



**House
Legislative
Analysis
Section**

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WATERCRAFT FRANCHISE ACT

RECEIVED

Senate Bill 428 with committee amendments
First Analysis (5-22-89)

JUN 06 1989

Sponsor: Sen. Dan DeGrow *Mich. State Law Libra*
House Committee: Marine Affairs & Port Development
Senate Committee: Commerce & Technology

THE APPARENT PROBLEM:

Within many industries it is common for dealers and manufacturers to maintain agreements or contracts defining their relationships and each party's responsibilities. However, written agreements specifying the nature of dealer/manufacture relationships are virtually unheard of in the state's marine industry. Agreements that do exist usually require, at the most, a thirty day notice before termination. It has been asserted that the lack of written agreements detailing dealer/manufacture relationships has led to several unfair terminations (i.e., cancellations without good cause) of verbal agreements between dealers and manufacturers.

The economic crises of the late 1970s and early 1980s affected many industries, including the marine industry. Due to economic changes in the marine industry during that period several companies have since consolidated and merged. In addition, it is maintained that unfair cancellations of dealerships have increased dramatically within the past decade because of the unstable financial conditions experienced in the industry. Many of the major, lucrative boat lines are currently held by two or three prominent companies because of the recent consolidations and mergers in the industry, and it has been suggested that many dealers whose agreements have been unfairly terminated have not been able to open new dealerships due to the unavailability of a major boat line. Some members of the marine industry have suggested that dealer agreements would help give stability to the industry by defining the responsibilities of each party in the agreement, thereby decreasing unfair cancellations of dealerships and encouraging maintenance of positive dealer/manufacture relationships.

THE CONTENT OF THE BILL:

The bill would create a watercraft franchise act to regulate dealings between manufacturers, distributors and their dealers. Under the bill, a manufacturer or distributor could not offer for sale to a new watercraft dealer, and a new or proposed new watercraft dealer could not offer to purchase from a manufacturer, a new watercraft or a new outboard motor without first entering into a written dealer agreement and complying with all other applicable provisions of the bill. An agreement would include information regarding territory or market areas, performance and marketing standards, dispute resolution procedures, and notice provisions for termination, cancellation or nonrenewal of an agreement.

Relationships between manufacturers, distributors and their dealers. The bill would prohibit a manufacturer or distributor from unreasonably withholding consent to the sale, transfer, or exchange of a dealership to a person who met the criteria set forth in the dealer agreement. Failure to respond within 60 days of receipt of a request for consent would be considered consent to the request.

Except for breach of a lease, a manufacturer or distributor could not terminate, cancel, fail to renew, or discontinue a lease of a new watercraft dealer's place of business.

Designated Successors. The bill would allow a designated successor of a deceased or incapacitated new watercraft dealer to succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated successor gave the manufacturer or distributor written notice of intent to succeed to the dealership within 60 days after the dealer's death or incapacitation and agreed to be bound by all of the terms and conditions of the dealer agreement. A manufacturer or distributor could refuse to honor the existing dealer agreement with the successor under circumstances detailed in the agreement. In addition, a manufacturer or distributor could request personal and financial data from a designated successor to determine whether an existing dealer agreement should be honored and could refuse to honor the succession if good cause or other criteria existed for refusal.

HOUSE COMMITTEE ACTION:

The House Marine Affairs and Port Development Committee adopted technical amendments to clarify the bill's provisions.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications for the state. (5-19-89)

ARGUMENTS:

For:

According to committee testimony, several watercraft dealers have had agreements with manufacturers terminated without good cause, including situations in which a manufacturer's new management decided to work with a different dealer although the existing dealer was performing quite well, or a new dealer promised the manufacturer increased sales and the manufacturer terminated its relationship with the existing dealer despite adequate performance. Dealers invest a lot of time, money and effort in their dealerships and they should have protection against termination of an agreement without good cause. In addition, recent mergers and consolidations in the marine industry have decreased the number of major boat lines available to dealers and put many dealers out of the boat business. For example, if a manufacturer terminated its relationship with a Sea Ray dealer, the dealer would probably not find a comparable boat line to sell in the state because Sea Ray, as well as the two comparable lines sold in Michigan (Bayliner and Wellcraft), are owned by the same corporation, Brunswick. Therefore, the termination would effectively put the dealer out of the boat business. The bill would address all of the concerns mentioned by defining the general nature of relationships

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tween manufacturers/distributors and dealers and prohibiting termination of dealer agreements without good cause. However, the bill will still allow manufacturers and dealers to work out the details of their agreements, and I require the two parties to detail their expectations of their relationship in a written agreement.

Against:

Although there is a certain amount of friction between manufacturers and dealers in the boating industry, the problems have been exaggerated. Manufacturers and distributors have an incentive to be fair to dealers, because dealers carry competing lines and they always will have the option to sell a competing manufacturer's line. Dealers, on the other hand, have an incentive to be fair to manufacturers and distributors because manufacturers and distributors always have the option of choosing to work with a different dealer. The system is one of checks and balances inherent to the nature of the free market system. The bill is unnecessary, and will upset the delicate balance between dealers and manufacturers.

POSITIONS:

Michigan Boating Industries Association supports the bill. (5-18-89)

National Marine Manufacturers Association supports the bill. (5-18-89)