

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: HB 1457 creates a regulation of the relationship between recreational vehicle dealers and manufacturers.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Current law provides no regulation of the relationship between RV dealers and manufacturers. Section 320.771, F.S., provides a licensure structure for RV dealer licensure through the Department.

According to the Department, there are approximately 263 RV dealers currently licensed in the state of Florida. According to the Florida RV Trade Association, of those, approximately 130 dealers are recognized as new RV dealers. The remainder fall into the category of those who sell used RVs. This population may include car dealers who also have a RV license to sell RVs they receive as trades or offer on a very limited basis to the public.

There are approximately 100 RV manufacturers currently licensed with the Department.

Proposed Changes:

HB 1457 creates language in Chapter 320, F.S. to regulate the relationship between RV dealers and manufacturers.

Definitions

The bill creates s. 320.3202, F.S., to define the terms: area of sales responsibility, dealer, distributor, factory campaign, family member, line-make, manufacturer, manufacturer/dealer agreement, proprietary part, recreational vehicle, transient customer, and warrantor.

Manufacturer/Dealer Agreement and Dealer Market Area

The bill creates s. 320.3203, F.S., to:

- Require RV manufacturers to have a written manufacturer/dealer agreement prior to selling RVs in Florida.
- Require manufacturers to designate in the agreement a market area for the dealer, where the dealer has the exclusive right to display or sell the manufacturer's new RVs of a particular line-make. Such designation may not be changed for a period of one year.
- Require a dealer to have a written manufacturer/dealer agreement prior to selling RVs in Florida.
- Prohibits a dealer from selling outside of its market area unless it meets one of the set forth criteria, which are:
 - If another dealer and their manufacturer allow them into another market area.
 - If the sale is in conjunction with a public trade show and in an open market area which is not protected by a manufacturer/dealer agreement.
 - If the sale is in conjunction with a manufacturer-funded trade show involving more than 35 dealers.

Sale of RVs by Manufacturer

The bill creates s. 320.3204, F.S., to specify that sales of RVs by manufacturers must be in accordance with published prices, charges, and terms of sale in effect at any given time. The manufacturer must

sell products on the same basis, with respect to all rebates, discounts, and programs, to all competing dealers similarly situated.

Termination, Cancellation, and Nonrenewal of a Manufacturer/Dealer Agreement

The bill creates s. 320.3205, F.S., to:

- Prohibit a manufacturer from terminating, canceling or failing to renew a manufacturer/dealer agreement without good cause. If the manufacturer renews an agreement, it may not require the purchase of excess inventory or increased sales goals in excess of the market growth in the dealer's area.
- Specify the manufacturer has the burden of showing good cause when terminating an agreement. When determining whether there is good cause, the following factors must be considered:
 - The extent of the affected dealer's penetration into the relevant market area.
 - The nature and extent of the dealer's investment in its business.
 - The adequacy of the dealer's service facilities, equipment, parts, supplies and personnel.
 - The effect of the proposed action on the community.
 - The extent and quality of the dealer's service under RV warranties.
 - The failure to follow agreed-upon procedures related to the overall operation.
 - The dealer's performance under the terms of its agreement.
- Direct a manufacturer to provide a dealer with at least 120 days' prior written notice of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.
 - The notice shall state all reasons for termination, cancellation or nonrenewal.
 - The dealer is given 30 days following receipt of the notice to provide a notice of intent to cure all claimed deficiencies. The dealer then has 120 days to rectify the deficiencies.
 - If the deficiencies are rectified within 120 days, the manufacturer's notice is void.
 - If the dealer does not provide a notice of intent to cure, the termination, cancellation or nonrenewal is effective 30 days after the dealer's receipt of the notice.
- Allow a manufacturer to provide a 30 day notice of termination, cancellation, or nonrenewal if the dealer has been convicted of a felony, closed his business, made a significant misrepresentation, or had his license suspended or revoked by the Department.
- Provide that the notice provisions do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.
- Allow a dealer to terminate its manufacturer/dealer agreement with or without cause by giving the manufacturer 30 days' notice. The dealer has the burden of showing good cause, which may be one of the following:
 - Manufacturer convicted of a felony.
 - Manufacturer closes his business for more than 10 days.
 - A significant misrepresentation by the manufacturer.
 - A violation of the newly created sections of statute found in this bill (ss. 320.3201-320.3211, F.S.)
 - A declaration by the manufacturer of bankruptcy.
- Direct a manufacturer to repurchase the following items, at the election of the dealer, once a manufacturer/dealer agreement is terminated, cancelled, or not renewed by the manufacturer or the dealer for cause :
 - All new RVs, at 100% of the net invoice cost;
 - All current and undamaged manufacturer's accessories and parts, if accompanied by the original invoice, at 105% of the original net price; and
 - Any functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, at 100% of the dealer's net cost, provided it was purchased by the dealer within five years before termination and can no longer be used in the normal course of business.
 - Manufacturer shall pay the dealer within 30 days of receipt of the returned items.

