

STORAGE NAME: h2025b.brc

DATE: March 11, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 2025

RELATING TO: Vessel Warranty Enforcement Act

SPONSOR(S): Representative Melvin

COMPANION BILL(S): SB 1864 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 6 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS
- (3) CIVIL JUSTICE AND CLAIMS
- (4)
- (5)

I. SUMMARY:

Florida has had a motor vehicle lemon law since 1983, but no such protection is afforded to consumers who purchase defective boats. This bill creates the "Vessel Warranty Enforcement Act" or the "Vessel Lemon Law" and patterns it after the "Motor Vehicle Warranty Enforcement Act." It requires boat manufacturers, or their authorized service agents, to repair defective boats and/or motors within 12 months of the purchase at no cost to the purchaser. If repeated attempts to repair the boat/motor are unsuccessful, the purchaser is eligible for the protections provided by the act. The effective date of the bill is October 1, 1997.

A \$2 fee per boat/motor sale is authorized. The Department of Agriculture and Consumer Services and the Department of Legal Affairs, who are charged with implementing and enforcing the act, state that they cannot determine the fiscal impact of the bill without further clarification of several of its provisions. The Department of Revenue, charged with collecting the fees, states that the bill would have a negligible impact on that department.

A "strike-everything" amendment by the Committee on Business Regulation and Consumer Affairs is traveling with the bill that requires the Attorney General to hold workshops to hear from marine manufacturers, vessel sales and service representatives, and consumers regarding the problems surrounding new, defective boats. It would take effect upon becoming a law.

The amendment is meant to have no fiscal impact on state government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida has had a motor vehicle lemon law since 1983 to provide recourse to consumers who purchase vehicles that do not conform to the manufacturer's warranty and repeated attempts to repair the vehicle have been unsuccessful. Since enactment of the law, approximately 8,000 cases have gone to arbitration, with almost 70 percent resolved in favor of the purchaser. Settlements and judgments have totaled approximately \$120 million.

However, no such protection is afforded to consumers who purchase defective boats and boat motors. These purchases can cost as little as several hundred dollars to as much as millions of dollars.

According to the Department of Highway Safety and Motor Vehicles, there are approximately 800,000 boats registered in Florida. The state does not collect data on the number of boats/*motors, new or used*, sold in the state each year, but the Department of Revenue reports that \$3,434,821,000 in gross *marine* sales was earned in 1996. *Of that amount, \$1,391,644,551 was taxable (represents in-state sales). Marine sales include new and used boats, boat motors and marine supplies.*

The Division of Consumer Services, Department of Agriculture and Consumer Services, has received 376 vessel complaints since 1993. The division does not categorize the complaints by type so the number includes grievances relating not only to manufacturers' warranties, but also to boat dealers, used boats, and boat/motor repair work.

B. EFFECT OF PROPOSED CHANGES:

The "Vessel Warranty Enforcement Act" or the "Vessel Lemon Law" is created and is patterned after the "Motor Vehicle Warranty Enforcement Act." It requires boat manufacturers, or their authorized service agents, to repair defective boats and/or motors within 12 months of the purchase at no cost to the purchaser. If repeated attempts to repair the boat are unsuccessful, the purchaser is eligible for the protections provided by the act.

The act: authorizes the Department of Agriculture and Consumer Services to certify boat manufacturers' procedures for settling disputes with consumers; creates the Florida New Vessel Arbitration Board to settle cases where the consumer is not satisfied with the manufacturer's compliance or when a manufacturer does not have a certified dispute procedure; provides for appeals of arbitration board decisions to the circuit court; and designates the Department of Legal Affairs as the law's enforcing authority.

Boat dealers are required to collect a \$2 fee at the time of each sale to fund the law. The Department of Revenue collects the fees that are deposited into the General Revenue Fund and disbursed to the Departments of Agriculture and Consumer Services and Legal Affairs to pay for the implementation and enforcement of the law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes; both to make rules and to adjudicate disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Departments of Agriculture and Consumer Services, Legal Affairs, and Revenue.

(3) any entitlement to a government service or benefit?

Yes. The bill establishes a new state program to assist consumers in their attempts to make boat manufacturers comply with their warranties.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. A \$2 fee per boat sale is authorized.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The bill intends for the beneficiaries to pay the entire cost of the new law.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates sections 327.901 - 327.919, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates s. 327.901, F.S., to designate the act as the "Vessel Warranty Enforcement Act," also known as the "Vessel Lemon Law."

Section 2. Creates s. 327.902, F.S., to declare the legislative intent of the act.

Section 3. Creates s. 327.903, F.S., to establish definitions, including “vessel” which means a new boat and a new motor.

