

1 SB364
2 164594-1
3 By Senator Reed
4 RFD: Judiciary
5 First Read: 09-APR-15

2
3
4
5
6
7
8 SYNOPSIS: Existing law does not specifically prohibit
9 manufacturers, distributors, and dealers of
10 powersports vehicles from selling the vehicles
11 without first entering into a manufacturer's and
12 dealer's agreement.

13 This bill would prohibit manufacturers,
14 distributors, and dealers of powersports vehicles
15 from selling the vehicles without first entering
16 into a manufacturer's and dealer's agreement.

17 This bill would provide the requirements for
18 the agreement.

19 This bill would provide for the termination,
20 cancellation, nonrenewal, or alteration of the
21 agreement.

22 This bill would provide for the repurchase
23 of the inventory.

24 This bill would provide for the transfer of
25 the ownership interest in a dealership.

26 This bill would provide for the obligation
27 of a warrantor.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT

5
6 Relating to manufacturers, distributors, and dealers
7 of powersports vehicles; to prohibit manufacturers,
8 distributors, and dealers from selling powersports vehicles
9 without having first entered into a dealer agreement; to
10 provide for termination, cancellation, nonrenewal, or
11 alteration of the agreement; to provide for repurchase of
12 inventory; to provide for the transfer of an ownership
13 interest in a dealership; to provide for obligations of a
14 warrantor; and to amend Section 8-20-2, Code of Alabama 1975,
15 to provide that the Motor Vehicle Franchise Act will not apply
16 to any dealer agreement between powersports vehicle
17 manufacturers and dealers to the extent that such agreement
18 relates to the sales of powersports vehicles.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. It is the intent of the Legislature to
21 protect the public health, safety, and welfare of the
22 residents of the state by regulating the relationship between
23 powersports vehicle dealers, manufacturers, and distributors,
24 by maintaining competition, and by providing consumer
25 protection and fair trade.

26 Section 2. As used in this act, the following words
27 shall have the following meanings:

1 (1) COERCE. The failure to act in good faith in
2 performing or complying with any term or provision of the
3 dealer agreement, except that recommendation, persuasion,
4 urging, or argument shall not be deemed to constitute a lack
5 of good faith.

6 (2) DEALER. Any person, firm, corporation, or
7 business engaged regularly in the business of selling
8 powersports vehicles to the general public and that maintains
9 a permanent business establishment including a service and
10 repair facility which offers mechanical services for the
11 powersports vehicles it sells.

12 (3) DEALER AGREEMENT OR FRANCHISE. The written
13 contract entered into between a manufacturer or a distributor
14 and a dealer that fixes the rights and responsibilities of the
15 parties and pursuant to which the dealer purchases and resells
16 new powersports vehicles.

17 (4) DISTRIBUTOR. Any person, firm, corporation, or
18 business entity, other than manufacturer, that purchases new
19 powersports vehicles for resale to dealers.

20 (5) FAMILY MEMBER. A spouse or a child, grandchild,
21 parent, sibling, niece, or nephew, or the spouse thereof.

22 (6) GOOD FAITH. Honesty in fact and the observation
23 of reasonable commercial standards of fair dealing in the
24 trade as is defined and interpreted in subdivision (1)(b) of
25 Section 7-2-103, Code of Alabama 1975.

1 (7) LINE-MAKE. A specific series of powersports
2 vehicle products that meets all of the following
3 specifications:

4 a. Is identified by a common series trade name or
5 trademark.

6 b. Is a product that the dealer agreement authorizes
7 the dealer to sell.

8 (8) MANUFACTURER. Any person, firm, corporation, or
9 business entity that engages in the manufacture of powersports
10 vehicles.

11 (9) NEW POWERSPORTS VEHICLE. A powersports vehicle
12 which has been sold to a new powersports dealer and which has
13 not been used for other than demonstration purposes.

14 (10) POWERSPORTS VEHICLE. A self-propelled land
15 vehicle, other than a motor vehicle intended for use and
16 operation on the public highways or a recreational vehicle as
17 defined by Section 8-21C-2(13), including vehicles designated
18 as "all terrain vehicles," "UTVs," and motorcycles intended
19 for use and operation other than on the public highways.

20 (11) RELEVANT MARKET AREA. The area within a radius
21 of 20 miles around an existing dealer.

22 (12) WARRANTOR. Any person, firm, corporation, or
23 business entity, including any manufacturer or distributor,
24 that provides an express written warranty to the consumer in
25 connection with a new powersports vehicle or parts,
26 accessories, or components thereof. The term does not include
27 service contracts, mechanical or other insurance, or extended

1 warranties sold for separate consideration by a dealer or
2 other person not controlled by a manufacturer or distributor.

