

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

7
RWS

L.D. 1197

DATE: 5-21-97

(Filing No. H-625)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

BUSINESS AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 880, L.D. 1197, Bill, "An Act to Provide Equity for Recreational Vehicle Dealers in Reimbursement for Parts and Labor Required under a Warranty"

Amend the bill by striking out the title and substituting the following:

'An Act to Regulate Recreational Vehicle Manufacturers, Distributors and Dealers'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 10 MRSA §1361, sub-§8, as enacted by PL 1993, c. 195, §1, is amended to read:

8. Goods. "Goods" means residential, recreational, agricultural, farm, commercial or business equipment, machinery or appliances that use electricity, gas, wood, a petroleum product or a derivative of a petroleum product, for operation. "Goods" does not include motor vehicles as defined in section 1171, subsection 11 and recreational vehicles as defined in section 1432, subsection 18.

Sec. 2. 10 MRSA c. 214-A is enacted to read:

CHAPTER 214-A

**RECREATIONAL VEHICLE MANUFACTURERS,
DISTRIBUTORS AND DEALERS**

COMMITTEE AMENDMENT

R. 04

§1431. Short title

2

This chapter may be known and cited as the "Regulation of Business Practices between Recreational Vehicle Manufacturers, Distributors and Dealers."

4

6

§1432. Definitions

8

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

10

12

1. Camping trailer. "Camping trailer" means a trailer constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

14

16

2. Dealer. "Dealer" means a recreational vehicle dealer to whom a dealer agreement is offered or granted.

18

20

3. Dealer agreement. "Dealer agreement" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a recreational vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of recreational vehicles or services related to recreational vehicles at wholesale, retail or leasing.

22

24

26

28

4. Designated family member. "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a new recreational vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new recreational vehicle dealership under the terms of the owner's will or who, in the case of an incapacitated owner of a new recreational vehicle dealership, has been appointed by a court as the legal representative of the new recreational vehicle dealer's property.

30

32

34

36

38

5. Distributor branch. "Distributor branch" means a branch office maintained by a distributor or wholesaler that sells or distributes new or used recreational vehicles to recreational vehicle dealers.

40

42

6. Distributor representative. "Distributor representative" means a representative employed by a distributor branch, distributor or wholesaler.

44

46

7. Distributor or wholesaler. "Distributor" or "wholesaler" means any person that sells or distributes new or

48

R. S.

2 used recreational vehicles to recreational vehicle dealers or
that maintains distributor representatives within this State.

4 8. Factory branch. "Factory branch" means a branch
maintained by a manufacturer that manufactures or assembles
6 recreational vehicles for sale to distributors or recreational
vehicle dealers or that is maintained for directing and
8 supervising the representatives of the manufacturer.

10 9. Factory representative. "Factory representative" means
a representative employed by a manufacturer or employed by a
12 factory branch for the purpose of making or promoting the sale of
recreational vehicles or for contracting with, supervising,
14 servicing, or instructing or contracting recreational vehicle
dealers or prospective recreational vehicle dealers.

16 10. Fifth-wheel trailer. "Fifth-wheel trailer" means a
18 trailer designed to provide temporary living quarters for
recreational, camping or travel use, of such size or weight as
20 not to require special highway movement permits and designed to
be towed by a motor vehicle that contains a towing mechanism
22 mounted above or forward of the tow vehicle's rear axle.

24 11. Fraud. "Fraud" includes, in addition to its normal
legal connotation, a misrepresentation in any manner, whether
26 intentionally false or due to gross negligence of a material
fact, a promise or representation not made honestly and in good
28 faith and an intentional failure to disclose a material fact.

30 12. Good faith. "Good faith" means honesty in fact and the
observance of reasonable commercial standards of fair dealing in
32 the trade as defined in Title 11, section 2103, subsection (1),
paragraph (b).

34 13. Manufacturer. "Manufacturer" means any person,
36 resident or nonresident, that manufactures or assembles new
recreational vehicles or imports for distribution through
38 distributors of recreational vehicles, or any person, resident or
nonresident, that is controlled by the manufacturer who grants a
40 dealer agreement to a recreational vehicle dealer.
42 "Manufacturer" includes distributor or wholesaler, distributor
branch, distributor representative, factory branch and factory
44 representative.

46 14. Motor vehicle. Motor vehicle has the same meaning as
defined in Title 29-A, section 101, subsection 42.

48 15. New recreational vehicle. "New recreational vehicle"
means a recreational vehicle that has not been previously sold to

P. of S.

any person except a distributor or wholesaler or recreational vehicle dealer for resale.

16. Person. "Person" means a natural person, corporation, partnership, trust or other entity. In the case of an entity, "person" includes any other entity in which it has a majority interest or effectively controls, as well as the individual officers, directors and other persons in active control of the activities of each such entity.

17. Recreational vehicle dealer. "Recreational vehicle dealer" means any person who sells or solicits or advertises the sale of new recreational vehicles. "Recreation vehicle dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court or public officers while performing their duties as those officers.