Section 4. Creates s. 327.904, F.S., to declare that it is the duty of the manufacturer to repair a defective vessel to conform it to the warranty within 12 months of its purchase. The purchaser may not be charged for the repairs. Manufacturers must inform the purchaser of the lemon law at the time of purchase.

Section 5. Creates s. 327.905, F.S., to establish the circumstances under which a boat becomes a “lemon” and to prescribe the responsibilities of the purchaser and the manufacturer, including refund or repurchase by the manufacturer.

Section 6. Creates s. 327.906, F.S., to establish the liability of a purchaser who makes a bad faith claim.

Section 7. Creates s. 327.907, F.S., to provide the parameters for boat manufacturers to use in establishing a voluntary dispute-settlement procedure for purchasers who believe they have purchased a “lemon” vessel. The Department of Agriculture and Consumer Services is charged with certifying these procedures using the statutory guidelines established by the bill.

Section 8. Creates s. 327.908, F.S., to designate the circumstances under which a purchaser is eligible to bring the dispute to the Florida New Vessel Arbitration Board. The Department of Agriculture and Consumer Services is charged with screening and forwarding to the board the eligible disputes.

Section 9. Creates s. 327.909, F.S., to establish the Florida New Vessel Arbitration Board within the Department of Legal Affairs and to prescribe its authority. Six board members are appointed by the Attorney General for initial one year terms, but may be reappointed for two years. The Attorney General may appoint as many boards as necessary to ensure that the hearings are held conveniently close to purchasers who bring disputes.

Section 10. Creates s. 327.911, F.S., to charge the Department of Legal Affairs with enforcing the act; to give it the authority to issue subpoenas and to seek relief in circuit court to compel compliance; and to authorize the department to impose up to \$1,000 in civil penalties for violations.

Section 11. Creates s. 327.912, F.S., to declare that a violation of the “Vessel Lemon Law” by a boat manufacturer is an unfair or deceptive trade practice.

Section 12. Creates s. 327.913, F.S., to establish consumer remedies including the right to file an action to recover damages.

Section 13. Creates s. 327.914, F.S., to declare that the act does not impose any liability on dealers, except in instances where a dealer provides written express warranties apart from the manufacturer’s warranty.

Section 14. Creates s. 327.915, F.S., to provide the responsibilities of vessel manufacturers regarding disposal of “lemon” boats returned to them under the

provisions of the act and to give the Department of Legal Affairs authority to adopt rules regarding the required disclosure statement.

Section 15. Creates s. 327.916, F.S., to declare that any agreement entered into by a purchaser that voids the rights established by the act are void "as contrary to public policy."

Section 16. Creates s. 327.917, F.S., to preempt any local government ordinance regarding vessel warranty rights.

Section 17. Creates s. 327.918, F.S., to authorize vessel dealers to collect a \$2 fee at the time of sale to fund the program. The Department of Revenue is to transfer the funds, less the cost of collection, to the Department of Legal Affairs for deposit into the General Revenue Fund. The Department of Legal Affairs is then to distribute up to one-fourth of the funds to the Department of Agriculture and Consumer Services to fund its responsibilities under the act.

Section 18. Creates s. 327.919, F.S., to authorize the Department of Legal Affairs to adopt rules to implement the act.

Section 19. Makes the act take effect October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Each person purchasing a boat and motor in Florida will be assessed a \$2 fee.

2. Direct Private Sector Benefits:

Individuals will be afforded government protection from boat manufacturers that do not honor their warranties.

3. Effects on Competition, Private Enterprise and Employment Markets:

Boat manufacturers *that choose to do so will incur the expense* of establishing mediation procedures to handle complaints from customers who contend they have purchased a "lemon." The manufacturers will also have to meet the other requirements of the law.

D. **FISCAL COMMENTS:**

The Department of Revenue reports that the law will have a negligible fiscal impact on the department. The Department of Agriculture and Consumer Services and the Department of Revenue state that they cannot determine the fiscal impact without clarification of several of the bill's provisions and a valid estimate of the number of boats sold per year in the state.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

An amendment was offered to the Committee on Business Regulation and Consumer Affairs that changed the effective date from October 1, 1997, to October 1 of the year in which the bill is enacted and corrected bill drafting errors that inadvertently include references to motor vehicles instead of vessels. However, that amendment was substituted for the amendment that is described in the section that follows.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment by the Committee on Business Regulation and Consumer Affairs is traveling with the bill. It strikes the bill language and replaces it with a requirement for the Attorney General to hold workshops to hear from marine manufacturers, vessel sales and service representatives, and consumers regarding the problems surrounding new, defective boats. A report is to be made to the Legislature by March 1, 1999, encompassing the findings and recommendations of the workshops. The amendment takes effect upon becoming a law. The bill sponsor intends for the amendment to have no fiscal impact on state government.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER SERVICES:

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