3 Section 3. (a) After June 1, 2015, a manufacturer or
4 distributor may not sell a powersports vehicle in this state
5 to or through a dealer without having first entered into a
6 dealer agreement with the dealer which has been signed by both
7 parties.

8 (b) A dealer may not sell a new powersports vehicle
9 in this state without having first entered into a dealer
10 agreement with a manufacturer or distributor which has been
11 signed by both parties.

12 Section 4. Notwithstanding the terms, provisions, or
13 conditions of any dealer agreement prior to the termination,
14 cancellation, or nonrenewal of any dealer agreement, the
15 following acts or conduct shall constitute unfair and
16 deceptive trade practices:

17 (1) For any manufacturer, manufacturer
18 representative, distributor, or wholesaler or distributor
19 representative to coerce or attempt to coerce any powersports
20 dealer to do any of the following:

21 a. Accept, buy or order any powersports vehicle or
22 vehicles, appliances, equipment, parts, or accessories
23 therefor, or any other commodity or commodities or service or
24 services which such powersports dealer has not voluntarily
25 ordered or requested except items required by applicable
26 local, state, or federal law; or to require a powersports
27 dealer to accept, buy, order, or purchase such items in order,

1 to obtain any powersports vehicle or any other commodity or
2 commodities which have been ordered or requested by such
3 powersports dealer.

4 b. Order or accept delivery of any powersports
5 vehicle with special features, appliances, accessories, or
6 equipment not included in the list price of the powersports
7 vehicle as publicly advertised by the manufacturer thereof,
8 except items required by applicable law.

9 c. Enter into any agreement with such manufacturer,
10 manufacturer representative, distributor, or wholesaler,
11 distributor branch or distributor representative, to do any
12 other act prejudicial to the dealer, the effect of which is to
13 reduce the powersports dealer's allocation of powersports
14 vehicles or cancel or fail to renew any dealer agreement
15 existing between the parties other than as hereinafter
16 provided; provided, however, that this subsection is not
17 intended to preclude the manufacturer or distributor from
18 insisting on compliance with the reasonable terms or
19 provisions of the franchise, and notice in good faith to any
20 powersports vehicle dealer of the dealer's violation of any
21 reasonable terms or provisions of such dealer agreement or of
22 any law or regulation applicable to the conduct of a
23 powersports vehicle dealer shall not constitute a violation of
24 this act; provided further, that this subsection is not
25 intended to preclude the dealer from entering any voluntary
26 agreement with the manufacturer or distributor.

1 d. Participate monetarily in an advertising campaign
2 or contest, or to purchase any promotional materials, training
3 materials, showroom or other display decorations, or materials
4 at the expense of the powersports vehicle dealer. This
5 paragraph is not intended to modify any reasonable and
6 uniformly applied provision of the franchise which requires
7 the powersports vehicle dealer to advertise and promote the
8 sale of vehicles and does not apply to campaigns, contests,
9 advertising, and other promotional programs in which the
10 powersports vehicle dealer voluntarily elects to participate.

11 e. Refrain from participation in the management of,
12 investment in, or the acquisition of any other line of
13 powersports vehicles or related products; provided that the
14 powersports vehicle dealer maintains a reasonable line of
15 credit, and that the powersports dealer remains in substantial
16 compliance with the terms and conditions of the dealer
17 agreement and with any reasonable facilities and
18 capitalization requirements of the manufacturer.

19 f. Change the location of the powersports vehicle
20 dealership or, during the course of the agreement, to make any
21 substantial alterations to the dealership premises when to do
22 so would be unreasonable.

23 g. Establish or maintain exclusive sales facilities,
24 personnel, or sales display space for a powersports vehicle
25 line-make unless such exclusive sales facilities or sales
26 display space is reasonable and is otherwise justified by
27 reasonable business considerations.

1 h. Adhere to performance standards that are not
2 fair, reasonable, and equitable or that are not applied
3 uniformly to other similarly situated dealers. A performance
4 standard, sales objective, or program for measuring dealership
5 performance that may have a material effect on a dealer,
6 including the dealer's right to payment under any incentive or
7 reimbursement program shall be fair, reasonable, equitable,
8 and based on accurate information.

9 i. Engage in any acts which constitute fraud,
10 deceit, or suppression under Sections 6-5-100 to 6-5-104,
11 inclusive, Code of Alabama 1975.

12 j. Offer to sell or sell any extended service
13 contract or extended maintenance plan offered, sold, backed
14 by, or sponsored by the manufacturer or to sell, assign, or
15 transfer any retail installment sales contract or lease
16 obtained by the dealer in connection with the sale or lease of
17 a new motor vehicle manufactured by the manufacturer to a
18 specified finance company, class of finance companies, leasing
19 company, or class of leasing companies, or to any other
20 specified persons.