18. Recreational vehicle. "Recreational vehicle" means a vehicle primarily designed as temporary living quarters for recreational, camping, travel or seasonal use that either is mounted on or towed by another vehicle. "Recreational vehicle" includes, but is not limited to, a camping trailer, fifth-wheel trailer, travel trailer and truck camper.

19. Sale. "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any recreational vehicle or interest in a recreational vehicle or of any dealer agreement related to a recreational vehicle and any option, subscription or other contract, or solicitation looking to a sale, or any offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any recreational vehicle with or as a bonus on account of the sale of anything is considered a sale of that recreational vehicle.

20. Trailer. "Trailer" means a vehicle without motive power and mounted on wheels, designed to carry persons or property and to be drawn by a motor vehicle and not operated on tracks.

21. Travel trailer. "Travel trailer" means a trailer designed to provide temporary living quarters for recreational, camping or travel use, of such size or weight as not to require special highway movement permits when towed by a motor vehicle.

22. Truck camper. "Truck camper" means a portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor

COMMITTEE AMENDMENT

2 and sides, designed to be loaded onto and unloaded from the bed
3 of a truck.

4 **§1433. Application**

6 Any person who engages directly or indirectly in purposeful
7 contacts within this State in connection with the offering or
8 advertising for sale or has business dealings with respect to a
9 new recreational vehicle within the State is subject to this
10 chapter.

12 **§1434. Prohibited conduct**

14 The following acts are unfair methods of competition and
15 unfair and deceptive practices. It is unlawful for any:

16 **1. Damage to public.** Manufacturer or recreational vehicle
17 dealer to engage in any action that is arbitrary, in bad faith or
18 unconscionable and causes damage to any manufacturer or dealer
19 parties or to the public;

22 **2. Coercion involving deliveries and orders.** Manufacturer
23 or officer, agent or other representative of that manufacturer to
24 coerce or attempt to coerce any recreational vehicle dealer:

26 A. To order or accept delivery of any recreational vehicle,
27 appliances, equipment, parts or accessories for a
28 recreational vehicle or any other commodity or commodities
29 not required by law that the recreational vehicle dealer has
30 not voluntarily ordered, or to order or accept delivery of
31 any recreation vehicle with special features, appliances,
32 accessories or equipment not included in the list price of
33 the recreational vehicle if such price exists, as publicly
34 advertised by the manufacturer; or

36 B. To order for any person any parts, accessories,
37 equipment, machinery, tools, appliances or any other
38 commodity;

40 **3. Certain interference in dealer's business.** Manufacturer
41 or officer, agent or other representative of that manufacturer:

42 A. To refuse to deliver in reasonable quantities and within
43 a reasonable time after receipt of a dealer's order to any
44 recreational vehicle dealer having a dealer agreement or
45 contractual arrangement for the retail sale of new
46 recreational vehicles sold or distributed by that
47 manufacturer any recreational vehicles that are covered by
48 that dealer agreement or contract and specifically publicly
49 advertised by that manufacturer to be available for delivery
50

2 in a reasonable time, except that the failure to deliver any
3 recreational vehicle is not a violation of this chapter if
4 that failure is due to an act of God or work stoppage or
5 delay due to a strike or labor difficulty, shortage of
6 materials, freight embargo or other cause over which the
7 manufacturer or any of its agents has no control;

8 B. To coerce or attempt to coerce any recreational vehicle
9 dealer to enter into any agreement with a manufacturer or an
10 officer, agent or other representative of that manufacturer
11 or to do any other act prejudicial to that dealer by
12 threatening to cancel any dealer agreement or any
13 contractual agreement existing between the manufacturer and
14 that dealer. Notice in good faith to any recreational
15 vehicle dealer of that dealer's violation of any terms or
16 provisions of that dealer agreement or contractual agreement
17 or insisting in good faith on the dealer's compliance with
18 the terms or provisions of the dealer agreement or any other
19 contractual agreement does not constitute a violation of
20 this chapter;

21 C. To resort to or use any false or misleading advertisement
22 in connection with the manufacturer's business as a
23 manufacturer or an officer, agent or other representative
24 of that manufacturer or to force any dealer to participate
25 in any advertising campaign or contest, or to purchase any
26 unnecessary or unreasonable quantities of promotional
27 materials, display devices or display decorations or
28 materials at the expense of the new recreational vehicle
29 dealer;

30 D. To offer to sell or to sell any new recreational vehicle
31 at a lower price than the price offered to any other
32 recreational vehicle dealer for the same model vehicle
33 similarly equipped or to utilize any device, including but
34 not limited to sales promotion plans or programs, that
35 results in that lower price. This paragraph does not apply
36 to the following:

37 (1) Sales to a recreational vehicle dealer for resale
38 to any unit of the Federal Government;

39 (2) Any manufacturer or any of its agents offering to
40 sell or selling new recreational vehicles to all
41 recreational vehicle dealers at an equal price; and

42 (3) Sales by a manufacturer to any unit of the Federal
43 Government;

