
SECOND SUBSTITUTE HOUSE BILL 1513

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Zellinsky, Eide, Sheldon and Schmidt; by request of Department of Licensing)

Read first time 01/28/94.

1 AN ACT Relating to vessel dealer registration; amending RCW
2 88.02.010 and 88.02.050; adding a new chapter to Title 88 RCW;
3 recodifying RCW 88.02.230; repealing RCW 88.02.023, 88.02.060,
4 88.02.078, 88.02.112, 88.02.115, 88.02.118, 88.02.125, 88.02.184,
5 88.02.188, 88.02.210, and 88.02.220; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 88.02.010 and 1983 c 7 s 14 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Vessel" means every watercraft used or capable of being used
12 as a means of transportation on the water, other than a seaplane.

13 (2) "Owner" means a person who has a lawful right to possession of
14 a vessel by purchase, exchange, gift, lease, inheritance, or legal
15 action whether or not the vessel is subject to a security interest.

16 (3) (~~"Dealer" means a person, partnership, association, or~~
17 ~~corporation engaged in the business of selling vessels at wholesale or~~
18 ~~retail in this state.~~

19 (4)) "Department" means the department of licensing.

1 **Sec. 2.** RCW 88.02.050 and 1993 c 244 s 38 are each amended to read
2 as follows:

3 Application for a vessel registration shall be made to the
4 department or its authorized agent in the manner and upon forms
5 prescribed by the department. The application shall state the name and
6 address of each owner of the vessel and such other information as may
7 be required by the department, shall be signed by at least one owner,
8 and shall be accompanied by a vessel registration fee of ten dollars
9 and fifty cents per year and the excise tax imposed under chapter 82.49
10 RCW. Any fees required for licensing agents under RCW 46.01.140 shall
11 be in addition to the ten dollar and fifty cent annual registration
12 fee.

13 Upon receipt of the application and the registration fee, the
14 department shall assign a registration number and issue a decal for
15 each vessel. The registration number and decal shall be issued and
16 affixed to the vessel in a manner prescribed by the department
17 consistent with the standard numbering system for vessels set forth in
18 volume 33, part 174, of the code of federal regulations. A valid decal
19 affixed as prescribed shall indicate compliance with the annual
20 registration requirements of this chapter.

21 The vessel registrations and decals are valid for a period of one
22 year, except that the director of licensing may extend or diminish
23 vessel registration periods, and the decals therefor, for the purpose
24 of staggered renewal periods. For registration periods of more or less
25 than one year, the department may collect prorated annual registration
26 fees and excise taxes based upon the number of months in the
27 registration period. Vessel registrations are renewable every year in
28 a manner prescribed by the department upon payment of the vessel
29 registration fee and excise tax. Upon renewing a vessel registration,
30 the department shall issue a new decal to be affixed as prescribed by
31 the department.

32 When the department issues either a notice to renew a vessel
33 registration or a decal for a new or renewed vessel registration, it
34 shall also provide information on the location of marine oil recycling
35 tanks and sewage holding tank pumping stations. This information will
36 be provided to the department by the state parks and recreation
37 commission in a form ready for distribution. The form will be
38 developed and prepared by the state parks and recreation commission
39 with the cooperation of the department of ecology. The department, the

1 state parks and recreation commission, and the department of ecology
2 shall enter into a memorandum of agreement to implement this process.

3 A person (~~acquiring~~) who acquires a vessel from other than a
4 dealer or who acquires a vessel already validly registered under this
5 chapter shall, within fifteen days of the acquisition or purchase of
6 the vessel, apply to the department or its authorized agent for
7 transfer of the vessel registration, and the application shall be
8 accompanied by a transfer fee of one dollar.

9 NEW SECTION. **Sec. 3.** The legislature finds and declares that the
10 distribution and sale of vessels in the state of Washington vitally
11 affects the general economy of the state and the public interest and
12 the public welfare. It is the intent of the legislature to regulate
13 and register vessel dealers doing business in Washington, to promote
14 honesty and fair dealing with citizens, and to preserve public
15 confidence in the vessel dealer industry.

16 NEW SECTION. **Sec. 4.** Unless the context clearly requires
17 otherwise, the definitions in this section apply throughout this
18 chapter.

