

HOUSE BILL REPORT

SHB 1996

As Passed Legislature

Title: An act relating to establishing the Washington recreational vehicle manufacturer and dealer law.

Brief Description: Establishing the Washington recreational vehicle manufacturer and dealer law.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Robertson, Chapman and Graham).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/17/24, 1/24/24 [DPS].

Floor Activity:

Passed House: 2/13/24, 97-0.

Passed Senate: 2/29/24, 49-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires a manufacturer or distributor and a dealer to have a manufacturer/dealer agreement in place before being authorized to sell new recreational vehicle's (RVs) in Washington.
- Establishes regulations and provisions that must be included in the manufacturer/dealer agreement.
- Establishes obligations for warrantors of RVs and RV parts, components, and accessories.
- Provides for civil dispute resolutions, mediation, and relief for manufacturers, distributors, dealers, and warrantors injured by another party's violations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Corry, Hackney, Ryu, Santos and Volz.

Staff: Megan Mulvihill (786-7304).

Background:

The Department of Licensing (Department) regulates persons who engage in businesses as vehicle dealers, which includes motor vehicle dealers, mobile home and travel trailer dealers, miscellaneous vehicle dealers, and recreational vehicle dealers. The Director of the Department has the authority to issue and deny licenses. A motor vehicle manufacturer maintains a franchise relationship with their dealers, and the responsibilities of each party are delineated in state law and the franchise agreement of the parties. State statutes generally dictate when a motor vehicle manufacturer may own or terminate a dealer's franchise, and the compensation a manufacturer must pay a dealer for warranty work and customer-paid service repair. The statutes also spell out prohibited practices. Recreational vehicles are exempt from the definition of motor vehicles under the unfair practices relating to manufacturers' and dealers' franchise agreements.

Summary of Substitute Bill:

Manufacturer/Dealer Agreements Required.

A recreational vehicle (RV) manufacturer or distributor and a dealer are required to have a manufacturer/dealer agreement (agreement) in place before selling a new RV in Washington. The manufacturer must designate the area of sales responsibility exclusively assigned to the dealer in the agreement, and a dealer may not sell RVs outside of the designated area. The agreement terms may not be reviewed or changed during its duration without written mutual consent of both parties. Manufacturers must distribute new RVs to dealers in a fair and equitable manner, and a manufacturer must provide the dealer with adequate technical data to perform service and repairs.

Termination, Cancellation, and Nonrenewal.

Manufacturers.

A manufacturer or distributor may terminate, cancel, or fail to renew a model, line-make, or agreement with good cause, and upon renewal, not require additional inventory stocking requirements or increased retail sales targets in excess of the market growth of the dealer's area of sales responsibility. The manufacturer or distributor has the burden of showing good cause for the proposed action based on certain factors. The manufacturer or distributor must provide at least 120 days prior written notice of the termination, cancellation, or nonrenewal. The notice must state all reasons for the proposed action, and

if, within 30 days following receipt of notice, the dealer provides to the manufacturer or distributor a written notice of the intent to cure all claimed deficiencies, the dealer will have 120 days to rectify the deficiencies. If the deficiencies are rectified within 120 days, the manufacturer's or distributor's notice is void. If the dealer does not provide notice of intent to cure, the proposed action takes effect 30 days after the dealer's receipt of the notice, unless the dealer has new and untitled inventory on hand.

The notice period may be reduced to 30 days if the grounds for termination, cancellation, or nonrenewal are due to certain circumstances, such as a dealer being convicted of a felony or having their license suspended. If the reason is for insolvency, the occurrence of an assignment for creditor's benefit, or bankruptcy, the notice provisions do not apply.

If the manufacturer or distributor terminate, cancel, or do not renew an agreement without good cause, the manufacturer or distributor must repurchase dealer inventory, equipment, and parts.

Dealers.