2 E. To offer to sell or lease or to sell or lease any new
3 recreational vehicle to any person, except a wholesaler or
4 distributor, at a lower price than the price offered and
5 charged to a recreational vehicle dealer for the same model
6 vehicle similarly equipped or to utilize any device that
7 results in that lower price. This paragraph does not apply
8 to the sale or lease by a manufacturer to the Federal
9 Government or any agency of the Federal Government;

10 F. To offer to sell or to sell parts or accessories to any
11 new recreational vehicle dealer for use in that dealer's own
12 business for the purpose of replacing or repairing the same
13 or a comparable part or accessory at a lower price than the
14 price charged for that part or accessory to any other new
15 recreational vehicle dealer for similar parts or accessories
16 for use in the dealer's own business. This paragraph does
17 not prohibit a manufacturer from offering incentives for
18 selling more recreational vehicle parts and accessories as
19 long as the incentive is offered to all dealers meeting the
20 terms and conditions of that incentive;

21 G. To prevent or attempt to prevent by contract or otherwise
22 any recreational vehicle dealer from changing the capital
23 structure of that person's dealership or the means by or
24 through which the dealer finances the operation of the
25 person's dealership if the dealer at all times meets any
26 reasonable capital standards agreed to between the dealer
27 and the manufacturer and if that change by the dealer does
28 not result in a change in the executive management control
29 of the dealership;

30 H. To prevent or attempt to prevent by contract or otherwise
31 any recreational vehicle dealer or any officer, partner or
32 stockholder of any recreational vehicle dealer from selling
33 or transferring any part of the interest of those persons to
34 any other person or party. A dealer, officer, partner or
35 stockholder may not sell, transfer or assign the rights
36 under the dealer agreement or power of management or control
37 without the consent of the manufacturer. The manufacturer
38 may not unreasonably withhold that consent;

39 I. To obtain money, goods, services, anything of value or
40 any other benefit from any other person with whom the
41 recreational vehicle dealer does business, on account of or
42 in relation to a transaction between the recreational
43 vehicle dealer and the other person, unless that benefit is
44 promptly accounted for and transmitted to the recreational
45 vehicle dealer;

R. of S.

2 J. To compete with a recreational vehicle dealer operating
3 under an agreement or dealer agreement from the manufacturer
4 in a relevant market area that has been determined
5 exclusively by equitable principles. A manufacturer is not
6 considered to be competing when operating a dealership
7 either temporarily for a reasonable period not to exceed one
8 year or in a bona fide relationship in which an independent
9 person has made a significant investment subject to loss in
10 the dealership and can reasonably expect to acquire full
11 ownership of the dealership on reasonable terms and
12 conditions;

13 K. To require a recreational vehicle dealer to assent to a
14 release assignment, novation, waiver or estoppel that
15 relieves any person from liability imposed by this chapter;

16 L. To require any new recreational vehicle dealer to refrain
17 from participation in the management of, investment in or
18 the acquisition of any other line of new recreational
19 vehicle or related product;

20 M. To require any new recreational vehicle dealer to change
21 the location of the new recreational vehicle dealership or
22 during the course of the agreement to make any substantial
23 alterations to the dealership premises if the change or
24 alteration is unreasonable;

25 N. To cancel, terminate, fail to renew or refuse to continue
26 any dealer agreement with a licensed new recreational
27 vehicle dealer, notwithstanding the terms, provisions or
28 conditions of any agreement or the terms or provisions of
29 any waiver, unless a manufacturer has:

- 30 (1) Satisfied the notice requirement of paragraph O;
- 31 (2) Acted in good faith as defined in section 1432,
- 32 subsection 12; and
- 33 (3) Good cause for the cancellation, termination,
- 34 nonrenewal or noncontinuance;

35 O. To cancel, terminate, fail to renew or refuse to continue
36 any dealer agreement with a licensed new recreational
37 vehicle dealer, notwithstanding the terms, provisions or
38 conditions of any agreement or the terms or provisions of
39 any waiver unless good cause exists. Good cause exists for
40 the purposes of a termination, cancellation, nonrenewal or
41 noncontinuance when:

COMMITTEE AMENDMENT

R 418

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

(1) There is a failure by the new recreational vehicle dealer to comply with a provision of the dealer agreement that is both reasonable and of material significance to the contractual relationship as long as compliance on the part of the new recreational vehicle dealer is reasonably possible and the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph Q;

(2) The failure by the new recreational vehicle dealer, described in subparagraph (1), relates to the performance of the new recreational vehicle dealer in sales or service, then good cause is defined as the failure of the new recreational vehicle dealer to effectively carry out the performance provisions of the dealer agreement if:

(a) The new recreational vehicle dealer was apprised by the manufacturer in writing of that failure, the notification stated that notice was provided of failure of performance pursuant to this section and the new recreational vehicle dealer was afforded a reasonable opportunity for a period of not less than 6 months to exert good faith efforts to carry out the performance provisions;

(b) The failure continued within the period that began not more than 180 days before the date of notification of termination, cancellation or nonrenewal was given pursuant to paragraph Q; and

(c) The new recreational vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to that dealer;

