

SB219\_L.022

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business Affairs and Labor.

SB18-219 be amended as follows:

1 Amend reengrossed bill, page 4, strike lines 24 and 25 and substitute:

2 "(3) (a) A MOTOR VEHICLE DEALER MAY ESTABLISH THE".

3 Page 12, after line 13 insert:

4 "(9) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING  
5 THAT ARE INVOLVED IN THE MANUFACTURING OF OR SELLING OF  
6 RECREATIONAL VEHICLES:

7 (a) A MOTOR VEHICLE DEALER;

8 (b) A MANUFACTURER OR COMPONENT MANUFACTURER;

9 (c) A DISTRIBUTOR; OR

10 (d) A MANUFACTURER REPRESENTATIVE.

11 **SECTION 3.** In Colorado Revised Statutes, add 12-6-132.6 as  
12 follows:

13 **12-6-132.6. Fulfillment of warranty and recall obligations -**  
14 **recreational vehicles - definitions. (1) Definitions.** AS USED IN THIS  
15 SECTION:

16 (a) "DEALER" MEANS A PERSON LICENSED OR REQUIRED TO BE  
17 LICENSED AS A MOTOR VEHICLE DEALER THAT SELLS RECREATIONAL  
18 VEHICLES.

19 (b) "RECREATIONAL VEHICLE" MEANS THE CATEGORY OF VEHICLE  
20 PRIMARILY DESIGNED AS TEMPORARY LIVING QUARTERS FOR  
21 RECREATIONAL, CAMPING, OR TRAVEL USE, WHICH EITHER HAS ITS OWN  
22 MOTIVE POWER OR IS MOUNTED ON OR DRAWN BY ANOTHER VEHICLE.

23 (c) "WARRANTOR" MEANS A PERSON THAT GIVES A WARRANTY IN  
24 CONNECTION WITH A NEW RECREATIONAL VEHICLE OR PARTS,  
25 ACCESSORIES, OR COMPONENTS OF A RECREATIONAL VEHICLE. THE TERM  
26 DOES NOT INCLUDE A PERSON WHO OFFERS OR PERFORMS SERVICE  
27 CONTRACTS, INSURANCE, OR EXTENDED WARRANTIES SOLD FOR SEPARATE  
28 CONSIDERATION BY A PERSON WHO IS NOT:

29 (I) THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER  
30 REPRESENTATIVE; OR

31 (II) CONTROLLED BY A MANUFACTURER, DISTRIBUTOR, OR  
32 MANUFACTURER REPRESENTATIVE.

33 (2) **Warranty obligations of recreational vehicle warrantors.**  
34 EACH WARRANTOR SHALL:

35 (a) COMPENSATE THE DEALER FOR WARRANTY SERVICE,  
36 INCLUDING DIAGNOSTIC WORK;