21 (2) For any manufacturer, manufacturer
22 representative, distributor, or wholesaler, distributor branch
23 or distributor representative to engage in any action with
24 respect to a franchise which is arbitrary, in bad faith or
25 unconscionable, unreasonable, or is not in good faith and
26 which causes damage to any of the parties.

1 (3) For any manufacturer, manufacturer
2 representative, distributor, or wholesaler, distributor branch
3 or distributor representative to do any of the following:

4 a. Adopt, change, establish, or implement a plan or
5 system for the allocation and distribution of powersports
6 vehicles to powersports vehicle dealers which is arbitrary,
7 capricious, or unreasonably discriminatory or to modify an
8 existing plan so as to cause the same to be arbitrary,
9 capricious, or unreasonably discriminatory.

10 b. Fail or refuse to advise or disclose to any
11 powersports vehicle dealer having a dealer agreement, upon
12 written request therefor, the basis upon which powersports
13 vehicles of the same line-make are allocated or distributed to
14 powersports dealers in the state and the basis upon which the
15 current allocation or distribution is being made or will be
16 made to such powersports dealer.

17 c. Refuse to deliver to a powersports dealer in
18 reasonable quantities and within a reasonable time after
19 receipt of the powersports dealer's order any such powersports
20 vehicles as are covered by a dealer agreement and specifically
21 publicly advertised in the state by such manufacturer,
22 manufacturer representative, distributor, or wholesaler,
23 distributor branch, or distributor representative to be
24 available for immediate delivery; provided, however, that the
25 failure to deliver any powersports vehicle shall not be
26 considered a violation of this act if such failure is due to
27 an act of God, a work stoppage or delay due to a strike or

1 labor difficulty, a shortage of materials, lack of available
2 manufacturing capacity, limited production or availability of
3 the vehicle, a freight embargo or other cause over which the
4 manufacturer, manufacturer representative, distributor, or
5 wholesaler, distributor branch, or distributor representative
6 shall have no control.

7 d. Cancel or terminate the franchise or dealer
8 agreement of a powersports dealer other than as hereinafter
9 provided.

10 e. Fail or refuse to extend the franchise or dealer
11 agreement of a motor vehicle dealer upon its expiration other
12 than as hereinafter provided.

13 f. Offer a renewal, replacement, or succeeding
14 franchise or dealer agreement containing terms and provisions
15 the effect of which is to substantially change or modify the
16 sales and service obligations or capital requirements of the
17 powersports vehicle dealer other than as hereinafter provided.

18 g. Offer to sell or lease, or to sell or lease, any
19 new powersports vehicle to any powersports vehicle dealer at a
20 lower actual price therefor than the actual price offered to
21 any other powersports vehicle dealer in the state for the same
22 model vehicle similarly equipped or to utilize any device
23 including, but not limited to, sales promotion plans or
24 programs which result in such lesser actual price and which
25 are not offered to dealers of vehicles of the same line-make;
26 provided, however, that the provisions of this paragraph shall
27 not apply to sale to a powersports vehicle dealer for resale

1 to any unit of the United States government, the state, or any
2 of its political subdivisions; provided further, that nothing
3 in this subsection shall prohibit any sales promotion plan or
4 program that is functionally available to all new powersports
5 vehicle dealers in the state on substantially comparable
6 terms.

7 h. Offer to sell or lease, or to sell or lease, any
8 new powersports vehicle to any person in the state, except a
9 wholesaler's or distributor's or manufacturer's employees, at
10 a lower actual price therefor than the actual price offered
11 and charged to a powersports vehicle dealer for the same model
12 vehicle similarly equipped or to utilize any device which
13 results in such lesser actual price and which are not offered
14 to dealers of vehicles of the same line-make; provided,
15 however, that the provisions of this paragraph shall not apply
16 to sales to a powersports vehicle dealer for resale to any
17 unit of the United States government, the state, or any of its
18 political subdivisions.

19 i. Prevent or attempt to prevent by contract or
20 otherwise any powersports vehicle dealer from changing the
21 executive management control of the powersports vehicle dealer
22 unless such change of executive management control will result
23 in executive management control by a person or persons who are
24 not of good moral character or who do not meet the
25 manufacturer's or wholesaler's or distributor's existing and
26 reasonable capital standards and minimum business experience
27 standards; provided, however, that where the manufacturer or

1 wholesaler rejects a proposed change in executive management
2 control, the manufacturer or wholesaler shall give written
3 notice of his or her reasons to the powersports vehicle dealer
4 within 60 days of notice to the manufacturer or wholesaler or
5 distributor by the powersports vehicle dealer of the proposed
6 change accompanied by information reflecting the identity,
7 business experience and affiliations, and source of investment
8 funds of the proposed new management.

