

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1457 Recreational Vehicle Dealers and Manufacturers
SPONSOR(S): Policy & Budget Council and Gardiner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>6 Y, 0 N</u>	<u>Owen</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Owen</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u>27 Y, 0 N, As CS</u>	<u>Martin</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law provides no regulation of the relationship between recreational vehicle (RV) dealers and manufacturers. Section 320.771, Florida Statutes (F.S.), provides a structure for RV dealer licensure through the Department of Highway Safety and Motor Vehicles (Department).

CS/HB 1457 creates new sections of statute within Chapter 320, F.S. The bill:

- Requires RV manufacturers to have a signed dealer agreement and specifies what shall be in the agreement.
- Prohibits a dealer from selling outside of its market area, unless certain criteria are met.
- Establishes the criteria for cancelling a manufacturer/dealer agreement.
- Establishes the criteria for a transfer of ownership and family succession of a dealership.
- Establishes warranty obligations.
- Specifies inspection criteria for vehicles shipped to a dealer, the time frame and standards for rejection of a vehicle, and the responsibilities of each party in the event a vehicle is rejected.
- Prohibits manufacturers from engaging in certain coercive practices.
- Sets a dispute resolution process, by which a party must first go through mediation before the case is brought to circuit court.
- Clarifies that the license of a dealer, manufacturer, distributor, or importer may be suspended or revoked and the entity fined by the Department for violations of the act.
- Specifies violations of the act are a misdemeanor of the second degree and punishable by imprisonment of up to 60 days and a fine of up to \$500.
- Specifies that RV manufacturers, distributors and importers are subject to licensure by the Department.
- Provides a severability clause.

The bill specifies that it is the intent of the Legislature that the provisions of the bill be applied to manufacturer/dealer agreements entered into on or after October 1, 2007.

The bill has no fiscal impact to state or local governments and is effective October 1, 2007.

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 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 an 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:

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

Intent

The bill specifies that the intent of the Legislature is to protect residents of the state by regulating the relationship between RV dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade. It is also the intent of the Legislature that the provisions of the bill be applied to manufacturer/dealer agreements entered into on or after October 1, 2007.

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.

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. If the termination is for cause, 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 material violation of the newly created sections of statute found in this bill (ss. 320.3201-320.3211, F.S.), which is not cured within 30 days after written notice by the dealer.
 - 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 45 days of receipt of the returned items.

- Direct a dealer when taking on an additional line make to notify a manufacturer of the same line make with whom the dealer has a manufacturer/dealer agreement at least 30 days prior to entering into an agreement with the additional line make.

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 10 business days of the closing.
- Prohibit the manufacturer, absent a breach of the manufacturer/dealer agreement or this Chapter by the selling dealer, from objecting to the change in ownership unless the manufacturer can show its decision is based on the prospective transferee's:
 - Previous termination by the manufacturer for breach of its dealer agreement;
 - Conviction of a felony or any crime of fraud, deceit, or moral turpitude;
 - Lack of any license required by law;
 - Lack of an active line of credit sufficient to purchase the manufacturer's product; or
 - Bankruptcy, insolvency, general assignment for the benefit of creditors or appointment of a receiver, trustee or conservator to take possession of the transferee's business or property, in the past 10 years.
- Direct the manufacturer objecting to a proposed change of ownership to provide written notice to the dealer within 7 business days after receipt of the dealer's notification. Absent the manufacturer's timely notice of its objection, the change or sale is deemed approved.
- Specify that the manufacturer has the burden of proof with regard to its objection to the change in ownership.
- 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 only grounds for objection to the succession of a dealership to a dealer's family member, absent a breach of the dealer agreement, are the successor's:
 - Conviction of a felony or any crime of fraud, deceit or moral turpitude;
 - Bankruptcy or insolvency during the past 10 years;
 - Prior termination by the manufacturer for breach of a dealer agreement;
 - Lack of an active line of credit sufficient to purchase the manufacturer's product; or
 - Lack of any license required by law.
- Specify that the manufacturer has the burden of proof regarding its objection to the succession of a family member to a dealership.
- 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.
- 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 days 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 45 days after the dealer's submission to disapprove a warranty claim. Claims not disapproved within the 45 days are construed to be approved and must be paid within 60 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 cowarrantor; 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 predelivery 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 two business days after the delivery of the RV.
- Authorize a dealer to reject an RV that, at the time of delivery, has an unreasonable amount of miles on its odometer. "Unreasonable amount of miles" is defined as being no less than the distance between the dealer and the manufacturer's factory or a distributor's point of distribution, plus 100 miles.