19 (1) "Vessel" means every watercraft used or capable of being used
20 as a means of transportation on the water, other than a seaplane.

21 (2) "Owner" means a person who has a lawful right to possession of
22 a vessel by purchase, exchange, gift, lease, inheritance, or legal
23 action whether or not the vessel is subject to a security interest.

24 (3) "Dealer" means a person, partnership, association, or
25 corporation engaged in the business of selling vessels at wholesale or
26 retail in this state.

27 (4) "Department" means the department of licensing.

28 (5) "Established place of business" means a location meeting the
29 requirements of section 8 of this act at which a vessel dealer conducts
30 business in this state.

31 NEW SECTION. **Sec. 5.** Vessel dealer display decals shall only be
32 used:

33 (1) To demonstrate vessels held for sale when operated by a
34 prospective customer holding a dated demonstration permit, and shall be
35 carried in the vessel at all times it is being operated by such
36 individual;

1 (2) On vessels owned or consigned for sale that are in fact
2 available for sale and being used only for vessel dealer business
3 purposes by an officer of the corporation, a partner, a proprietor, or
4 by a bona fide employee of the firm if a dealer identification card so
5 identifying any such individual is carried in the vessel at all times
6 it is so operated.

7 NEW SECTION. **Sec. 6.** (1) A vessel in a vessel dealer's inventory
8 is not subject to registration under this chapter. A vessel
9 registration decal is not required to be displayed on the vessel, but
10 whenever the vessel is operated on the waters of this state, the vessel
11 must display the vessel dealer's registration number and registration
12 decal.

13 (2) Dealer registrations are not transferable.

14 NEW SECTION. **Sec. 7.** (1) Each vessel dealer shall register with
15 the department in the manner and upon forms prescribed by the
16 department, in accordance with rules adopted under chapter 34.05 RCW.
17 After the completed vessel dealer application has been satisfactorily
18 filed and the applicant is eligible as determined by the department's
19 rules, the department shall, if no denial proceeding is in effect,
20 issue the vessel dealer's registration on the basis of staggered annual
21 expiration dates.

22 (2) Before issuing a vessel dealer's registration, the department
23 shall require the applicant to file with the department a surety bond
24 in the amount of five thousand dollars. The bond shall run to the
25 state of Washington and be executed by a surety company authorized to
26 do business in the state of Washington. The attorney general shall
27 approve the bond as to form and it must be conditioned that the dealer
28 shall conduct his or her business in conformity with the provisions of
29 this chapter. A vessel consignor or purchaser who has suffered loss or
30 damage by reason of an act or omission by a dealer that constitutes a
31 violation of this chapter may institute an action for recovery against
32 the dealer and the surety upon the bond. Successive recoveries against
33 the bond are permitted, but the aggregate liability of the surety to
34 all persons may not exceed the amount of the bond. Upon exhaustion of
35 the penalty of the bond or the cancellation of the bond by the surety,
36 the vessel dealer registration is automatically canceled.

1 (3) Vessel dealers selling fifteen vessels or fewer per license
2 year are not subject to subsection (2) of this section if the retail
3 value of each vessel does not exceed two thousand dollars.

4 (4) For each fiscal biennia, the director shall establish the
5 amount of registration, renewal, display decal, and display decal
6 replacement fees. Such fees shall be set at a sufficient level to
7 defray the costs of administering the vessel dealer registration
8 program. All such fees shall be fixed by rule adopted by the director
9 in accordance with the administrative procedure act, chapter 34.05 RCW.
10 All fees collected under this section shall be deposited with the state
11 treasurer and credited to the general fund.

12 (5) Manufacturers who produce only documented commercial vessels
13 for commercial or governmental use are exempt from obtaining a
14 Washington state vessel dealer's license.

15 NEW SECTION. **Sec. 8.** (1) An "established place of business"
16 requires the following:

17 (a) A place of business in the state of Washington, in an area
18 where vessel dealer business may be lawfully conducted in accordance
19 with the terms of all applicable building codes, zoning, and other land
20 use regulatory ordinances;

21 (b) Display of a sign, permanently affixed to the land or building,
22 clearly visible to the public, identifying the nature of the business
23 as marine sales, service, repair, or manufacturing;

24 (c) A business phone at the place of business that is listed with
25 directory assistance in the business name;

26 (d) The dealer shall keep the place of business open or maintain a
27 telecommunications system so that the public and representatives of the
28 department may contact the vessel dealer or dealer's salesperson at
29 reasonable times;

30 (e) The books, records, and files necessary to conduct the business
31 shall be kept and maintained at the place of business listed on the
32 vessel dealer's registration, and shall be available for inspection by
33 representatives of the department during normal business hours.