(3) The dealer and the manufacturer or distributor agree not to renew the dealer agreement; or

(4) The manufacturer discontinues production or distribution of the recreational vehicle product in this State and, in the case of termination or cancellation, discontinues advertising that product within this State;

P. To cancel, terminate, fail to renew or refuse to continue any contractual relationship with a licensed new recreational vehicle dealer, notwithstanding the terms,

COMMITTEE AMENDMENT

2 provisions or conditions of any agreement or dealer
3 agreement or the terms or provisions of any waiver, based on
4 any of the following conditions, which do not constitute
5 good cause:

6 (1) The change of ownership of the new recreational
7 vehicle dealer's dealership. This subparagraph does
8 not authorize any change in ownership that has the
9 effect of the sale of rights under the dealer
10 agreement without the manufacturer's or distributor's
11 written consent. This consent may not be unreasonably
12 withheld. The burden of establishing the
13 reasonableness is on the manufacturer or distributor;

14 (2) The fact that the new recreational vehicle dealer
15 unreasonably refused to purchase or accept delivery of
16 any new recreational vehicle, parts, accessories or any
17 other commodity or services not ordered by the new
18 recreational vehicle dealer, except that the
19 manufacturer may require that the dealer stock a
20 reasonable supply of parts or accessories required to
21 perform campaign, recall or warranty work and that this
22 provision is not intended to modify or supersede any
23 requirement of the dealer agreement that dealers market
24 a representative line of those recreational vehicles
25 that the manufacturer is publicly advertising;

26 (3) The fact that the new recreational vehicle dealer
27 owns, has an investment in, participates in the
28 management of, or holds a license for, the sale of
29 another make or line of new recreational vehicle or
30 that the new recreational vehicle dealer has
31 established another make or line of new recreational
32 vehicle in the same dealership facilities as those of
33 the manufacturer as long as the new recreational
34 vehicle dealer maintains a reasonable line of credit
35 for each make or line of new recreational vehicle and
36 that the new recreational vehicle dealer remains in
37 substantial compliance with reasonable facilities
38 requirements of the manufacturer;

39 (4) The fact that the new recreational vehicle dealer
40 sells or transfers ownership of the dealership or sells
41 or transfers capital stock in the dealership to the new
42 recreational vehicle dealer's designated family
43 member. The manufacturer shall give effect to that
44 change in the ownership in the dealership. This
45 subparagraph does not authorize any changes in
46 ownership that have the effect of the sale of the
47 dealership without the manufacturer's written consent.
48
49
50

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 880, L.D. 1197

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer; or

(5) The manufacturer has the burden of proof under paragraph N for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the dealer agreements termination, cancellation, nonrenewal or noncontinuance;

Q. To cancel, terminate, fail to renew or refuse to continue any dealership relationship with a licensed new recreational vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or dealer agreement or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new recreational vehicle dealer as follows:

(1) Notification must be in writing and delivered personally or by certified mail to the new recreational vehicle dealer and contain:

(a) A statement of intent to terminate the dealer agreement, cancel the dealer agreement, not continue the dealer agreement or not to renew the dealer agreement;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) Notification may not be less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal; or

(3) Notification may not be less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

(a) Insolvency of the new recreational vehicle dealer or filing of any petition by or against the new recreational vehicle dealer under any bankruptcy or receivership law;

COMMITTEE AMENDMENT

2 (b) The business operations outlined by the dealer
3 agreement have been abandoned or closed for 14
4 consecutive business days unless the closing is
5 due to an act of God, a strike or labor difficulty;

6
7 (c) Conviction of or plea of nolo contendere of a
8 recreational vehicle dealer or one of its
9 principal owners of any Class A, Class B or Class
10 C crime, as defined in Title 17-A, in which a
11 sentence of imprisonment of 60 days or more is
12 imposed under Title 17-A, sections 1251 and 1252;

13
14 (d) Revocation of the recreational vehicle
15 dealer's license pursuant to Title 29-A, section
16 903; or

17 (e) A determination that there was a material
18 fraudulent misrepresentation by the dealer to the
19 manufacturer, distributor or wholesaler; or

20
21 R. To cancel, terminate, fail to renew or refuse to continue
22 any dealer agreement with a licensed new recreational
23 vehicle dealer without providing fair and reasonable
24 compensation to the licensed new recreational vehicle dealer
25 for:

26
27 (1) All unsold and unaltered new model recreational
28 vehicle inventory of the current and previous model
29 years purchased from the manufacturer;

30
31 (2) Unused supplies and parts purchased from the
32 manufacturer or its approved sources;

33 (3) Equipment and furnishings purchased from the
34 manufacturer or its approved sources;

35 (4) Special tools purchased from the manufacturer or
36 its approved sources; and

37 (5) Facilities, if the involuntary termination,
38 cancellation, noncontinuance or nonrenewal is due to a
39 failure of performance of the new recreational vehicle
40 dealer in sales or service and;

41
42 (a) The new recreational vehicle dealer is leasing
43 the dealership facilities from a lessor other than
44 the manufacturer, the manufacturer shall pay the
45 new recreational vehicle dealer a sum equivalent
46 to the prorated portion of rent attributable to
47
48
49
50

2 the manufacturer's terminated line for the
3 unexpired term of the lease or one year's rent,
4 whichever is less; or

6 (b) The new recreational vehicle dealer owns the
7 facilities, the manufacturer shall pay the new
8 recreational vehicle dealer a sum equivalent to
9 the prorated portion of the reasonable rental
10 value of the facilities attributable to the
11 manufacturer's terminated line for one year.

