dealer or is damaged in transit to the dealer
 458 when the carrier or means of transportation has been selected by
 459 the manufacturer or distributor, the dealer shall notify the
 460 manufacturer or distributor of the damage within the timeframe
 461 specified in the manufacturer/dealer agreement and:

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

465 (b) Reject the vehicle within the timeframe set forth in
 466 subsection (3).

467
 468 If the manufacturer or distributor refuses or fails to authorize
 469 repair of such damage within 10 days after receipt of
 470 notification or if the dealer rejects the recreational vehicle
 471 because of damage, ownership of the new recreational vehicle
 472 reverts to the manufacturer or distributor.

473 (2) The dealer shall exercise due care in custody of the
 474 damaged recreational vehicle, but the dealer shall have no other
 475 obligations, financial or otherwise, with respect to that
 476 recreational vehicle.

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477 (3) The timeframe for inspection and rejection by the
 478 dealer must be part of the manufacturer/dealer agreement and may
 479 not be less than 2 business days after the physical delivery of
 480 the recreational vehicle.

481 (4) Any recreational vehicle that has, at the time of
 482 delivery to the dealer, an unreasonable amount of miles on its
 483 odometer, as determined by the dealer, may be subject to
 484 rejection by the dealer and reversion of the vehicle to the
 485 manufacturer or distributor. In no instance shall a dealer deem
 486 an amount less than the distance between the dealer and the
 487 manufacturer's factory or a distributor's point of distribution,
 488 plus 100 miles, as unreasonable.

489 Section 8. Section 320.3209, Florida Statutes, is created
 490 to read:

491 320.3209 Coercion of dealer prohibited.--

492 (1) A manufacturer or distributor may not coerce or
 493 attempt to coerce a dealer to:

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

495 (b) Enter into an agreement with the manufacturer or
 496 distributor;

497 (c) Take any action that is unfair or unreasonable to the
 498 dealer; or

499 (d) Enter into an agreement that requires the dealer to
 500 submit its disputes to binding arbitration or otherwise waive
 501 rights or responsibilities provided under ss. 320.3201-320.3211.

502 (2) As used in this section, the term "coerce" includes,
 503 but is not limited to, threatening to terminate, cancel, or not
 504 renew a manufacturer/dealer agreement without good cause or

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505 threatening to withhold product lines or delay product delivery
506 as an inducement to amending the manufacturer/dealer agreement.

507 Section 9. Section 320.3210, Florida Statutes, is created
508 to read:

509 320.3210 Civil dispute resolution; mediation; relief.--

510 (1) A dealer, manufacturer, distributor, or warrantor
511 injured by another party's violation of ss. 320.3201-320.3211
512 may bring a civil action in circuit court to recover actual
513 damages. The court shall award attorney's fees and costs to the
514 prevailing party in such action. Venue for any civil action
515 authorized by this section must exclusively be in the county in
516 which the dealership is located. In an action involving more
517 than one dealer, venue may be in any county in which a dealer
518 who is party to the action is located.

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

522 (a) The demand for mediation shall be served upon the
523 offending party via certified mail at the address stated within
524 the agreement between the parties. In the event of a civil
525 action between two dealers, the demand must be mailed to the
526 address on the dealer's license filed with the department.

527 (b) The demand for mediation must contain a brief
528 statement of the dispute and the relief sought by the party
529 filing the demand.

530 (c) Within 20 days after the date a demand for mediation
531 is served, the parties shall mutually select an independent
532 certified mediator and meet with the mediator for the purpose of

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533 attempting to resolve the dispute. The meeting place must be in
534 this state in a location selected by the mediator. The mediator
535 may extend the date of the meeting for good cause shown by
536 either party or upon stipulation of both parties.

537 (d) The service of a demand for mediation under this
538 subsection stays the time for the filing of any complaint,
539 petition, protest, or action under ss. 320.3201-320.3211 until
540 representatives of both parties have met with a mutually
541 selected mediator for the purpose of attempting to resolve the
542 dispute. If a complaint, petition, protest, or action is filed
543 before that meeting, the court shall enter an order suspending
544 the proceeding or action until the meeting has occurred and may,
545 upon written stipulation of all parties to the proceeding or
546 action that they wish to continue to mediate under this
547 subsection, enter an order suspending the proceeding or action
548 for as long a period as the court considers appropriate. A
549 suspension order issued under this paragraph may be revoked by
550 the court.

551 (e) The parties to the mediation shall bear their own
552 costs for attorney's fees and divide equally the cost of the
553 mediator.