9 j. Prevent or attempt to prevent by contract or
10 otherwise any powersports vehicle dealer from establishing or
11 changing the capital structure of his or her dealership or the
12 means by or through which he or she finances the operation
13 thereof, provided the dealer meets any reasonable capital
14 standards of the manufacturer, distributor, or wholesaler, who
15 may require that the sources, method, and manner by which the
16 powersports vehicle dealer finances or intends to finance its
17 operation, equipment, or facilities be fully disclosed.

18 k. Refuse to give effect to or prevent or attempt to
19 prevent by contract or otherwise any powersports vehicle
20 dealer or any officer, partner, or stockholder of any
21 powersports vehicle dealer from selling or transferring any
22 part of the interest of any of them to any other person unless
23 such sale or transfer is to a transferee who would not
24 otherwise qualify for a new powersports vehicle dealer's
25 license issued by the State of Alabama or a political
26 subdivision thereof or unless such sale or transfer is to a
27 person who is not of good moral character or who does not meet

1 the manufacturer's or wholesaler's or distributor's existing
2 and reasonable capital standards and minimum business
3 experience standards in the market area; provided, however,
4 that where such a rejection of a transfer is made the
5 manufacturer or distributor or wholesaler shall give written
6 notice of his or her reasons to the powersports vehicle dealer
7 within 60 days of notice to the manufacturer or wholesaler or
8 distributor by the dealer of the proposed transfer accompanied
9 by information reflecting the identity of the new owner or
10 owners, their business experience and affiliations and the pro
11 forma balance sheet and source of investment funds of the
12 proposed new dealership. A manufacturer or distributor may
13 exercise a contractual right of first refusal with respect to
14 the sale or transfer of the interest of the dealer only if
15 each of the following requirements are met:

16 1. The sale or transfer is not to a family member of
17 an owner of the dealership, nor a managerial employee of the
18 dealership owning 15 percent or more of the dealership, nor a
19 corporation, partnership, or other legal entity owned by the
20 existing owners of the dealership.

21 2. The manufacturer or distributor notifies the
22 dealer in writing within 60 days after receipt of the
23 completed application forms and related information generally
24 used by a manufacturer or distributor to conduct its review
25 and a copy of all agreements regarding the proposed transfer
26 of its intent to exercise its right of first refusal or its
27 rejection of the proposed transfer. If the manufacturer or

1 distributor fails to notify the dealer of its exercise of the
2 right of first refusal or its rejection of the proposed
3 transferee within the 60-day period, the effect of such
4 failure shall constitute approval of the proposed sale or
5 transfer. If the manufacturer or distributor exercises a right
6 of first refusal under this section, the transfer shall be
7 deemed to be rejected.

8 3. The exercise of the right of first refusal
9 provides to the dealer the same compensation as, or greater
10 compensation than, the dealer had negotiated to receive from
11 the proposed buyer or transferee.

12 4. The manufacturer or distributor agrees to pay the
13 reasonable expenses, including reasonable attorneys' and
14 accountants' fees that do not exceed the usual, customary, and
15 reasonable fees charged for similar work done for other
16 clients incurred by the proposed buyer or transferee before
17 the manufacturer's or distributor's exercise of its right of
18 first refusal in negotiating and implementing the contract for
19 the sale or transfer. The proposed buyer or transferee shall
20 provide to the manufacturer or distributor a written
21 itemization of the expenses incurred within 30 days of the
22 receipt by the proposed buyer or transferee of a written
23 request from the manufacturer or distributor for an accounting
24 of the expenses. The manufacturer or distributor shall make
25 payment of these expenses within 30 days of exercising the
26 right of first refusal.

1 1. Unreasonably and without notice to existing
2 powersports vehicle dealers, as hereinafter provided, enter
3 into a franchise with an additional powersports vehicle dealer
4 who intends to conduct its dealership operations from a place
5 of business situated within the relevant market area of an
6 existing powersports vehicle dealer or powersports vehicle
7 dealers representing the same line-make. The appointment of a
8 successor powersports vehicle dealer at the same location as
9 its predecessor or within a two-mile radius therefrom within
10 two years from the date on which its predecessor ceased
11 operations or was terminated, whichever occurred later, shall
12 not be construed as the entering into of an additional
13 franchise. Any manufacturer, distributor, or wholesaler,
14 factory branch, factory representative, distributor branch, or
15 distributor representative which intends to enter into an
16 additional franchise shall, at least 60 days prior to granting
17 such franchise, give written notice of its intention to do so
18 to each powersports vehicle dealer of the same line-make
19 within the relevant market area. Such notice shall state the
20 date on or after which such proposed franchise shall be
21 granted or entered into. Prior to the date set forth in the
22 notice on or after which such franchise will be entered into,
23 any such powersports vehicle dealer may petition a court of
24 competent jurisdiction to determine whether such appointment
25 or proposed appointment is unreasonable in which action the
26 manufacturer, wholesaler, or distributor shall have the burden
27 of proof that such action is not unreasonable. No bond shall