12 The fair and reasonable compensation for the items listed in
13 subparagraphs (1) to (5) may not be less than the
14 acquisition price and must be paid by the manufacturer
15 within 90 days of the effective date of the termination,
16 cancellation, noncontinuance or nonrenewal.

18 In lieu of any injunctive relief or any other damages, if
19 the manufacturer fails to prove there was good cause for the
20 termination, cancellation, noncontinuance or nonrenewal or
21 if the manufacturer fails to prove that it acted in good
22 faith, the manufacturer shall pay the new recreational
23 vehicle dealer fair and reasonable compensation for the
24 attributable value of the dealership as an ongoing business
25 to the manufacturer's terminated line; and

26 **4. Dealer violations. Recreational vehicle dealer:**

28 A. To require a purchaser of a new recreational vehicle, as
29 a condition of sale and delivery of the new recreational
30 vehicle, to also purchase special features, appliances,
31 equipment, parts or accessories not desired or requested by
32 the purchaser. The requirements of this paragraph must be
33 conveyed by the recreational vehicle dealer to the purchaser
34 prior to the consummation of the purchase;

36 B. To represent and sell as a new recreational vehicle any
37 recreational vehicle that has been used and operated for
38 demonstration purposes or is otherwise a used recreational
39 vehicle;

41 C. To resort to or use any false or misleading advertisement
42 in connection with that dealer's business as a recreational
43 vehicle dealer; or

45 D. To fail to disclose conspicuously in writing the
46 recreational vehicle dealer's policy relating to the return
47 of a deposit received from any person. A dealer shall
48 require that a person making a deposit sign the form on
49 which the disclosure appears.
50

2 **§1435. Limitations on establishing or relocating dealerships**

4 A new recreational vehicle dealership may not be established
6 and an existing recreational vehicle dealership may not be
relocated, except as follows.

8 **1. Notification.** If a manufacturer seeks to enter into a
10 dealer agreement establishing an additional new recreational
12 vehicle dealership or relocating an existing new recreational
14 vehicle dealership, within or into a relevant market area where
16 the same line make is already represented, the manufacturer shall
18 notify, in writing, each new recreational vehicle dealer in the
20 line make in the relevant market area of the intention to
establish an additional dealership or to relocate an existing
dealership within or into that market area. The relevant market
area is a radius of 15 miles around an existing dealership in the
following cities: Augusta, Auburn, Bangor, Biddeford, Brewer,
Falmouth, Lewiston, Portland, Saco, South Portland, Waterville
and Westbrook. The relevant market area is a radius of 30 miles
around all other existing dealerships.

22 Within 30 days of receiving the notice or within 30 days after
24 the end of any appeal procedure provided by the manufacturer, a
26 new recreational vehicle dealership may file a complaint in the
28 Superior Court of the county in which the dealership is located,
protesting the establishment or relocation of the new
recreational vehicle dealership. When a complaint is filed, the
30 manufacturer may not establish or relocate the proposed new
32 recreational vehicle dealership until a hearing has been held on
34 the merits of establishing or relocating that recreational
36 vehicle dealership, and that dealership may not be established or
relocated if the court has determined that there is good cause
for not permitting the new recreational vehicle dealership. For
the purposes of this section, the reopening in a relevant market
area of a new recreational vehicle dealership that has not been
in operation for one year or more is considered the establishment
38 of an additional new recreational vehicle dealership.

40 **2. Good cause.** In determining whether good cause has been
42 established for not entering into a new dealer agreement or
relocating an additional dealer for the same line make, the court
shall take into consideration the existing circumstances,
44 including, but not limited to:

46 A. The permanency of the investment of both the existing and
proposed new recreational vehicle dealers;

48 B. The effect on the retail new recreational vehicle
50 business and the public in the relevant market area;

2 C. Whether it is injurious or beneficial to the public for
3 an additional new recreational vehicle dealer to be
4 established;

6 D. Whether the new recreational vehicle dealers of the same
7 line make in that relevant market area are providing
8 adequate competition and convenient consumer care for the
9 recreational vehicles of the line make in that market area
10 that includes the adequacy of recreational vehicle sales and
11 service facilities, equipment, supply of recreational
12 vehicle parts and qualified service personnel;

14 E. Whether the establishment of an additional new
15 recreational vehicle dealership would increase competition
16 and be in the public interest; and

18 F. The effect on the establishing or relocating dealer as a
19 result of not being permitted to establish or relocate.

