

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/CS/SB 2488

INTRODUCER: Commerce Committee, Transportation Committee and Senator Haridopolos

SUBJECT: Recreational Vehicle Dealers and Manufacturers

DATE: April 17, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/CS/SB 2488 (the CS) regulates the business relationships between recreational vehicle (RV) dealers and manufacturers, similar to that in current law for motor vehicle dealers and manufacturers.

CS/CS/SB 2488:

- Requires RV manufacturers and dealers to have written agreements designating market areas;
- Generally prohibits dealers from selling outside their market area;
- Establishes criteria required to be met before a dealer agreement may be canceled;
- Protects family successions and transfers of dealer businesses;
- Establishes warranty obligations;
- Provides inspection criteria and obligations for the rejection of vehicles shipped to dealers;
- Prohibits manufacturers from engaging in coercive practices against dealers;
- Establishes a dispute resolution process to mediate disagreements between dealers and manufacturers; and
- Provides penalties, including suspension or revocation of dealer licenses and monetary fines for violations of the act.

CS/CS/SB 2488 creates ss. 320.3201, 320.3202, 320.3203, 320.3205, 320.3206, 320.3207, 320.3208, 320.3209, 320.3210, and 320.3211, F.S., and amends s. 320.8225, F.S.

II. Present Situation:

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers, and regulates the relationship between franchised dealers and the manufacturers. Like automobile dealers and manufacturers, RV dealers and manufacturers are licensed under ch. 320, F.S. However, no law regulates the relationship between RV manufacturers and dealers. According to the Department of Highway Safety and Motor Vehicles (DHSMV), there are 263 RV dealers and approximately 103 RV manufacturers licensed to do business in Florida.

Current RV Dealer Licensing

Section 320.771, F.S., establishes license requirements for RV dealers and prohibits a person from engaging in business as, or serving in the capacity of, a dealer without possession of a current license. A license may be denied to any applicant who has:

- Made a material misstatement in the application;
- Failed to comply with the provisions of the section;
- Failed to provide warranty service;
- Violated any law, rule, or regulation relating to the sale of recreational vehicles;
- Engaged in previous conduct which would be grounds for revocation or suspension;
or
- Been proven by DHSMV to be unfit as a dealer.

A license may be suspended or revoked and the licensee may be fined up to \$1,000 for any violation of this section or any other law having to do with dealing in RVs.

Current RV Manufacturer Licensing

Section 320.8225, F.S., establishes license requirements for RV manufacturers. A person who manufactures RVs in Florida, or who manufactures RVs out of state but ultimately sells those RVs in Florida, must annually obtain a license for each factory location prior to distributing the RVs for sale. Licensees must annually submit a bond or letter of credit in the amount of \$10,000 for the benefit of any retail customer's loss arising from noncompliance with codes or warranty service. Only one bond is required regardless of the number of factories a manufacturer may have. A license may be denied to any applicant who has:

- Made a material misstatement in the application;
- Failed to comply with the provisions of the section;
- Failed to provide warranty service;
- Violated any law, rule, or regulation relating to the manufacture of recreational vehicles;
- Engaged in previous conduct which would be grounds for revocation or suspension;
or
- Been proven by DHSMV to be unfit.

A license may be suspended or revoked and the licensee may be fined up to \$1,000 for any violation of this section or any other law having to do with dealing in RVs.

III. Effect of Proposed Changes:

CS/CS/SB 2488 creates new sections in ch. 320, F.S., to regulate the business relationships between RV dealers and manufacturers.

Legislative Intent/Definitions

Section 1 creates s. 320.3201, F.S., establishing the intent of the Legislature to protect the health, safety, and welfare of the state's citizens by regulating the relationship between RV dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade.

Section 2 creates s. 320.3202, F.S., defining 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.

Agreements and Area of Sales

Section 3 creates s. 320.3203, F.S., requiring manufacturers to have a written agreement with dealers that, among things, designates a market area for the dealer. Within his or her designated market area, a dealer has the exclusive right to display or sell the manufacturer's new RVs of a particular line-make. The designation may not be changed for a period of 1 year. A dealer may not sell or display RVs outside of its market area unless the dealer has obtained a supplemental license and

- Another dealer and manufacturer of the same line-make allow the out-of-market area sale or display;
- 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; or
- The sale is in conjunction with a manufacturer-funded trade show involving more than 35 dealers.

Termination of Manufacturer/Dealer Agreement

Section 4 creates s. 320.3205, F.S., establishing criteria under which a manufacturer/dealer agreement may be terminated. A manufacturer is prohibited from terminating, canceling or failing to renew an agreement without good cause. A dealer may not be required to purchase inventory or increase sales goals in excess of market growth in the dealer's area. To terminate an agreement, the manufacturer has the burden of showing good cause which shall consider any of the following factors:

- 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; and
- The dealer's performance under the terms of its agreement.

A manufacturer must provide a dealer with at least 120 days' prior written notice of termination, cancellation, or nonrenewal, stating all reasons for the action. The dealer is given 30 days to provide a notice of intent to cure all claimed deficiencies. If the deficiencies are corrected 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. A manufacturer may terminate an agreement with 30 days notice if:

- A dealer or one of the dealership's owner has been convicted of, or pleaded nolo contendere to, a felony;
- A dealer has abandoned or closed his business;
- A dealer has made a significant misrepresentation that materially affects his business relationships; or
- A dealer's license has been suspended or revoked by DHSMV.