1 be required as a precondition to entry of an injunction
2 enjoining appointment of an additional franchise. Such
3 petition shall be entitled to a speedy trial. In determining
4 whether such proposed appointment is unreasonable, the court
5 shall consider all pertinent circumstances. These may include
6 but are not limited to:

7 1. Whether the establishment of such additional
8 franchise is warranted by economic and marketing conditions
9 including anticipated future changes;

10 2. The past, present, and anticipated retail sales
11 and service business transacted by the objecting powersports
12 vehicle dealer or dealers and other powersports vehicle
13 dealers of the same line-make with a place of business in the
14 relevant market area;

15 3. The investment made and obligations incurred by
16 the objecting powersports vehicle dealer or dealers and other
17 powersports vehicle dealers of the same line-make with a place
18 of business in the relevant market area;

19 4. Whether it is beneficial or injurious to the
20 public welfare for an additional franchise to be established.

21 m. Prevent or refuse to give effect to the
22 succession to the ownership or management control of a
23 dealership upon the death or incapacity of a powersports
24 vehicle dealer to any legatee or devisee under the will of a
25 dealer or to an heir under the laws of descent and
26 distribution of this state unless the successor is a person
27 who is not of good moral character or who does not meet the

1 manufacturer's or distributor's or wholesaler's existing and
2 reasonable capital standards and minimum business experience
3 standards; provided, however, that where such a rejection of
4 succession is made, the manufacturer or distributor or
5 wholesaler shall give written notice of his or her reasons to
6 the proposed successor within 60 days of notice to the
7 manufacturer or wholesaler or distributor by the proposed
8 successor of his or her intent to succeed to the ownership or
9 management of the dealership accompanied by information
10 reflecting the identity of the new owner or owners, their
11 business experience and affiliation and the pro forma balance
12 sheet and source of investment funds of the proposed new
13 dealership. This section does not preclude the owner of a new
14 powersports vehicle dealer from designating any person as his
15 or her successor by written instrument filed with and approved
16 by the manufacturer or distributor and, in the event there is
17 a conflict between such written instrument and the provisions
18 of this section, the written instrument shall govern.

19 n. Fail to indemnify and hold harmless its
20 powersports vehicle dealers against any losses, including, but
21 not limited to, court costs and reasonable attorneys' fees, or
22 damages arising out of complaints, claims, or lawsuits,
23 including, but not limited to, strict liability, negligence,
24 misrepresentation, warranty (express or implied), or
25 rescission of the sale where the complaint, claim, or lawsuit
26 relates to 1. the manufacture, assembly, or design of new
27 powersports vehicles, parts, or accessories; 2. a defect in

1 any forms furnished to the dealer or in the written
2 instructions for the completion of such forms by the
3 manufacturer, an affiliate of the manufacturer, or person
4 controlled by the manufacturer used in connection with the
5 sale, lease, or financing of a vehicle and associated
6 products, unless the dealer improperly completes the forms or
7 makes misrepresentations contrary either to the terms of the
8 forms or the written instructions for their completion; or 3.
9 other functions by the manufacturer, beyond the control of the
10 dealer, including, without limitation, the selection by the
11 manufacturer of parts or components for the vehicle, or any
12 damages to merchandise occurring in transit to the dealer
13 where the carrier is designated by the manufacturer.

14 o. Increase prices of new powersports vehicles which
15 the new powersports vehicle dealer had ordered for retail
16 consumers prior to the dealer's receipt of the written
17 official price increase notification. A sales contract signed
18 by a retail consumer shall constitute evidence of each such
19 order; provided that the vehicle is in fact delivered to that
20 customer. In the event of manufacturer price reductions or
21 cash rebates, the amount of any such reduction or rebate
22 received by a dealer shall be passed on to the retail consumer
23 by the dealer if the retail price was negotiated on the basis
24 of the previous higher price to the dealer. Price differences
25 applicable to new model or series powersports vehicles at the
26 time of the introduction of new models or series shall not be
27 considered a price increase or price decrease. Price changes

1 caused by either: 1. the addition to a powersports vehicle of
2 required or optional equipment pursuant to state or federal
3 law; 2. revaluation of the United States dollar, in the case
4 of foreign-made vehicles or components; or 3. an increase in
5 transportation charges due to increased rates imposed by
6 common or contract carriers, shall not be subject to the
7 provisions of this paragraph.