20 **§1436. Transportation damages**

22 **1. Liability of new dealer after acceptance.**
23 Notwithstanding the terms, provisions or conditions of any
24 agreement or dealer agreement, the new recreational vehicle
25 dealer is solely liable for damages to new recreational vehicles
26 after acceptance from the carrier and before delivery to the
27 ultimate purchaser.

28 **2. Liability of manufacturer.** Notwithstanding the terms,
29 provisions or conditions of any agreement or dealer agreement,
30 the manufacturer is liable for all damages to recreational
31 vehicles before delivery to a carrier or transporter.

34 **3. Additional liability of dealer.** The new recreational
35 vehicle dealer is liable for damages to new recreational vehicles
36 after delivery to the carrier only if the dealer selects the
37 method of transportation, mode of transportation and the
38 carrier. In all other instances, the manufacturer is liable for
39 carrier-related new recreational vehicle damage, as long as the
40 new recreational vehicle dealer annotates the bill of lading or
41 other carrier document indicating damages observed at the time of
42 delivery to the new recreational vehicle dealer and promptly
43 notifies the manufacturer of any concealed damage discovered
44 after delivery.

46 **§1437. Survivorship**

48 **1. Right of family member.** The right of a designated
49 family member to succeed in dealer ownership is governed by the
50 following provisions.

2 A. Any designated family member of a deceased or
4 incapacitated new recreational vehicle dealer who has been
6 designated as successor to that dealer in writing to the
8 manufacturer may succeed the dealer in the ownership or
10 operation of the dealership under the existing dealer
12 agreement or distribution agreement if the designated family
14 member gives the manufacturer of new recreational vehicles a
16 written notice of the intention to succeed to the dealership
18 within 120 days of the dealer's death or incapacity. The
20 designated family member may not succeed the dealer if there
22 exists good cause for refusal to honor the succession on the
24 part of the manufacturer.

26 B. The manufacturer may request and the designated family
28 member shall provide, upon the request, on forms provided
30 for that purpose by the manufacturer, personal and financial
32 data that is reasonably necessary to determine whether the
34 succession may be honored.

36 2. Refusal to honor; notice required. The refusal to honor
38 the right of the designated family member to succeed in dealer
40 ownership is governed by the following provisions.

42 A. If a manufacturer, distributor, factory branch, factory
44 representative or importer believes that good cause exists
46 for refusing to honor the succession to the ownership and
48 operation of a dealership by a designated family member of a
50 deceased or incapacitated new recreational vehicle dealer
 under the existing dealer agreement, the manufacturer,
 within 60 days of receipt of the information requested in
 subsection 1, paragraph B, may serve upon the designated
 family member notice of its refusal to honor the succession
 or its intent to discontinue the existing dealer agreement
 with the dealership. A discontinuance may not take place
 sooner than 90 days from the date the notice is served.

B. The notice must state the specific grounds for the
 refusal to honor the succession and of the intent to
 discontinue the existing dealer agreement with the
 dealership no sooner than 90 days from the date the notice
 is served.

C. If notice of refusal and discontinuance is not served
 upon the designated family member in a timely manner, the
 dealer agreement continues in effect and is subject to
 termination only as otherwise permitted by this section.

3. Written designation of succession unaffected. This
 section does not preclude a new recreational vehicle dealer from

2 designating any person, by written instrument filed with the
3 manufacturer, as that dealer's successor.

4 **§1438. Delivery and preparation obligations; product liability**
5 **and implied warranty complaints**

6
7 A manufacturer shall specify to the dealer the delivery and
8 preparation obligations of its recreational vehicle dealers prior
9 to delivery of new recreational vehicles to retail buyers. The
10 delivery and preparation obligations of its recreational vehicle
11 dealers and a schedule of the compensation to be paid to its
12 recreational vehicle dealers for the work and services the
13 dealers are required to perform in connection with the delivery
14 and preparation are the dealer's only responsibility for product
15 liability between that dealer and that manufacturer. The
16 compensation stated in the schedule must be reasonable.

17
18 In any action or claim brought against the recreational
19 vehicle dealer on a product liability complaint in which it is
20 later determined that the manufacturer is liable, the dealer is
21 entitled to receive from the manufacturer its reasonable costs
22 and attorney's fees incurred in defending the claim or action.

23
24 In any action or claim brought against the recreational
25 vehicle dealer on a breach of implied warranty complaint in which
26 it is later determined that the manufacturer is liable, the
27 dealer is entitled to receive from the manufacturer the dealer's
28 reasonable costs and attorney's fees incurred in defending the
29 claim or action. In any implied warranty action, a dealer has
30 the rights of a buyer under Title 11, section 2-607, subsection
31 (5).

32
33 The court shall consider the recreational vehicle dealer's
34 share in the responsibility for the damages in awarding costs and
35 attorney's fees.