554 (3) In addition to the remedies provided in this section
555 and notwithstanding the existence of any additional remedy at
556 law, a dealer or manufacturer may apply to a circuit court for
557 the grant, upon a hearing and for cause shown, of a temporary or
558 permanent injunction, or both, restraining any person from
559 acting as a dealer, manufacturer, distributor, or importer
560 without being properly licensed pursuant to this chapter, from

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561 violating or continuing to violate any of the provisions of ss.
 562 320.3201-320.3211, or from failing or refusing to comply with
 563 the requirements of ss. 320.3201-320.3211. Such injunction shall
 564 be issued without bond. A single act in violation of s. 320.3203
 565 is sufficient to authorize the issuance of an injunction.

566 Section 10. Section 320.3211, Florida Statutes, is created
 567 to read:

568 320.3211 Penalties.--

569 (1) The department may suspend or revoke any license
 570 issued under s. 320.771 upon a finding that the dealer,
 571 manufacturer, distributor, or importer violated any provision of
 572 ss. 320.3201-320.3211. The department may impose, levy, and
 573 collect by legal process fines, in an amount not to exceed
 574 \$1,000 for each violation, against any person if it finds that
 575 such person has violated any provision of ss. 320.3201-320.3211.
 576 Such person is entitled to an administrative hearing pursuant to
 577 chapter 120 to contest the action or fine levied, or about to be
 578 levied, against the person.

579 (2) In addition to the civil and administrative remedies,
 580 a person who violates any provision of ss. 320.3201-320.3211
 581 commits a misdemeanor of the second degree, punishable as
 582 provided in s. 775.082 or s. 775.083.

583 Section 11. Section 320.8225, Florida Statutes, is amended
 584 to read:

585 320.8225 Mobile home and recreational vehicle
 586 manufacturer, distributor, and importer license ~~manufacturer's~~
 587 license.--

588 (1) LICENSE REQUIRED.--Any person who engages in the

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589 business of a mobile home manufacturer or a recreational vehicle
 590 manufacturer, distributor, or importer in this state, or who
 591 manufactures mobile homes or recreational vehicles out of state
 592 which are ultimately offered for sale in this state, shall
 593 obtain annually a license for each factory location in this
 594 state and for each factory location out of state which
 595 manufactures mobile homes or recreational vehicles for sale in
 596 this state, prior to distributing or importing mobile homes or
 597 recreational vehicles for sale in this state.

598 (2) APPLICATION.--The application for a license must ~~shall~~
 599 be in the form prescribed by the department and ~~shall~~ contain
 600 sufficient information to disclose the identity, location, and
 601 responsibility of the applicant. The application must ~~shall~~ also
 602 include a copy of the warranty and a complete statement of any
 603 service agreement or policy to be utilized by the applicant, any
 604 information relating to the applicant's solvency and financial
 605 standing, and any other pertinent matter commensurate with
 606 safeguarding the public. The department may prescribe an
 607 abbreviated application for renewal of a license if the licensee
 608 has had previously filed an initial application pursuant to this
 609 section. The application for renewal must ~~shall~~ include any
 610 information necessary to make ~~bring~~ current the information
 611 required in the initial application.

612 (3) FEES.--Upon submitting an ~~making~~ initial application,
 613 the applicant shall pay to the department a fee of \$300. Upon
 614 submitting a ~~making~~ renewal application, the applicant shall pay
 615 to the department a fee of \$100. Any applicant for renewal who
 616 fails ~~has failed~~ to submit his or her renewal application by

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617 | October 1 shall pay a renewal application fee equal to the
 618 | original application fee. No fee is refundable. All fees must
 619 | ~~shall~~ be deposited into the General Revenue Fund.

620 | (4) NONRESIDENT.--Any person applying for a license who is
 621 | not a resident of this state must designate ~~shall have~~
 622 | ~~designated~~ an agent for service of process pursuant to s.
 623 | 48.181.

624 | (5) REQUIREMENT OF ASSURANCE.--

625 | (a) Annually, prior to the receipt of a license to
 626 | manufacture mobile homes, the applicant or licensee shall submit
 627 | a surety bond, cash bond, or letter of credit from a financial
 628 | institution, or a proper continuation certificate, sufficient to
 629 | assure satisfaction of claims against the licensee for failure
 630 | to comply with appropriate code standards, failure to provide
 631 | warranty service, or violation of any provisions of this
 632 | section. The amount of the surety bond, cash bond, or letter of
 633 | credit must ~~shall~~ be \$50,000. Only one surety bond, cash bond,
 634 | or letter of credit shall be required for each manufacturer,
 635 | regardless of the number of factory locations. The surety bond,
 636 | cash bond, or letter of credit must ~~shall~~ be to the department,
 637 | in favor of any retail customer who suffers a ~~shall suffer~~ loss
 638 | arising out of noncompliance with code standards or failure to
 639 | honor or provide warranty service. The department may ~~shall have~~
 640 | ~~the right to~~ disapprove any bond or letter of credit that does
 641 | not provide assurance as provided in this section.