8 p. Offer any refunds or other types of inducements
9 to any person for the purchase of new powersports vehicles of
10 a certain line-make to be sold to the state or any political
11 subdivision thereof without making the same offer to all other
12 new powersports vehicle dealers in the same line-make within
13 the state.

14 q. Release to any outside party, except under
15 subpoena, or as otherwise required by law or in an
16 administrative, judicial, or arbitration proceeding, any
17 business, financial, or personal information which may be from
18 time to time provided by the dealer to the manufacturer,
19 without the express written consent of the dealer.

20 r. Own an interest in a new powersports vehicle
21 dealership, to operate or control a dealership, to make direct
22 sales or leases of new powersports vehicles to the public in
23 Alabama, or to own, operate, or control a facility for
24 performance of powersports vehicle warranty or repair service
25 work, except as follows:

26 1. The manufacturer or distributor is owning or
27 operating a new powersports vehicle dealership or a warranty

1 repair facility for a temporary period of not more than 24
2 months, as long as the new powersports vehicle dealership or
3 warranty repair center is for sale at a reasonable price and
4 on reasonable terms and conditions; or

5 2. The manufacturer's or distributor's participation
6 is in a bona fide relationship with an independent person (i)
7 who is required to make significant investment in the new
8 powersports vehicle dealership or warranty repair center
9 subject to loss, (ii) and operates the dealership or warranty
10 repair center and may reasonably be expected to acquire full
11 ownership of the dealership or warranty repair center within a
12 reasonable time and under reasonable terms and conditions.

13 3. The manufacturer or distributor is selling or
14 leasing new powersports vehicles in Alabama to its qualified
15 vendors, not-for-profit organizations, fleets, or the federal,
16 state, or local government if sold or leased and delivered
17 through new powersports vehicle dealers in this state. The
18 manufacturer or distributor is selling or leasing new
19 powersports vehicles in Alabama to its employees and
20 employees' families if delivered through new powersports
21 vehicle dealers in this state. The manufacturer or distributor
22 is implementing a program to sell or lease or offer to sell or
23 lease new powersports vehicles through new powersports vehicle
24 dealers in this state.

25 s. Make any material change in any franchise
26 agreement without giving the dealer written notice by

1 certified mail of such change at least 60 days prior to the
2 effective date of such change.

3 t. Fail to pay or otherwise compensate its new
4 powersports vehicle dealers for sales incentives, service
5 incentives, rebates, or other forms of incentive compensation
6 earned by the dealer as a consequence of incentive programs of
7 the manufacturer. The manufacturer shall have the right to
8 audit any such incentive payments made to the dealer and to
9 charge back the dealer for any fraudulent claims for incentive
10 payments made to the dealer for a period not to exceed 12
11 months from the date the claim was paid. A manufacturer shall
12 not disapprove claims for which the dealer has received
13 preauthorization from the manufacturer or its representative
14 nor shall the manufacturer unreasonably disapprove a claim
15 solely based on the dealer's incidental failure to comply with
16 a specific claim processing requirement that results only in a
17 clerical error or administrative error; rather a claim denial
18 must be based upon a material defect and deviation from the
19 reasonable written claim submission requirements of the
20 manufacturer.

21 u. Fail or refuse to offer its same line-make
22 franchised dealers all models of new powersports vehicles
23 manufactured for that line-make and offered to any dealer in
24 this state. No unreasonable additional requirements, over the
25 requirements originally required to obtain a franchise from
26 the manufacturer, may be required of existing franchised
27 dealers to receive any model by that line-make. The provisions

1 in this paragraph shall not apply to recreational vehicles and
2 reasonable requirements of a manufacturer that its dealers
3 obtain tools or diagnostic equipment to properly service its
4 line-make of powersports vehicles. The failure to deliver any
5 such new powersports vehicle shall not be considered a
6 violation of this section if the failure is due to a lack of
7 manufacturing capacity or to a strike or labor difficulty, a
8 shortage of materials, limited production or availability of
9 the vehicle, a freight embargo, or any other cause over which
10 the manufacturer has no control.

11 Section 5. (a) Notwithstanding the terms,
12 provisions, or conditions of any dealer agreement, no
13 manufacturer or distributor shall cancel, terminate, modify,
14 fail to renew, or refuse to continue any dealer agreement with
15 a powersports vehicle dealer unless the manufacturer has:

16 (1) Satisfied the notice requirement of this
17 section.

18 (2) Acted in good faith as defined in this act with
19 respect to the cancellation, termination, modification,
20 nonrenewal, or noncontinuance.

21 (3) Has good cause for the cancellation,
22 termination, modification, nonrenewal, or noncontinuance.