36
37 **§1439. Warranty**

38
39 1. Parts or labor; satisfaction of warranty. If a
40 manufacturer requires or permits a recreational vehicle dealer to
41 perform labor or provide parts in satisfaction of a warranty
42 created by the manufacturer, the manufacturer shall properly and
43 promptly fulfill its warranty obligations and:

44
45 A. Reimburse the dealer for any parts provided to satisfy
46 the warranty at the dealer's cost of those parts plus a
47 markup of 20%; and

48
49 B. Reimburse the dealer for any labor performed at the
50 retail rate customarily charged by that dealer for the same

R. of S

2 labor when not performed in satisfaction of a warranty as
3 long as the dealer's rate for labor not performed in
4 satisfaction of a warranty is routinely posted in a place
5 conspicuous to its service customer.

6 2. Claim. Any claim made by a dealer for compensation for
7 parts provided or for reimbursement for labor performed in
8 satisfaction of a warranty must be paid within 30 days of its
9 approval. All the claims must be either approved or disapproved
10 within 30 days of their receipt. When any claim is disapproved,
11 the dealer that submitted the claim must be notified in writing
12 of the claim's disapproval within that 30-day period with the
13 specific reasons for its disapproval.

14 3. Audits. The manufacturer is permitted to audit claims
15 within a 2-year period from the date the claim was paid or credit
16 issued by the manufacturer and to charge back any false or
17 unsubstantiated claims. If there is evidence of fraud, this
18 subsection does not limit the right of the manufacturer to audit
19 for longer periods and charge back for any fraudulent claim.

20 4. Restrictions prohibited.* A manufacturer may not, by
21 agreement, by restriction upon reimbursement or otherwise,
22 restrict the nature or extent of labor performed or parts
23 provided if the restriction impairs the dealer's ability to
24 satisfy a warranty created by the manufacturer by performing
25 labor in a professional manner or by providing parts required in
26 accordance with generally accepted standards.

27 5. Costs; fees. In any claim that is disapproved by the
28 manufacturer and in which the dealer brings legal action to
29 collect the disapproved claim and is successful in the action,
30 the court shall award the dealer the cost of the action together
31 with reasonable attorney's fees. If the manufacturer is
32 successful in the action, the court shall award the manufacturer
33 the cost of the action together with reasonable attorney's fees,
34 but not to exceed the amount expended by the dealer in bringing
35 the action. Reasonable attorney's fees are determined by the
36 value of the time reasonably expended by the attorney and not by
37 the amount of the recovery on behalf of, or sought by, the dealer.

38 6. Motor homes. For the purposes of this section only, a
39 manufacturer of motor homes, as defined in Title 29-A, section
40 101, subsection 40, shall reimburse a dealer of motor homes for
41 parts of systems, appliances, furnishings, accessories and
42 fixtures of a motor home that are designed, used and maintained
43 primarily for nonvehicular residential purposes.

44 §1440. Mediation and arbitration of manufacturer; dealer disputes

50

COMMITTEE AMENDMENT

1. Mediation. Neither a dealer nor a manufacturer may bring an action in a court of competent jurisdiction based on an alleged violation of this chapter unless the dealer or manufacturer first serves a demand for mediation upon the other before bringing the action.

2. Demand for mediation. A demand for mediation must be in writing and served on the other party by certified mail at an address designated within the sales agreement. The demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand. Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

3. Effect of demand. The service of a demand for mediation under subsection 1 stays the time for the filing of any action under this chapter until the representatives of both parties have met with a mutually selected mediator for the purpose of resolving the dispute. If an action is filed before the meeting, the court shall enter an order suspending the action until the meeting has occurred and, upon written stipulation of all parties to the action that the parties wish to continue to mediate under this subsection, may enter an order suspending the action for as long as the court considers appropriate. A suspension order may be revoked upon motion of any party or upon motion of the court.

4. Arbitration. If a dispute arises under this chapter, the dealer may voluntarily agree to submit that dispute to binding or nonbinding arbitration. An arbitration proceeding must be voluntary, initiated by serving a written request for arbitration on the other party and conducted under the provisions of the Maine Uniform Arbitration Act.

5. Civil liability immunity. A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of powers and duties under this section. Every act or omission is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

§1441. Unreasonable restrictions

It is unlawful directly or indirectly to impose unreasonable restrictions on the recreational vehicle dealer relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, right of first refusal to purchase,

1 option to purchase, compliance with subjective standards or
2 assertion of legal or equitable rights.

4 **§1442. Covered under written or oral agreements**

6 1. Agreements subject to this chapter. Written or oral
7 agreements between a manufacturer and a recreational vehicle
8 dealer, including, but not limited to, the dealer agreement
9 offering, the dealer agreement, sales agreement, sales of goods,
10 services or advertising, leases or mortgages of real or personal
11 property, promises to pay, security interests, pledges, insurance
12 contracts, advertising contracts, construction or installation
13 contracts, servicing contracts and all other agreements in which
14 the manufacturer has any direct or indirect interest are subject
15 to this chapter. Any agreement renewed or continued beyond its
16 term after the effective date of this chapter is subject to this
17 chapter.

18
19 2. Copy of agreement or amendments. Before any new selling
20 agreement or any amendment between the parties becomes effective,
21 the manufacturer or officer, agent or other representative of the
22 manufacturer, 90 days prior to the effective date of the
23 agreement or amendment, shall forward a copy of the agreement or
24 amendment to the dealer.