Transfer of Ownership; Family Succession

The bill creates s. 320.3206, F.S., to

- Require the dealer to notify the manufacturer of a change in ownership within 30 days of the closing.
- Prohibit the manufacturer from disapproving the change or sale unless the manufacturer can show its decision is based on criteria such as: the prospective transferee's business experience, moral character, financial qualifications, and any criminal record.
- Direct the manufacturer rejecting a proposed change or sale to provide written notice to the dealer within 30 days after receipt of the dealer's notification. Absent the manufacturer's notice of rejection, the change or sale is deemed approved.
- Specify that the manufacturer has the burden of showing its rejection of the transfer or sale is reasonable.
- Prohibit a manufacturer from failing to provide a dealer with an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer, unless the manufacturer has provided written notice of its objections
- Specify the grounds for rejection of the succession of a dealership to a dealer's family member are: lack of creditworthiness, conviction of a felony, lack of required licenses or business experience, or other condition which makes the succession unreasonable. The manufacturer has the burden of showing unreasonableness of the succession.
- Prohibit succession of a family member if the succession involves a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement, unless the manufacturer consents.

Warranty Obligations

The bill creates s.320.3207, F.S., to:

- Direct each warrantor to:
 - Specify in writing to each of its dealers the obligations for preparation, delivery, and warranty service on its products.
 - Compensate the dealer for warranty service required of the dealer by the warrantor.
 - Provide the dealer with the schedule of compensation and the time allowances for the performance of such work. The schedule of compensation must include diagnostic work as well as warranty labor.
- Specify that time allowances for the diagnosis and performance of warranty work are to be reasonable and the dealer does not need manufacturer prior approval to undertake warranty work that will require less than three hours of labor.
- Require the compensation of a dealer for warranty labor to be no less than the lowest retail labor rates actually charged by the dealer.
- Direct the warrantor to reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30-percent handling charge and the cost of any freight to return warranty parts to the warrantor.
- Specify that warranty audits of dealer records may be conducted on a reasonable basis. Dealer claims for warranty compensation are not to be denied except for cause, such as: performance of nonwarranty repairs, noncompliance with warrantor's published policies, lack of material documentation, fraud, or misrepresentation.
- Directs the dealer to submit warranty claims within 45 day after completing the work. If the dealer is unable to perform repetitive warranty repairs, the dealer must notify the warrantor verbally or in writing as soon as is reasonably possible.
- Provides the warrantor with 30 days after the dealer's submission to disapprove a warranty claim. Claims not disapproved within the 30 days are construed to be approved and must be paid within 45 days.
- Set forth a list of bad practices for warrantors which constitutes a violation of this act, including:
 - Failure to perform any of its warranty obligations;
 - Failure to include the expected date by which necessary parts and equipment will be available to dealers to perform the factory campaign work;