23 (b) Notwithstanding the terms, provisions, or
24 conditions of any dealer agreement or the terms or provisions
25 of any waiver, good cause shall exist for the purposes of a
26 termination, cancellation, modification, nonrenewal, or
27 noncontinuance when there is a failure by the powersports

1 dealer to comply with a provision of the dealer agreement
2 which provision is both reasonable and of material
3 significance to the contractual relationship or material
4 failure to meet the reasonable sales or service performance
5 standards of the manufacturer or distributor

6 (c) The manufacturer or distributor shall have the
7 burden of proof for showing that it has acted in good faith,
8 that the notice requirements have been complied with, and that
9 there was good cause for the dealer agreement termination,
10 cancellation, modification, nonrenewal, or noncontinuance.

11 (d) Notwithstanding the terms, provisions, or
12 conditions of any dealer agreement, prior to the termination,
13 cancellation, modification, or nonrenewal of any dealer
14 agreement, the manufacturer or distributor shall furnish
15 notification of such termination, cancellation, modification,
16 or nonrenewal to the powersports vehicle dealer as follows:

17 (1) In the manner described in subsection (e); and

18 (2) Not less than 90 days prior to the effective
19 date of such termination, cancellation, modification, or
20 nonrenewal or not less than 30 days prior to the effective
21 date of such termination, cancellation, or nonrenewal with
22 respect to any of the following:

23 a. Filing of any petition by or against the
24 powersports vehicle dealer under any bankruptcy or
25 receivership law.

1 b. Willful or intentional misrepresentation made by
2 the powersports vehicle dealer with the express intent to
3 defraud the manufacturer or distributor.

4 c. Failure of the powersports vehicle dealer to
5 conduct its customary sales and service operations during its
6 customary business hours for seven consecutive business days.

7 d. Final conviction, including appeal, of the new
8 powersports vehicle dealer, principal owner, or principal
9 executive manager of any felony.

10 (e) Notification under this section shall be in
11 writing and shall contain the following:

12 (1) A statement of intention to terminate the
13 franchise, cancel the franchise, modify the franchise, or not
14 to renew the franchise.

15 (2) A statement of the reasons for the termination,
16 cancellation, modification, or nonrenewal.

17 (3) The date on which such termination,
18 cancellation, modification, or nonrenewal takes effect.

19 (f) Upon the termination, cancellation, or
20 nonrenewal by the manufacturer or distributor of any franchise
21 for good cause, the powersports dealer shall be paid fair and
22 reasonable compensation by the manufacturer or distributor for
23 the following:

24 (1) New powersports vehicle inventory of the current
25 and previous model year which has been acquired from the
26 manufacturer or distributor. Any new and unused powersports
27 vehicle repurchased by the manufacturer or distributor shall

1 be repurchased at the net cost to the dealer less the cost of
2 transportation, handling, packing, and loading.

3 (2) New, unused, unopened, and undamaged supplies
4 and parts, which were acquired by the powersports vehicle
5 dealer from the manufacturer or distributor or its approved
6 sources and which are listed in the manufacturer's or
7 distributor's current parts catalogue at the time the
8 termination, cancellation, or nonrenewal takes effect. Any
9 parts repurchased by the manufacturer or distributor shall be
10 repurchased at current catalogue price, less any restocking
11 fees, which shall not exceed 15 percent of the current
12 catalogue price, and less the cost of transportation,
13 handling, packing, and loading.

14 (3) Special tools, which shall be repurchased by the
15 manufacturer or distributor at the current fair market value
16 at the time the termination, cancellation, or renewal takes
17 effect, less the cost of transportation, handling, packing,
18 and loading.

19 (g) Upon the termination, cancellation, or
20 nonrenewal by the manufacturer or distributor of any franchise
21 without good cause, the powersports vehicle dealer shall be
22 paid fair and reasonable compensation by the manufacturer for
23 the personal property described in subdivisions (f)(1) through
24 (f)(3) and fair and reasonable compensation for the value of
25 the dealership.

26 (h) A powersports vehicle dealer may terminate its
27 dealer agreement with a manufacturer or distributor

1 voluntarily by providing written notice at least 30 days prior
2 to the effective date of termination. In the event a dealer
3 terminates its dealer agreement with a manufacturer or
4 distributor voluntarily, the manufacturer or distributor shall
5 not be required to provide the fair and reasonable
6 compensation described in this section.

7 (i) The fair and reasonable compensation to the
8 dealer shall be paid by the manufacturer within 90 days after
9 tender by the dealer of the items in subdivisions (f)(1)
10 through (f)(3) at the dealership premises, provided the
11 powersports vehicle dealer has clear title to the inventory
12 and other items and is in a position to convey that title to
13 the manufacturer.