34 (2) The department may waive any requirements pertaining to a
35 vessel dealer's established place of business if such waiver both
36 serves the purposes of this chapter and is necessary due to unique
37 circumstances such as a highly specialized business or impediments to
38 displaying a business sign.

1 NEW SECTION. **Sec. 9.** It is unlawful for a person, firm, or
2 association to act as a vessel dealer or vessel manufacturer, to engage
3 in the business as such, serve in the capacity as such, advertise
4 himself, herself, or themselves as such, solicit sales as such, or
5 distribute or transfer vessels for resale in this state, without first
6 holding a current registration as provided in this chapter. It is
7 unlawful for a person other than a registered vessel dealer to display
8 a vessel for sale unless the registered owner or legal owner is the
9 displayer or holds a notarized power of attorney. A person or firm
10 engaged in buying and offering for sale, or buying and selling vessels,
11 or in any other way engaged in vessel dealer activity without holding
12 a vessel dealer's registration, is guilty of a gross misdemeanor and,
13 upon conviction, is subject to a fine of up to five thousand dollars
14 for each violation and up to a year in jail. A second offense is a
15 class C felony punishable under chapter 9A.20 RCW. A violation of this
16 section is also a per se violation of chapter 19.86 RCW and is
17 considered a deceptive practice.

18 NEW SECTION. **Sec. 10.** In addition to other penalties imposed by
19 this chapter for unauthorized or personal use of vessel dealer display
20 decals, the director may confiscate all display decals for such period
21 as the director deems appropriate, and in addition, or in lieu of other
22 sanctions, the director may impose a monetary penalty not exceeding
23 twice the amount of excise tax that should have been paid to register
24 each vessel properly. A monetary penalty assessment is in addition to
25 any fees owing to register each vessel properly. Any monetary penalty
26 imposed or vessel display decals confiscated shall be done in
27 accordance with chapter 34.05 RCW. Any monetary penalty imposed by the
28 director and the delinquent excise taxes collected shall be deposited
29 in the general fund.

30 NEW SECTION. **Sec. 11.** It is a gross misdemeanor for any person to
31 obtain a vessel dealer's registration for the purpose of evading excise
32 tax on vessels under chapter 82.49 RCW.

33 NEW SECTION. **Sec. 12.** (1) Except as otherwise provided in this
34 chapter, including sections 9, 10, and 11 of this act, a violation of
35 this chapter and the rules adopted by the department pursuant to this
36 chapter, is a misdemeanor punishable by a fine not to exceed one

1 hundred dollars per vessel for the first violation. Subsequent
2 violations in the same year are subject to the following fines:

3 (a) For the second violation, a fine of two hundred dollars per
4 vessel;

5 (b) For the third and successive violations, a fine of four hundred
6 dollars per vessel.

7 (2) After subtraction of court costs and administrative collection
8 fees, moneys collected under this section shall be credited to the
9 current expense fund of the arresting jurisdiction.

10 (3) Only department personnel shall have the authority to enforce
11 this chapter and the rules adopted by the department pursuant to this
12 chapter.

13 NEW SECTION. **Sec. 13.** (1) Vessel dealers shall possess a
14 certificate of title for each used vessel or a manufacturer's statement
15 of origin, a carpenter's certificate, or a factory invoice with other
16 evidence of ownership for each new vessel in the vessel dealer's
17 inventory unless the vessel for sale is consigned or subject to an
18 inventory security agreement. Each certificate of title shall be
19 either in the name of the dealer or in the name of the dealer's
20 immediate vendor properly assigned.