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.

A dealer may terminate, cancel, or not renew its manufacturer/dealer agreement with or without cause by giving the manufacturer 30 days' notice. "Cause" may be claimed by the dealer if the manufacturer:

- Has been convicted of, or pleaded nolo contendere to, a felony;
- Has ceased business operations for 10 consecutive days, unless the closure was result of an act of God, a strike, labor difficulty, or other cause over which the manufacturer has no control;
- Has violated any of the sections of law created by CS/CS/SB 2488;
- Has made a significant misrepresentation that materially affects his business relationships; or
- Has declared bankruptcy or insolvency.

If an agreement is terminated by the manufacturer without cause or by the dealer for cause, the dealer may cause a manufacturer to repurchase the following items:

- All new RVs, at 100 percent of the net invoice cost;
- All undamaged manufacturer's accessories and parts, if accompanied by the original invoice, at 105 percent of the original net price within 12 months; and
- Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, at 100 percent of the dealer's net cost, provided it was purchased by the dealer within 5 years before termination and can no longer be used in the normal course of business.

The manufacturer shall pay the dealer within 30 days of receipt of the returned items.

This section also directs a dealer, who is planning to sell an additional line-make of RVs, to notify the manufacturer of his existing line-make at least 30 days prior to entering into an agreement with the manufacturer of the new brand.

Transfer of Dealer Ownership

Section 5 creates s. 320.3206, F.S., requiring the dealer to notify the manufacturer of a change in ownership within 10 business days of the closing. The manufacturer may not disapprove the change or sale without a basis in such criteria as: the prospective transferee's business experience, moral character, financial qualifications, or criminal record. A manufacturer rejecting a proposed change or sale must provide written notice to the dealer within 7 business days or the change or sale is deemed approved. The manufacturer has the burden of showing its rejection of the transfer or sale is reasonable.

A manufacturer may not prevent a dealer from designating, in writing, a family member 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. Grounds for objections include a lack of creditworthiness or conviction of a felony, a lack of required licenses or business experience, or other grounds which make the succession unreasonable. The manufacturer has the burden of showing any unreasonableness of the succession. Any succession involving a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement requires the manufacturer's consent.

Warranty Obligations

Section 6 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. A dealer must be reasonably compensated for warranty service, including diagnostics and parts, required by the warrantor at rates specified by the warrantor. However, the compensation of a dealer for warranty labor shall be no less than the lowest retail labor rates actually charged by the dealer. The dealer does not need the manufacturer's prior approval to undertake warranty work requiring less than 3 hours of labor.

Dealer claims for warranty compensation may not be denied except for cause, such as: performance of nonwarranty repairs, noncompliance with warrantor's published policies, lack of material documentation, fraud, or misrepresentation. The dealer must submit warranty claims within 45 day after completing the work. and the warrantor has 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. The bill requires reciprocal indemnification of the warrantor and dealer.

Section 7 creates s. 320.3208, F.S., establishing a procedure to identify and remedy damages to, or excessive use of, new RVs in transit from the manufacturer to the dealer, when the manufacturer has selected the carrier.

Coercion of Dealers

Section 8 creates s. 320.3209, F.S., providing a definition of "coerce" and prohibiting 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 or distributor;
- Take any action which is unfair or unreasonable to the dealer; or

- Require the dealer to enter into an agreement requiring the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities under this act.

Dispute Resolution

Section 9 creates s. 320.3210, F.S., establishing the right of a dealer, manufacturer, warrantor, or distributor injured by another party's violation to bring civil action against that party in circuit court to recover damages. Court costs and attorney's fees shall be awarded to the prevailing party. However, mediation by an independent certified mediator mutually selected and compensated by both parties must be attempted prior to any court action taking place. A dealer or manufacturer seeking an injunction against another party acting as a dealer, manufacturer, distributor, or importer without being properly licensed or who fails to comply with the requirements of ss. 320.3201-320.3211, F.S., is not required to seek prior mediation.

Penalties

Section 10 creates s. 320.3211, F.S., establishing penalties. CS/CS/SB 2488:

- Authorizes the DHSMV to suspend or revoke the license of a dealer, manufacturer, distributor, or importer violating any provision of this act.
- Authorizes the DHSMV 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.
- Specifies 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.

Licensure of Distributors and Importers

Section 11 amends s. 320.8225, F.S., to require RV distributors and importers to annually obtain a license from the DHSMV, subject to the same conditions, bond requirements, revocability, and other requirements, as RV manufacturers.

Severability

Section 12 provides severability to the act and its application so any portion of the act deemed to be unenforceable does not affect the validity of the remaining provisions of the act.

Effective Date

Section 13 provides an effective date of October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. To the extent that CS/CS/SB 2488 codifies requirements for manufacturer/dealer agreements that clarify each side's responsibilities and rights, RV dealers may benefit. However, these same law changes may create financial costs for licensed manufacturers, distributors, and importers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

According to DHSMV, CS/CS/SB 2488 does not provide for notification to DHSMV of the "areas of sales responsibility" or designated market areas, preventing DHSMV from determining whether a dealer has violated the restriction on selling RVs in another dealer's area.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
