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HOUSE BILL NO. 1320

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 20, 1997)

(Patron Prior to Substitute—Delegate J. Paul Council, Jr.)

A BILL to amend the Code of Virginia by adding in Chapter 8 of Title 29.1 an article numbered 4, consisting of sections numbered 29.1-828 and 29.1-829, relating to watercraft warranties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 29.1 an article numbered 4, consisting of sections numbered 29.1-828 and 29.1-829, as follows:

Article 4.

Compensation for Watercraft, Motor, and Warranty Work.

§ 29.1-828. Definitions.

As used in this article, unless the context requires a different meaning:

"Dealer" means any person who (i) sells, solicits, or advertises the sale of new watercraft or engines for watercraft and (ii) is authorized by a manufacturer to provide warranty services.

"Manufacturer" means any person, partnership, firm, association, or corporation that manufactures or assembles new watercraft or engines for watercraft, or imports for distribution new watercraft or engines for watercraft.

"Reasonable attorney's fees" includes the costs directly incurred in or in connection with litigation instituted under this section. Such fees shall not be determined by the amount of the recovery on behalf of the manufacturer or dealer.

"Watercraft" means any vessel used or capable of being used for navigation or flotation on or through the water.

§ 29.1-829. Warranty work; dealers' requirements; performance of warranty work; disapproval of claims; indemnification.

A. If a manufacturer requires or permits a dealer to provide parts or to perform labor to satisfy a warranty created by the manufacturer, the manufacturer shall:

1. Properly and promptly fulfill its warranty obligations; and

2. Fairly compensate the dealer for the work and services the dealer is required to perform and for other expenses incurred to comply with a manufacturer's warranty. A manufacturer may not pay a dealer a labor rate for warranty work that is less than the lower amount that is charged by the dealer and that is charged in the relevant marketplace to retail customers for non-warranty work of the same kind by similar technicians. However, if the manufacturer or the distributor has in effect a warranty program in which the dealer can comply with reasonable and objective criteria and, as a result, obtain 100 percent of the dealer's retail labor rate or the prevailing retail labor rate in the relevant marketplace, the labor rate for warranty work shall be as the terms of the program require, but shall not be less than seventy percent of the dealer's labor rate or the prevailing retail labor rate in the relevant marketplace.

B. To be entitled to compensation from a manufacturer under subsection B, the dealer shall:

1. Employ watercraft and engine parts expressly authorized by the manufacturer for warranty work;

2. Retain a copy of the manufacturer's then current service literature, if any;

3. Record the warranty work with the manufacturer within forty-five days of completing the warranty work;

4. Complete and maintain for inspection by the manufacturer, a manufacturer's delivery checklist signed by the customer for each watercraft or watercraft engine sold by the dealer;

5. Promptly handle all warranty work in accordance with industry standards regardless of the location where the watercraft or watercraft engine was sold; and

6. Submit warranty registration cards to the manufacturers on a timely basis.

C. To ensure that warranty work is performed in accordance with industry standards, the dealer shall:

1. Take reasonable steps to ensure that the warranty work is completed by technicians who have received training in servicing the watercraft or engines for watercraft manufactured, imported, or distributed by the manufacturer; and

2. Maintain technician training and development programs authorized or provided by the manufacturer as provided in the dealer's agreement with the manufacturer.

D A dealer shall not charge a consumer for labor or parts on warranty work when the warranty claim has been paid by the manufacturer.

E. All claims by a dealer for warranty work shall be approved or disapproved and paid, if due,

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60 *within a reasonable time, but no longer than forty-five days from the date on which the manufacturer*
61 *receives a properly completed claim form containing all required information.*

62 *F. If a manufacturer disapproves a claim, the manufacturer shall provide the dealer with written*
63 *notice of disapproval within forty-five days from the date on which the manufacturer receives a properly*
64 *completed claim form containing all required information. The notice of disapproval shall contain the*
65 *specific reasons for disapproval.*

66 *G. A dealer shall hold harmless the manufacturer for any financial injuries or other damages*
67 *suffered by the manufacturer and solely as a result of the negligence of the dealer in performing*
68 *warranty work, including reasonable attorney's fees. A manufacturer shall hold harmless the dealer for*
69 *any financial injuries or other damages suffered by the dealer solely as a result of the negligence of the*
70 *manufacturer related to the manufacture or design of the watercraft, including reasonable attorney's*
71 *fees.*

72 *H. If a dealer brings a legal action to collect a disapproved claim and is successful in the action,*
73 *the court shall award the dealer the cost of the action and reasonable attorney's fees.*

74 *I. The manufacturer shall compensate the dealer for the cost of parts used in the warranty repair*
75 *and shipping of the parts to and from the manufacturer, plus a reasonable profit, not less than fifteen*
76 *percent, on authorized parts stocked by the dealer.*

77 *J. Nothing in this article shall inhibit or restrain any manufacturer or dealer from exceeding the*
78 *minimum requirements of this article.*