21 (2) A vessel dealer may display and sell consigned vessels or
22 vessels subject to an inventory security agreement if there is a
23 written and signed consignment agreement for each vessel or an
24 inventory security agreement covering all inventory vessels. The
25 consignment agreement shall include verification by the vessel dealer
26 that a vessel title or manufacturer's statement of origin exists and
27 its location, the name and address of the registered owner, and the
28 legal owner, if any. Vessels that are subject to an inventory security
29 interest shall be supported with a certificate of title or
30 manufacturer's statement of origin that is in the dealer's possession
31 or the possession of the inventory security party. Upon payment of the
32 debt secured for that vessel, the secured party shall deliver the
33 certificate of title or the manufacturer's statement of origin,
34 appropriately released, to the dealer. It is the vessel dealer's
35 responsibility to ensure that title documents are available for title
36 transfer upon the sale of the vessel.

37 (3) Following the retail sale of any vessel, the dealer shall
38 promptly make application and execute the assignment and warranty of

1 the certificate of title. Such assignment shall show any secured party
2 holding a security interest created at the time of sale. The dealer
3 shall deliver the certificate of title and application for registration
4 to the department.

5 NEW SECTION. **Sec. 14.** (1) The department may authorize vessel
6 dealers properly registered pursuant to this chapter to issue temporary
7 permits to operate vessels under such rules as the department adopts.

8 (2) The fee for each temporary permit application distributed to an
9 authorized vessel dealer shall be an amount fixed by rule and adopted
10 by the director. The fee must be credited to the payment of
11 registration fees at the time application for registration is made.

12 NEW SECTION. **Sec. 15.** For the purposes of an investigation or
13 proceeding under this chapter the director or an officer designated by
14 the director may administer oaths and affirmations, subpoena witnesses
15 and records, compel their attendance, take evidence, and require the
16 production of books, papers, correspondence, memoranda, agreements, or
17 other documents or records that the director deems relevant or material
18 to the inquiry.

19 In case of contumacy by, or refusal to obey a subpoena issued to,
20 a person, a court of competent jurisdiction, upon application by the
21 director or the officer designated by the director, may order the
22 person to produce documentary or other evidence touching the matter
23 under investigation or in question. The failure to obey an order of
24 the court may be punished as contempt.

25 NEW SECTION. **Sec. 16.** Except as otherwise provided in this
26 chapter, the director may by order deny, suspend, or revoke the
27 registration of any vessel dealer, or in lieu thereof or in addition
28 thereto, may by order assess monetary penalties of a civil nature not
29 to exceed one thousand dollars per violation, if the director finds
30 that the applicant or registrant:

31 (1) Is applying for a dealer's registration or has obtained a
32 dealer's registration for the purpose of evading excise taxes on
33 vessels;

34 (2) Has been adjudged guilty of a felony that directly relates to
35 marine trade and the time elapsed since the adjudication is less than
36 ten years. For purposes of this section, adjudged guilty means, in

1 addition to a final conviction in court, an unvacated forfeiture of
2 bail or collateral deposited to secure a defendant's appearance in
3 court, the payment of a fine, a plea of guilty, or a finding of guilt
4 regardless of whether the sentence is deferred or the penalty is
5 suspended;

6 (3) Has failed to comply with the trust account requirements of
7 this chapter;

8 (4) Has failed to transfer a certificate of title to a purchaser as
9 required in this chapter;

10 (5) Has misrepresented the facts at the time of application for
11 registration or renewal; or

12 (6) Has failed to comply with applicable provisions of, or any
13 rules adopted under, this chapter.

14 NEW SECTION. **Sec. 17.** If it appears to the director that a person
15 has engaged or is about to engage in an act or practice constituting a
16 violation of this chapter, or a rule adopted or an order issued under
17 this chapter, the director may issue an order directing the person to
18 cease and desist from continuing the act or practice. The director
19 shall give reasonable notice of an opportunity for a hearing. The
20 director may issue a temporary order pending a hearing. The temporary
21 order remains in effect until ten days after the hearing is held and
22 becomes final if the person to whom the notice is addressed does not
23 request a hearing within twenty days after receipt of the notice.

24 NEW SECTION. **Sec. 18.** The director may bring an action in
25 superior court against a person who has violated an order issued under
26 this chapter, to enforce such an order, or to restrain or prevent an
27 act or practice prohibited under this chapter. In an action to
28 enforce an injunction, the director may petition for the recovery of
29 civil penalties of not more than twenty-five thousand dollars.