14 Section 6. (a) Each warrantor shall do all of the
15 following:

16 (1) Specify in writing each of its dealer
17 obligations, if any, for preparation, delivery, and warranty
18 service on its products.

19 (2) Compensate a dealer for preparation, delivery,
20 and warranty service required of the dealer by the warrantor.
21 Such compensation may be made through direct payment,
22 allowance, or other reasonable process provided by the
23 warrantor.

24 (3) Provide a dealer the schedule of compensation to
25 be paid and the time allowances for the performance of any
26 warranty work and service. The schedule of compensation shall

1 include reasonable compensation for diagnostic work as well as
2 warranty labor.

3 (b) Time allowances for the diagnosis and
4 performance of warranty labor shall be reasonable for the work
5 to be performed. In the determination of what constitutes
6 reasonable compensation under this section, the principal
7 factors to be given consideration shall be the actual wage
8 rates being paid by the dealer and the actual retail labor
9 rate being charged by the dealers in the community in which
10 the dealer is doing business.

11 (c) The warrantor shall provide reasonable
12 reimbursement to the dealer for warranty parts.

13 (d) Warranty audits of dealer records may be
14 conducted by the warrantor on a reasonable basis, and dealer
15 claims for warranty compensation may not be denied except for
16 cause, such as performance of non-warranty repairs, material
17 noncompliance with the warrantor's published policies and
18 procedures, lack of material documentation, fraud, or
19 misrepresentation

20 (e) The dealer shall submit warranty claims within
21 the timeframe required by the warrantor for submission of such
22 claims, so long as such timeframe is reasonable.

23 (f) The warrantor shall disapprove warranty claims
24 in writing within 60 days after the date of submission by the
25 dealer in the manner and form prescribed by the warrantor.
26 Claims not specifically disapproved in writing within 30 days
27 shall be construed to be approved.

1 (g) It is a violation of this act for any warrantor
2 to do any of the following:

3 (1) Fail to perform any of its warranty obligations
4 with respect to its warranted products.

5 (2) Fail to compensate any of its dealers for
6 authorized repairs effected by the dealer of merchandise
7 damaged in manufacture or transit to the dealer, if the
8 carrier is designated by the warrantor, factory branch,
9 distributor, or distributor branch.

10 (3) Fail to compensate any of its dealers in
11 accordance with the schedule of compensation provided to the
12 dealer pursuant to this section if performed in a timely and
13 competent manner and such claims are submitted and documented
14 consistent with any reasonable requirements of the warrantor.

15 (4) Intentionally misrepresent in any way to
16 purchasers of powersports vehicles that warranties with
17 respect to the manufacture, performance, or design of the
18 vehicle are made by the dealer as warrantor or co-warrantor.

19 (5) Require the dealer to make warranties to
20 customers in any manner related to the manufacture of the
21 powersports vehicle.

22 Section 7. (a) A dealer, manufacturer, or
23 distributor injured by another party's violation of this act
24 may bring a civil action in circuit court to recover actual
25 damages.

26 (b) Any civil action commenced under this act shall
27 be brought within two years after the cause of action accrued.

1 Section 8. Section 8-20-2 of the Code of Alabama 20
2 1975, is amended to read as follows:

3 "§8-20-2.

4 "(a) The Legislature finds and declares that the
5 distribution and sale of motor and powersports vehicles within
6 this state vitally affect the general economy of the state and
7 the public interest and the public welfare, and that in order
8 to promote the public interest and the public welfare, and in
9 the exercise of its police power, it is necessary to regulate
10 motor and powersports vehicle manufacturers, distributors,
11 dealers, and their representatives and to regulate the
12 dealings between manufacturers and distributors or wholesalers
13 and their dealers in order to prevent fraud and other abuses
14 upon the citizens of this state and to protect and preserve
15 the investments and properties of the citizens of this state.

16 "(b) This chapter shall not apply to any
17 ~~recreational vehicle~~ manufacturer and dealer agreement or
18 franchise to which Chapter 21A, Chapter 21B, or Chapter 21C of
19 this title applies, nor to any dealer agreement between a
20 powersports vehicle manufacturer or distributor and a
21 powersports dealers to the extent that such agreement applies
22 to the sale of powersports vehicles."

23 Section 9. This act applies to dealer agreements
24 entered into on or after June 1, 2015.

25 Chapter 20 of Title 8, Code of Alabama 1975, shall
26 not apply to any dealer agreement between a powersports
27 vehicle manufacturer and dealer to the extent that such

1 agreement applies to powersports vehicles. This act does not
2 otherwise amend or affect Chapter 20 of Title 8.

3 Section 10. This act shall become effective on June
4 1, 2015.