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BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 428 (as enrolled)

Sponsor: Senator Dan L. DeGrow

Senate Committee: Commerce and Technology

House Committee: Marine Affairs and Port Development

Date Completed: 6-16-89

PUBLIC ACT 88 of 1989

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RATIONALE

Within many industries it is common for dealers and manufacturers to maintain agreements defining their relationship and each party's responsibilities. Apparently, however, such agreements are virtually unheard of in the State's marine industry, and agreements that do exist usually require, at the most, a 30-day notice before termination. It has been asserted that the lack of written agreements detailing dealer/manufacturer relationships has led to several unfair terminations (i.e., cancellations without good cause) of verbal agreements between dealers and manufacturers.

Reportedly, due to economic crises of the late 1970s and early 1980s, and economic changes in the marine industry during that time, several companies have since consolidated or merged. As a result, many of the major, lucrative boat lines evidently are held by only two or three prominent companies. It is maintained that unfair cancellations of dealerships have increased dramatically within the past decade because of the unstable financial conditions experienced within the industry, and that many dealers whose agreements were unfairly terminated have not been able to open new dealerships due to the unavailability of a major boat line. Some have suggested that dealer agreements would help stabilize the industry by encouraging positive dealer/manufacturer relationships.

CONTENT

The bill would create the "Watercraft Franchise Act" to prohibit manufacturers

and distributors from selling to new watercraft dealers, and dealers from purchasing, new watercraft or outboard motors without a written dealer agreement. The bill would require certain information to be contained in agreement, provide for consent to an agreement, and regulate the succession to a dealership by a designated successor.

"Manufacturer" would refer to a person who manufactured or assembled new watercraft or new outboard motors, or a distributor, factory branch, or factory representative. "Distributor" would mean a person who sold or distributed new watercraft or new outboard motors to new watercraft dealers, maintained a factory representative, or controlled a person who sold or distributed new watercraft or outboard motors. "New watercraft dealer" would mean a person who held a dealer agreement granted by a manufacturer or distributor for the sale of the manufacturer's or distributor's watercraft or outboard motors, who was engaged in the business of purchasing, selling, exchanging, or servicing new watercraft or outboard motors, and who had an established place of business.

A dealer agreement would have to include at least the following: the territory or market area; the period of time covered by the agreement; performance and marketing standards; notice provisions for termination, cancellation, or nonrenewal; obligations in the preparation and delivery of the product and warranty service; disposal obligations upon termination, cancellation, or nonrenewal of

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inventory, equipment, furnishings, special tools, and required signs acquired within 18 months of the date of termination, cancellation, or nonrenewal; and dispute resolution procedures. ("Dealer agreement" would mean the written agreement or contract between a manufacturer or distributor and a new watercraft dealer that purported to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale of new watercraft or new outboard motors.)

A manufacturer or distributor could not unreasonably withhold 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 receiving a written request for the sale, transfer, or exchange would be considered consent to the request. Except for a material breach of the 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.

The designated successor of a deceased or incapacitated new watercraft dealer could 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 his or her intention to succeed within 60 days after the dealer's death or incapacity and agreed to be bound by all of the terms of the agreement. A manufacturer or distributor could refuse to honor the existing agreement with the successor for good cause or criteria agreed to in the agreement. The manufacturer or distributor could request from a designated successor the personal and financial data necessary to determine whether the existing agreement should be honored, and the successor would have to supply the data. ("Designated successor" would mean one or more persons nominated by the new watercraft dealer, in a written document filed by the dealer with the manufacturer or distributor at the time the dealer agreement was executed, to succeed the dealer in the event of his or her death or incapacity.)

Within 60 days after receiving notice of the designated successor's intent to succeed or within 60 days after receiving the requested data, whichever occurred later, if a

manufacturer or distributor believed that good cause or other criteria existed for refusing to honor the succession, the manufacturer or distributor could serve upon the successor notice of its refusal to approve the succession.

If a designated successor were not able to succeed a new watercraft dealer because of the successor's death or legal incapacity, the dealer, within 60 days after the death or incapacity, would have to execute a new document nominating a designated successor.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Reportedly, several watercraft dealers have had agreements with manufacturers terminated without good cause, despite the dealers' adequate performance. Dealers invest a lot of time, money, and effort in their dealerships and should be protected against unfair terminations. In addition, recent mergers and consolidations have decreased the number of major boat lines available to dealers and put some dealers out of the boat business. For example, if a manufacturer terminated its relationship with a Sea Ray dealer, the dealer probably would 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. The bill would address these concerns by requiring written dealer agreements and regulating the general nature of relationships between new watercraft manufacturers or distributors and dealers. Manufacturers and dealers would still negotiate the details of their agreements, however, and would have to define their expectations in writing.

Supporting Argument

The bill would protect family businesses by requiring manufacturers and distributors to honor an existing dealer agreement in the event a designated successor took over, unless there were good cause for refusing to honor the agreement, or criteria for refusal were spelled out in the agreement and were present. In many cases, dealers and their families have

worked long and hard to build up a business and wish to keep it in the family upon the dealer's death or incapacity. Without the bill's protections, however, a manufacturer or distributor can thwart these wishes by refusing to do business with the dealer's successor and, instead, entering into a relationship with a newcomer.

Opposing Argument

Although there has been some 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 always will have the option to sell a competing manufacturer's product. Dealers, on the other hand, have an incentive to be fair to manufacturers and distributors because those parties always have the option of choosing to work with a different dealer. The system is one of checks and balances intrinsic to the free market system. The bill is unnecessary and could upset the delicate balance between dealers and manufacturers.

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