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 or manufacturer to seek a temporary or permanent injunction restraining any person from:
 - acting as a dealer, manufacturer, distributor, or importer without being properly licensed,
 - violating any of the provisions of this act, or
 - failing or refusing to comply with the provisions in this act.
- Specify that a single act in violation of a dealer’s area of sales responsibility (s. 320.3203, F.S.) is sufficient to authorize issuance of an injunction.

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, manufacturer, distributor, or importer 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.

RV Manufacturer, Distributor, and Importer License

The bill amends s. 320.8225, F.S., to:

- Add RV distributors and importers to the list of those entities required to obtain an annual license from the Department.
- Require RV distributors and importers to submit a surety bond in the amount of \$10,000 to the Department annually, prior to receipt of a license.
- Permits the Department to deny an RV distributor or importer license based on grounds currently in statute for RV manufacturers.

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

The bill is effective October 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. 320.3205, 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; requiring notification of a manufacturer of the same line make when a dealer takes on an additional line make.

Section 5. Creates s. 320.3206, F.S., providing for change in ownership by a dealer; requiring notice to the manufacturer; providing requirements for objection 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 objection to the successor by the manufacturer.

Section 6. 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 7. Creates s. 320.3208, F.S., providing for inspection and rejection of a recreational vehicle upon delivery to a dealer.

Section 8. Creates s. 320.3209, F.S., prohibiting a manufacturer or distributor from coercing a dealer to perform certain acts.

Section 9. 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 10. 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 11. Amends s. 320.8225, F.S., providing licensure requirements for distributors and importers.

Section 12. Provides for severability.

Section 13. Provides an effective date of October 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 CS/HB 1457 sets requirements for manufacturer/dealer agreements; 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 Department currently has a licensure program in place for motor vehicle and RV dealers and manufacturers (161 FTEs) and will use those existing resources to enforce the provisions of the bill. 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 has made the following comments regarding the bill:

- 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 needs to be notified when the “area of sales responsibility” and line-make have been taken away from the dealer.
- The term “similarly situated” needs to be defined.

The Florida RV Trade Association is in support of the language and points to model legislation enacted in states such as Pennsylvania and Georgia which is 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 made several technical changes, added legislative intent language, and specified that RV distributors and importers are subject to licensure by the Department. The bill was reported favorably with one amendment.

On March 29, 2007, this bill was considered by the Economic Expansion and Infrastructure Council. A strike-all amendment was adopted which made several technical changes to conform the House bill to the Senate bill; added a 30-day cure period for a manufacturer's material violation of the franchise agreement; extended a manufacturer's time to approve warranty claims from 30 to 45 days and to pay warranty claims from 45 to 60 days; and allowed a manufacturer to make application for injunctive relief. The bill was reported favorably as a council substitute.

On April 5, 2007, this bill was considered by the Policy and Budget Council. A strike-all amendment was adopted which made several technical changes, deleted the requirement that sales of RVs by manufacturers and distributors be in accordance with published prices, charges, and terms of sale in effect at any given time; extended a manufacturer's time to pay for repurchased items from 30 days to 45 days; required dealers to provide 30 days' written notice to a manufacturer before taking on a new line make; specified grounds for which a manufacturer can object to a change in ownership or a plan of succession of a dealership; deleted the 3-hour prior approval threshold for warranty work; reduced the pre-delivery inspection period for a dealer from 3 days to 2 days; clarified what a reasonable amount of mileage is on a new RV delivered from a manufacturer; specified that single acts in violation of a dealer's area of sales responsibility is sufficient for injunctive relief; and extended the penalty provisions to manufacturers, dealers, and importers. The bill was reported favorably as a council substitute.

The staff analysis has been updated to reflect the amendment.