A dealer may terminate, cancel, or not renew a model, line-make, or agreement with a manufacturer or distributor, with or without good cause, at any time by giving 30 days written notice. If for good cause, the dealer has the burden of showing good cause. If the agreement is terminated, cancelled, or not renewed by a dealer for good cause, the manufacturer must, at the election of the dealer and within 45 days, repurchase:

- All new, untitled RVs acquired by the dealer within 18 months before the notice, that have not been used, altered, or damaged at 100 percent of the net invoice cost, including transportation, less rebates and discounts. Any repurchased RV must be paid in full before it is removed from the dealer's premises, but upon payment, the RV must immediately be surrendered.
- All undamaged accessories and proprietary parts sold to the dealer for resale within 12 months prior to the termination, cancellation, or non-renewal, if accompanied by the original invoice, at 105 percent of the original net price to compensate for handling, packing, and shipping the parts.
- Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100 percent of the dealer's net cost, plus freight, destination, delivery, and distribution charges and sales taxes, if purchased by the dealer within five years before termination, cancellation, or nonrenewal.

Remaining Inventory After Termination.

When selling remaining inventory after termination:

- A dealer may sell the remaining in-stock inventory of a particular line-make after an agreement has been terminated, cancelled, or not renewed by the manufacturer or distributor.
- If RVs of a line-make subject to the terminated agreement are not repurchased or required to be repurchased by the manufacturer or distributor, the dealer may continue to sell such in-stock RVs until they are no longer in the dealer's inventory.

- When taking on an additional line-make of an RV, a dealer must notify, in writing, the manufacturer with whom the dealer has an agreement, of the same line-make at least 30 days prior to entering into a different agreement with the other manufacturer.

Transfer of Ownership.

A dealer who desires to sell must provide the manufacturer or distributor with written notice 10 days before closing so the manufacturer or distributor can determine if there is an objection to the sale. The manufacturer or distributor may not object to the change in ownership unless the prospective transferee:

- has previously been terminated for cause by the manufacturer;
- has been convicted of a felony or fraud, deceit, or moral turpitude;
- lacks any license required by law;
- does not have an active line of credit sufficient to purchase a manufacturer's product;
- or
- has undergone bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee, or conservator to take possession of transferee's business or property in the last 10 years.

If a manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor must give written notice of its reasons to the dealer within seven business days after receipt of the dealer's notification. The manufacturer or distributor has the burden of proof, and if the manufacturer or distributor does not give timely notice, the sale is deemed approved.

A dealer has the opportunity to designate a family member as a successor to the dealership. A manufacturer or distributor may not prevent or refuse to honor a succession unless a written notice of the objection is provided within 10 business days after receipt of the dealer's modification of the dealer's succession plan. The manufacturer or distributor may only object to the succession for the same reasons as listed above for change in ownership, and has the burden of proof. A family member may not succeed to a dealership if the succession involves, without the manufacturer's or distributor's consent, relocation of the business or alteration of the agreement.

Warranty Obligations.

Warrantors must:

- specify in writing to each of its dealers, the dealer's obligations, if any, for preparation, delivery, and warranty service on its products based on the warrantor's stated policies;
- compensate the dealer for covered warranty services performed; and
- provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service.

Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. The compensation of a dealer for warranty labor may not be

less than the lowest retail labor rate actually charged by the dealer in the ordinary course of business for like nonwarranty labor, as long as such rate is reasonable in the dealer's market. The warrantor must reimburse the dealer for any warranty part, accessory, or complete component at actual wholesale cost, plus a minimum 30 percent handling charge, and the cost, if any, of freight to return such part, component, or accessory to the warrantor. If a part is sent to the dealer at no cost, the dealer is entitled to a 30 percent payment of the part's wholesale cost from the warrantor as a handling charge. The maximum handling charge may not exceed \$300. The warrantor must also reimburse the dealer for the cost of freight to return a warranty part, accessory, or complete component.