26 **§1443. Dealership interest; vested rights**

28 Notwithstanding any other provision of law, it is unlawful
29 for the manufacturer, wholesaler or distributor, without due
30 cause, to fail to renew a dealer agreement on terms then equally
31 available to all its recreational vehicle dealers, to terminate a
32 dealer agreement or to restrict the transfer of right under a
33 dealer agreement unless the dealer receives fair and reasonable
34 compensation for the value of the business.

36 **§1444. Dealer's right to associate**

38 Any dealer has the right of free association with other
39 dealers for any lawful purpose.

40
41 **§1445. Discounts and other inducements**

42
43 In connection with a sale of a recreational vehicle or
44 vehicles to the State or to any political subdivision of the
45 State, a manufacturer may not offer discounts, refunds or any
46 other similar type of inducement to a dealer without making the
47 same offer or offers to all its dealers within the relevant
48 market area. If inducements are made, the manufacturer shall
49 give simultaneous notice of those inducements to all of its
50 dealers within the relevant market area.

R. of

2 **§1446. Public policy**

4 A contract or part of a contract or practice under a
6 contract in violation of any provision of this chapter is against
8 public policy and is void and unenforceable. An existing
10 contract or part of a contract or practice in violation of any
12 provision of this chapter is against public policy and is void
14 and unenforceable to the extent that it is in conflict with this
16 chapter.

12 **§1447. Civil remedies**

14 Any recreational vehicle dealer who has been damaged by
16 reason of a violation of a provision of this chapter may bring an
18 action to enjoin that violation and to recover any damages
20 arising from that violation of any part of this chapter. A final
22 judgment, order or decree rendered against a person in any civil,
24 criminal or administrative proceeding under the federal antitrust
26 laws, the Federal Trade Commission Act or under the Maine Revised
28 Statutes is prima facie evidence against that person subject to
30 the conditions set forth in the federal antitrust laws, 15 United
32 States Code, Section 16.

24 **§1448. Statute of limitation**

26 Actions arising out of any provision of this chapter must be
28 commenced within 4 years after the cause of action accrues. If a
30 person liable under this chapter conceals the cause of action
32 from the knowledge of the person entitled to bring it, the period
34 prior to the discovery of the cause of action by the person so
36 entitled is excluded in determining the time limited for
38 commencement of the action. If a cause of action accrues during
40 the pendency of any civil, criminal or administrative proceeding
42 against a person brought by the United States or any of its
44 agencies under the antitrust laws, the Federal Trade Commission
46 Act or any other federal Act or the laws of the State related to
48 antitrust laws or to franchising, that action may be commenced
50 within one year after the final disposition of the civil,
criminal or administrative proceeding.

42 **§1449. Construction**

44 In construing this chapter the courts may be guided by the
46 interpretations of the Federal Trade Commission Act, 15 United
48 States Code, Section 45.

48 If any provision of this chapter is declared
50 unconstitutional or the applicability of this chapter to any
person or circumstance is held invalid, the constitutionality of

the remainder of this chapter and the applicability of this chapter to persons and circumstances is not affected.

§1450. Jurisdiction

A person who violates any provisions of this chapter is subject to the jurisdiction of the courts of this State upon service of process in accordance with Title 14, chapter 203 and consistent with the maximum limits of due process as decided by the United States Supreme Court.

§1450-A. Penalty

A person who violates this chapter is guilty of a Class E crime.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.78 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

This bill may increase the number of civil suits and criminal cases filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees and additional fines may also increase General Fund revenue by minor amounts.'

SUMMARY

The bill requires a recreational vehicle franchisor to reimburse a franchisee at the retail rate for any parts or labor provided by that franchisee to satisfy a warranty.

The amendment replaces the bill and regulates the business practices between recreational vehicle manufacturers and dealers. A recreation vehicle includes, but is not limited to, a camping trailer, fifth-wheel trailer, travel trailer and truck camper.

2 The amendment provides essentially the same protections for
3 recreational vehicle dealers that Maine laws extend to motor
4 vehicle dealers. Some of these protections as follows.

6 1. Manufacturer warranty work provided by a dealer must be
7 reimbursed by the manufacturer at the retail rate customarily
8 charged by the dealer for the same labor when not performed for
9 warranty work. Reimbursement to a dealer for parts to satisfy
10 warranty work will be calculated on the dealer cost of the parts
11 plus a 20% mark-up.

12 2. A dealership may not be terminated without proper
13 notice, as described under the Maine Revised Statutes, Title 10,
14 chapter 214-A, good faith and good cause for termination.

16 3. A manufacturer may not coerce a dealer to accept
17 recreational vehicles, parts or accessories that the dealer has
18 not ordered.

20 4. Affected dealers may appeal and stop with "good cause" a
21 manufacturer's decision to establish a new dealership in another
22 dealer's relevant market area.

24 This amendment also adds a fiscal note to the bill.