- Failure to compensate any of its dealers for authorized repairs to RVs damaged in manufacture or transit to the dealer;
- Failure to compensate any of its dealers for authorized warranty service;
- Intentional misrepresentation to purchasers of RVs that warranties with respect to the manufacture, performance, or design are made by the dealer either as warrantor or covearrantor; or
- Requiring the dealer to make warranties to customers in any manner related to the manufacture of the RV.
- Set forth a list of bad practices for dealers which constitutes a violation of this act, including:
 - Failure to perform pre-delivery inspection functions;
 - Failure to perform authorized warranty service work on any transient customer's vehicle of the same line-make without good cause; or
 - Misrepresentation of the terms of any warranty.
- Require reciprocal indemnification.

Inspection and Rejection of New RVs by the Dealer

The bill creates s. 320.3208, F.S., to:

- Specify that when a new RV is damaged prior to or during transit to the dealer, when the carrier has been selected by the manufacturer, the dealer shall:
 - Notify the manufacturer of the damage by the next business day after date of delivery; and
 - Either request authorization from the manufacturer to repair the vehicle or reject the vehicle in the timeframe authorized in the manufacturer/dealer agreement. If the manufacturer refuses or fails to authorize repair within ten days, ownership of the vehicle reverts to the manufacturer.
 - Have no obligation, financial or otherwise, with respect to the damaged RV.
- Specify that the timeframe for inspection of a new RV shall be part of the manufacturer/dealer agreement, but should not be less than three business days after the delivery of the RV.
- Authorize a dealer to reject a RV that, at the time of delivery, has an unreasonable amount of miles on its odometer.

Coercion of Dealer Prohibited

The bill creates s. 320.3209, F.S., to:

- Prohibit a manufacturer from coercing or attempting to coerce a dealer to:
 - Purchase a product the dealer did not order;
 - Enter into an agreement with the manufacturer;
 - Take any action which is unfair or unreasonable to the dealer; or
 - Require the dealer to enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities under this act.
- Provide a definition of the term "coerce".

Civil Dispute Resolution; Mediation; Relief

The bill creates s. 320.3210, F.S., to:

- Provide that a dealer, manufacturer, distributor, or warrantor injured by a violation of this act may bring a civil action in circuit court to recover actual damages. Attorney's fees and costs shall be awarded to the prevailing party. The venue for the civil action must be in the dealership's county.
- Direct the party bringing a suit under this section to serve a written demand for mediation upon the offending party, which shall contain a brief statement of the dispute and the relief sought. The demand shall be served via certified mail.
- Require both parties to mutually select an independent certified mediator and meet with the mediator within 20 days after the demand is served.
- Specify that a demand for mediation shall stay the time for any complaint, petition, protest, or action under this act until both parties have met with the mediator. If such action is filed before

the meeting, the court will enter an order suspending the action until the mediation meeting has occurred.

- Require the parties of the mediation to bear their own costs and divide the cost of the mediator equally.
- Authorize a dealer to seek a temporary or permanent injunction restraining any person from:
 - acting as a dealer without being properly licensed,
 - violating any of the provisions of this act, or
 - failing or refusing to comply with the provisions in this act.

Penalties

The bill creates s. 320.3211, F.S., to:

- Authorize the Department to suspend or revoke an RV dealer's license if the dealer violates any provision of this act.
- Authorize the Department to collect by legal process fines against any person it finds has violated any provision of this act in an amount not to exceed \$1,000 for each violation. The individual is entitled to an administrative hearing to contest the action or fine.
- Specify that any person who violates the provisions of this act commits a second degree misdemeanor, punishable by imprisonment for up to 60 days and a fine of up to \$500.

The bill provides a severability clause for the provisions of the act.

The bill is effective July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates s. 320.3201, F.S., providing legislative intent.

Section 2. Creates s. 320.3202, F.S., providing definitions.