Warrantors are permitted to conduct warranty audits of dealer records on a reasonable basis, and dealer claims for warranty compensation may not be denied except for cause. The dealer must submit warranty claims within 45 days of completing the work. The dealer must notify the warrantor as soon as reasonably possible if unable or unwilling to perform material or repetitive warranty repairs. The warrantor must disapprove warranty claims in writing within 45 days after the date of submission by the dealer, in the manner and form prescribed by the warrantor. All claims not specifically disapproved within 45 days are considered approved and must be paid in 60 days.

It is a violation for any warrantor to:

- fail to perform any of its warranty obligations with respect to warranted products;
- fail to include, in written notices of factory campaigns to RV owners and dealers, the expected date by which necessary parts and equipment will be available to dealers to perform the campaign work;
- fail to compensate any of its dealers for authorized repairs on merchandise damaged in manufacture or transit, if the carrier is designated by the warrantor, factory branch, distributor, or distributor branch;
- fail to compensate any of its dealers for authorized warranty service in accordance with the time allowances set forth in the schedule of compensation, if performed in a timely and competent manner;
- intentionally misrepresent in any way to RV purchasers that warranties are made by the dealer as warrantor or cowarrantor;
- require the dealer to make warranties to customers in any manner related to the manufacture of the RV; or
- fail to indemnify, defend, and hold harmless its dealer against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the warrantor.

It is a violation for any dealer to:

- fail to perform predelivery inspection functions in a competent and timely manner;
- fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's RV of the same line-make, unless the dealer determines that the customer is acting in a manner detrimental to its business;

- fail to track actual time expended to perform warranty work not governed by time allowances in the schedule of compensation;
- claim an agency relationship with warrantor or manufacturer;
- misrepresent the terms of any warranty; or
- fail to indemnify, defend, and hold harmless its warrantor against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the dealer.

Dealer Inspection and Rejection.

When the manufacturer or distributor selects the carrier or means of transportation and an RV is damaged prior to or in transit to the dealer, the dealer must notify the manufacturer or distributor of the damage and either request authorization to correct the damage or reject the RV within the specified timeframe. If the manufacturer or distributor refuses or fails to authorize repair within 10 business days of notification or if the dealer rejects the RV, the ownership reverts to the manufacturer or distributor and the dealer has no other obligations with respect to the RV.

Dealer Coercion Prohibited.

A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

- purchase a product that the dealer did not order;
- enter into an agreement;
- take any action that is unfair or unreasonable;
- enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities; or
- forego exercising a right authorized by the agreement or any law governing the manufacturer/dealer relationship.

Civil Dispute Resolution.

A dealer, manufacturer, distributor, or warrantor may bring civil action in superior court to recover actual damages for violations by another party. The court must award attorney fees and costs to the prevailing party. The venue for the civil action must be held in the county where the dealer is located. Before a party may bring suit, a written demand for mediation must be served upon the offending party. Provisions specifying the mediation process are outlined. A dealer or manufacturer may also apply for a grant of a temporary or permanent injunction to restrain any person from acting as a dealer, manufacturer, or distributor without being properly licensed, from violating any of the provisions required, or from failing or refusing to comply with requirements.

Penalties.

A dealer, manufacturer, or distributor may have their license suspended or revoked if they are found to be in violation of the agreement regulations. The Department of Licensing may impose fines, not to exceed \$1,000 for each violation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This legislation was brought forward by the industry to put parameters around manufacturer and dealer agreements for RVs that are very similar to the auto industry. The auto industry operates as a one manufacturer to one dealer arrangement. It is impressive that RV dealers and manufacturers got together to find a compromise and agreed to a structural arrangement. Dealers sometimes absorb costs, and this will be a huge economic gain for dealers. It is also better for the consumer.

(Opposed) None.

(Other) There has been work on the bill to craft a proposal that everyone is in agreement with. Motorhomes are exempt under the proposed substitute bill, which is appreciated as these should be recognized as motor vehicles.

Persons Testifying: (In support) Representative Eric Robertson, prime sponsor; Mike Ochs, RV Industry Association; and James Harvey, Speedway RV Center.

(Other) Scott Hazlegrove, Washington State Auto Dealers Association.

Persons Signed In To Testify But Not Testifying: None.