30 NEW SECTION. **Sec. 19.** Any vessel dealer or manufacturer, by or
31 against whom a petition in bankruptcy has been filed, shall within ten
32 days of the filing notify the department of the proceedings in
33 bankruptcy, including the identity and location of the court in which
34 the proceedings are pending.

1 NEW SECTION. **Sec. 20.** (1) A vessel dealer shall complete and
2 maintain for a period of at least three years a record of the purchase
3 and sale of all vessels purchased or consigned and sold by the vessel
4 dealer. Records shall be made available for inspection by the
5 department during normal business hours. The records shall consist of:

6 (a) The registration and title numbers of the state in which the
7 vessel was last registered;

8 (b) A description of the vessel, including the documented name,
9 documentation number, hull identification number, and name of vessel;

10 (c) The name and address of the person from whom the vessel was
11 purchased;

12 (d) The name of the legal owner, if any;

13 (e) The name and address of the purchaser;

14 (f) If purchased from a dealer, the name, business address, dealer
15 registration number, and resale tax number of the dealer;

16 (g) The written consignment or listing agreement allowing a vessel
17 dealer to sell the vessel;

18 (h) Trust account records of receipt, deposits, and withdrawals;

19 (i) All sale documents, which shall show the full name of the
20 dealer or employee involved in the sale;

21 (j) Evidence of title transfer; and

22 (k) Any additional information the department may require. The
23 dealer shall maintain the records separate and apart from all other
24 business records of the dealer and shall keep them on file at the
25 dealer's established place of business.

26 (2) Before renewal of the vessel dealer registration, the
27 department shall require, on the forms prescribed, a record of the
28 number of vessels sold during the registration year. Vessel dealers
29 who assert that they qualify for the exemption provided in section 7(3)
30 of this act shall also record, on forms prescribed, the highest retail
31 value of any vessel sold in the registration year.

32 NEW SECTION. **Sec. 21.** A vessel dealer who receives cash or a
33 negotiable instrument of deposit in excess of one thousand dollars, or
34 a deposit of any amount that will be held for more than fourteen
35 calendar days, shall place the funds in a separate trust account. Only
36 cash or negotiable instruments from a retail purchaser are required to
37 be placed in such trust account.

1 (1) The cash or negotiable instrument must be set aside immediately
2 upon receipt for the trust account, or endorsed to such a trust account
3 immediately upon receipt.

4 (2) The cash or negotiable instrument must be deposited in the
5 trust account by the close of banking hours on the day following the
6 receipt.

7 (3) After delivery of the purchaser's vessel the vessel dealer
8 shall remove the deposited funds from the trust account.

9 (4) The dealer shall not commingle the trust account funds with
10 any other funds at any time.

11 (5) The funds shall remain in the trust account until the delivery
12 of the purchased vessel. However, upon written agreement from the
13 purchaser, the vessel dealer may remove and release trust funds before
14 delivery.

15 NEW SECTION. **Sec. 22.** The department may adopt rules under
16 chapter 34.05 RCW to implement this chapter.

17 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
18 each repealed:

- 19 (1) RCW 88.02.023 and 1987 c 149 s 4;
- 20 (2) RCW 88.02.060 and 1987 c 149 s 1 & 1983 c 7 s 19;
- 21 (3) RCW 88.02.078 and 1987 c 149 s 2;
- 22 (4) RCW 88.02.112 and 1987 c 149 s 3;
- 23 (5) RCW 88.02.115 and 1987 c 149 s 6;
- 24 (6) RCW 88.02.118 and 1993 c 238 s 4 & 1987 c 149 s 7;
- 25 (7) RCW 88.02.125 and 1987 c 149 s 8;
- 26 (8) RCW 88.02.184 and 1987 c 149 s 9;
- 27 (9) RCW 88.02.188 and 1987 c 149 s 12;
- 28 (10) RCW 88.02.210 and 1987 c 149 s 10; and
- 29 (11) RCW 88.02.220 and 1991 c 339 s 33 & 1987 c 149 s 11.

30 NEW SECTION. **Sec. 24.** RCW 88.02.230 is recodified as a section in
31 chapter 88.-- RCW (sections 3 through 22 of this act).

32 NEW SECTION. **Sec. 25.** Sections 3 through 22 of this act shall
33 constitute a new chapter in Title 88 RCW.

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