Section 3. Creates s. 320.3203, F.S., providing requirements for a manufacturer/dealer agreement; requiring designation of the area of sales responsibility; providing conditions for sales outside the dealer's area of sales responsibility.

Section 4. Creates s. 320.3204, F.S., providing requirements for sale by manufacturers and distributors.

Section 5. Creates s. 320.3205, F.S., providing requirements and procedures for termination, cancellation, or nonrenewal of an agreement by a manufacturer or a dealer; providing for the repurchase by the manufacturer or a dealer; providing for the repurchase by the manufacturer of vehicles, accessories, and parts and equipment, tools, signage, and machinery.

Section 6. Creates s. 320.3206, F.S., providing for change in ownership by a dealer; requiring notice to the manufacturer; providing requirements for rejection by the manufacturer; providing for a dealer to name a family member as a successor in case of retirement, incapacitation, or death of the dealer; providing requirements for rejection of the successor by the manufacturer.

Section 7. Creates s. 320.3207, F.S., providing requirements for warrantors, manufacturers, and dealers with respect to warranties; providing responsibilities; providing requirements for compensation of the dealer; authorizing warranty audits by the warrantor; requiring cause for denial of compensation; providing for disposition of warranty claims; prohibiting certain acts by the warrantor and the dealer; requiring notice of certain pending suits.

Section 8. Creates s. 320.3208, F.S., providing for inspection and rejection of a recreational vehicle upon delivery to a dealer.

Section 9. Creates s. 320.3209, F.S., prohibiting a manufacturer or distributor from coercing a dealer to perform certain acts.

Section 10. Creates s. 320.3210, F.S., providing for resolution when a dealer, manufacturer, distributor, or warrantor is injured by another party's violations; authorizing civil action; providing for mediation; providing for remedies.

Section 11. Creates s. 320.3211, F.S., providing administrative and criminal penalties for violations; providing for an administrative hearing to contest a penalty imposed by the department.

Section 12. Provides for severability.

Section 13. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

SEE FISCAL COMMENTS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent HB 1457 sets requirements for manufacturer/dealer agreements; clarifies treatment of similarly situated dealers; establishes criteria for cancelling a dealer agreement; sets requirements for transferring a dealership; protects family succession of a dealership; establishes warranty obligations; sets inspection criteria for vehicles shipped to the dealer; prohibits manufacturers from engaging in coercive practices; and creates a dispute resolution process, the bill may benefit recreational vehicle dealers. These same law changes may create financial costs for licensed manufacturers, distributors, and importers.

D. FISCAL COMMENTS:

The bill may generate fine revenues for state government as a result of fines levied by the Department against RV dealers for non-compliance. Any revenues associated with such fines would be indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department claims the bill does not address the approximately 263 RV dealers who are currently licensed by the Department. These licensed dealers may carry the same line-makes and possibly could be in conflict with future designation of "area sales responsibility" or are currently overlapping the designated area. They claim the bill also does not address the approximately 103 RV manufacturers currently licensed by the Department with regard to a timeframe for initiating manufacturer/dealer agreements with the currently licensed RV dealers.

The Department also points to the fact that the bill does not provide for licensing of RV distributors/importers. They also claim the bill does not provide for notification to the Department of the "area of sales responsibility" and line-makes assigned to RV dealers. Such notification is necessary to prevent sale of RVs by non-authorized dealers. The Department claims to also need to be notified when the "area of sales responsibility" and line-make have been taken away from the dealer.

The Department also claims the term "similarly situated" needs to be defined.

The Florida RV Trade Association is in support of the language and claims model legislation enacted in states such as Pennsylvania and Georgia is very similar to the language in HB 1457.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2007, this bill was considered by the Committee on Infrastructure. A strike-all amendment was adopted which makes several technical changes, adds legislative intent language, and specifies that RV distributors and importers are subject to licensure by the Department. The bill was reported favorably with one amendment.