642 | (b) Annually, prior to the receipt of a license to
 643 | manufacture, distribute, or import recreational vehicles, the
 644 | applicant or licensee shall submit a surety bond, or a proper

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645 continuation certificate, sufficient to assure satisfaction of
 646 claims against the licensee for failure to comply with
 647 appropriate code standards, failure to provide warranty service,
 648 or violation of any provisions of this section. The amount of
 649 the surety bond must ~~shall~~ be \$10,000 per year. The surety bond
 650 must ~~shall~~ be to the department, in favor of any retail customer
 651 who suffers ~~shall suffer~~ loss arising out of noncompliance with
 652 code standards or failure to honor or provide warranty service.
 653 The department may ~~shall have the right to~~ disapprove any bond
 654 that ~~which~~ does not provide assurance as provided in this
 655 section.

656 (c) The department shall adopt rules pursuant to chapter
 657 120 relating to ~~consistent with this section in~~ providing
 658 assurance of satisfaction of claims under this section.

659 (d) The department shall, upon denial, suspension, or
 660 revocation of any license, notify the surety company of the
 661 licensee, in writing, that the license has been denied,
 662 suspended, or revoked and shall state the reason for such
 663 denial, suspension, or revocation.

664 (e) Any surety company that ~~which~~ pays any claim against
 665 the bond of any licensee shall notify the department, in
 666 writing, that it has paid such a claim and shall state the
 667 amount of the claim.

668 (f) Any surety company that ~~which~~ cancels the bond of any
 669 licensee shall notify the department, in writing, of such
 670 cancellation, giving reason for the cancellation.

671 (6) LICENSE YEAR.--A license issued to a mobile home
 672 manufacturer or a recreational vehicle manufacturer,

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673 distributor, or importer entitles the licensee to conduct ~~the~~
 674 ~~business of a mobile home or recreational vehicle manufacturer~~
 675 for a period of 1 year from October 1 preceding the date of
 676 issuance.

677 (7) DENIAL OF LICENSE.--The department may deny a mobile
 678 home manufacturer or a recreational vehicle manufacturer,
 679 distributor, or importer ~~manufacturer's~~ license on the ground
 680 that:

681 (a) The applicant has made a material misstatement in his
 682 or her application for a license.

683 (b) The applicant has failed to comply with any applicable
 684 provision of this chapter.

685 (c) The applicant has failed to provide warranty service.

686 (d) The applicant or one or more of his or her principals
 687 or agents has violated any law, rule, or regulation relating to
 688 the manufacture or sale of mobile homes or recreational
 689 vehicles.

690 (e) The department has proof of the unfitness of the
 691 applicant.

692 (f) The applicant or licensee has engaged in previous
 693 conduct in any state which would have been a ground for
 694 revocation or suspension of a license in this state.

695 (g) The applicant or licensee has violated any provision
 696 of the ~~provisions of the~~ National Mobile Home Construction and
 697 Safety Standards Act of 1974 or any related rule or regulation
 698 adopted by ~~of~~ the Department of Housing and Urban Development
 699 ~~promulgated thereunder.~~

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701 Upon denial of a license, the department shall notify the
 702 applicant within 10 days, stating in writing its grounds for
 703 denial. The applicant is entitled to an administrative ~~a public~~
 704 hearing and may request that such hearing be held within 45 days
 705 of denial of the license. All proceedings must ~~shall~~ be pursuant
 706 to chapter 120.

707 (8) REVOCATION OR SUSPENSION OF LICENSE.--The department
 708 shall suspend or, in the case of a subsequent offense, shall
 709 revoke any license upon a finding that the licensee violated any
 710 provision of this chapter or any other law of this state
 711 regarding the manufacture, warranty, or sale of mobile homes or
 712 recreational vehicles. The department may reinstate the license
 713 if it ~~When any license has been revoked or suspended by the~~
 714 ~~department, it may be reinstated if the department~~ finds that
 715 the former licensee has complied with all applicable
 716 requirements of this chapter and an application for a license is
 717 refiled pursuant to this section.

718 (9) CIVIL PENALTIES; PROCEDURE.--~~In addition to the~~
 719 ~~exercise of other powers provided in this section,~~ The
 720 department is authorized to assess, impose, levy, and collect by
 721 legal process a civil penalty, in an amount not to exceed \$1,000
 722 for each violation, against any licensee if it finds that a
 723 licensee has violated any provision of this section or has
 724 violated any other law of this state having to do with dealing
 725 in motor vehicles. A ~~Any~~ licensee is ~~shall be~~ entitled to a
 726 hearing pursuant to chapter 120 ~~should the licensee wish to~~
 727 contest the fine levied, or about to be levied, upon him or her.

728 Section 12. If any provision of this act or the

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729 application thereof to any person or circumstance is held
730 invalid, the invalidity does not affect other provisions or
731 applications of the act which can be given effect without the
732 invalid provision or application and, to this end, the
733 provisions of this act are severable.

734 Section 13. This act shall take effect October 1, 2007.