HOUSE BILL 655

Consumer Protection-Automobile Financing Charges-Required Dealer Disclosures

Position of MD RV (Recreational Vehicles) Dealers Association: OPPOSE

- HB 655 is bad policy, does not benefit consumers, and is very likely unconstitutional.

- Financing of Recreational Vehicles is open, and very competitive; no buyer is required to finance through an RV dealer; any buyer can go to his or her bank, or credit union, or other lender and arrange for independent financing, if the purchaser wishes to finance an RV purchase.

- Financing a purchase is already a competitive process with many options available to the consumer; but in fact, dealers finance about 70% of people who finance; this occurs because in many cases consumers prefer the loan available through the dealer.

- In most cases, RV Dealers will meet or beat loan terms that a consumer may get from a bank or credit union; the dealer's relationships with various lenders and the volume of loans that a dealer can provide to a lender will allow the dealer to obtain better rates than a consumer could get on his own; a consumer, for example, could not obtain the so-called "buy rate" in HB 655 because he does not have those lender relationships.

- In addition, all dealer financing, should the consumer opt to go that route, is subject to the federal Truth in Lending Act; under this act, lenders must provide a disclosure statement that includes information about the loan, including the amount of the loan, the annual percentage rate, finance charges including application fees, late charges and prepayment penalties, a payment schedule and the total repayment amount over the lifetime of the loan; these required disclosures allow consumers to accurately compare loans.

- The disclosure requirements in HB 655 will not benefit consumers; consumers simply will not obtain a loan on the same terms as a dealer, or at the so-called "buy rate"; dealers do volume business with lenders, and have long term relationships with those lenders that gives them access to more favorable rates.

- In addition, HB 655 is almost certainly unconstitutional, as it violates the First Amendment; the Supreme Court has made it very clear that the First Amendment applies not only to prohibitions on speech, but that it equally applies to compelled speech, such as required disclosures; the state cannot compel disclosures unless required to further a "compelling

government interest", and "narrowly tailored" to that end. *NILFA v. Becerra*, 138 S. Ct. 2361 (2018); *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015).

- HB 655 does not come close to satisfying either legal requirement. It fails on two grounds. First, it contains no disclosure requirements for consumer loans made directly from banks or credit unions, only from dealer arranged financing. There is obviously no compelling state interest in disclosure to consumers, when the bill exempts huge portions of the financing market from any disclosure (its fatal failure in this regard is, as the Court noted in *Becerra*, "wildly underinclusive"); second, since the required disclosures from dealers would apply to information about loans that are unavailable to the consumer, there can be no legitimate state interest in providing disclosures about "buy rates" that are unavailable to consumers; for the same reasons, the bill's broad exemptions fail to satisfy the "narrowly tailored" test; As the Court has stated, its precedents require that compelled disclosures "remedy a harm that is potentially real not purely hypothetical". HB 655 fails this constitutional hurdle.

- **Contact: James J. Doyle, jimdoyle3@comcast.net, 443-676-2940.**