37 (b) PROVIDE THE DEALER A SCHEDULE OF COMPENSATION TO BE

1 PAID THAT MUST BE IN A FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;  
2 (c) PROVIDE THE DEALER A SCHEDULE OF THE TIME ALLOWANCES  
3 FOR WARRANTY SERVICE THAT MUST PROVIDE ADEQUATE AND  
4 REASONABLE TIME TO COMPLETE SERVICE WORK AND THAT MUST BE IN A  
5 FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;  
6 (d) REIMBURSE THE DEALER FOR WARRANTY SERVICE AND  
7 WARRANTY PARTS IN ACCORDANCE WITH THE SCHEDULE OF  
8 COMPENSATION THAT IS REQUIRED IN SUBSECTION (2)(b) OF THIS SECTION;  
9 (e) IF THE SCHEDULE OF COMPENSATION REQUIRED IN SUBSECTION  
10 (2)(b) OF THIS SECTION DOES NOT INCLUDE A PARTICULAR REPAIR,  
11 REIMBURSE THE DEALER FOR WARRANTY SERVICE FOR THE ACTUAL TIME  
12 EXPENDED IF REASONABLE, AND THE MANUFACTURER BEARS THE BURDEN  
13 TO PROVE THAT THE ACTUAL TIME EXPENDED WAS UNREASONABLE;  
14 (f) REIMBURSE THE DEALER FOR WARRANTY SERVICE AT NOT LESS  
15 THAN THE LOWEST RETAIL LABOR RATE ACTUALLY CHARGED BY THE  
16 DEALER FOR COMPARABLE NONWARRANTY LABOR IF THE RATE IS  
17 REASONABLE; AND  
18 (g) REIMBURSE THE DEALER FOR WARRANTY PARTS AT  
19 WHOLESALE PRICE PLUS:  
20 (I) A MINIMUM THIRTY PERCENT HANDLING CHARGE; AND  
21 (II) ANY COST OF FREIGHT TO RETURN WARRANTY PARTS TO THE  
22 WARRANTOR.  
23 (3) THE WARRANTOR SHALL NOT DENY A DEALER'S CLAIMS FOR  
24 WARRANTY COMPENSATION WITHOUT CAUSE, WHICH MAY INCLUDE  
25 PERFORMANCE OF NONWARRANTY REPAIRS, MATERIAL NONCOMPLIANCE  
26 WITH THE WARRANTOR'S PUBLISHED POLICIES AND PROCEDURES, LACK OF  
27 MATERIAL DOCUMENTATION, FRAUD, OR MISREPRESENTATION.  
28 (4) A WARRANTOR SHALL NOT:  
29 (a) FAIL TO COMPENSATE A DEALER FOR WARRANTY REPAIRS MADE  
30 TO A RECREATION VEHICLE OR COMPONENT OF A RECREATIONAL VEHICLE  
31 MADE BY THE DEALER OF MERCHANDISE:  
32 (I) DAMAGED DURING DELIVERY TO THE DEALER OR DURING  
33 MANUFACTURING; OR  
34 (II) DEFECTIVELY BUILT OR DESIGNED;  
35 (b) SEND REPLACEMENT PARTS TO A DEALER AT NO CHARGE  
36 WITHOUT PAYING THE PARTS MARKUP REQUIRED BY SUBSECTION (2)(g) OF  
37 THIS SECTION TIMES THE DEALER COST OF THE PART;  
38 (c) FAIL TO FULFILL PARTS ORDERS WHEN PARTS ARE AVAILABLE;  
39 (d) RETALIATE AGAINST A DEALER FOR EXERCISING THE DEALER'S  
40 RIGHTS UNDER THIS SECTION; OR  
41 (e) ATTEMPT TO COERCE A DEALER TO NOT EXERCISE ITS RIGHTS  
42 UNDER THIS SECTION.  
43 (5) THE DEALER MAY SUBMIT WARRANTY CLAIMS INVOLVING ANY

1 COMPONENT USED IN THE MANUFACTURING OF A RECREATIONAL VEHICLE  
2 TO THE MANUFACTURER THAT:  
3 (a) COMPLETES THE MANUFACTURING OF THE RECREATIONAL  
4 VEHICLE; AND  
5 (b) ISSUES THE MANUFACTURER'S CERTIFICATE OF ORIGIN.  
6 (6) NOTWITHSTANDING THE TERMS OF ANY MANUFACTURER AND  
7 DEALER AGREEMENT:  
8 (a) A WARRANTOR SHALL INDEMNIFY AND DEFEND A DEALER  
9 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR  
10 DAMAGES, INCLUDING DEFENSE COSTS AND ATTORNEY FEES, TO THE  
11 EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED BY THE  
12 NEGLIGENCE OR WILLFUL MISCONDUCT OF THE WARRANTOR OR ANY  
13 COMPONENT WARRANTOR WHOSE PRODUCT IS INCORPORATED IN THE  
14 WARRANTOR'S PRODUCT. THE WARRANTOR SHALL NOT DENY THE DEALER  
15 INDEMNIFICATION OR DEFENSE FOR FAILING TO DISCOVER, DISCLOSE, OR  
16 REMEDY A DEFECT IN THE DESIGN OR MANUFACTURING OF A  
17 RECREATIONAL VEHICLE. TO BE INDEMNIFIED OR DEFENDED, THE DEALER  
18 MUST PROVIDE TO THE WARRANTOR A COPY OF ANY CLAIM IN WHICH  
19 ALLEGATIONS ARE MADE THAT FALL UNDER THIS SUBSECTION (6)(a)  
20 WITHIN TEN DAYS AFTER RECEIVING THE CLAIM OR SUIT.  
21 (b) A DEALER SHALL INDEMNIFY AND DEFEND ITS WARRANTOR  
22 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR  
23 DAMAGES TO THE EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED  
24 BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DEALER  
25 INDEPENDENT OF ANY MANUFACTURING OR DESIGN DEFECT. TO BE  
26 INDEMNIFIED OR DEFENDED, THE WARRANTOR MUST PROVIDE TO THE  
27 DEALER A COPY OF ANY CLAIM IN WHICH ALLEGATIONS ARE MADE THAT  
28 FALL UNDER THIS SUBSECTION (6)(b) WITHIN TEN DAYS AFTER RECEIVING  
29 THE CLAIM OR SUIT.  
30 (7) **Dispute resolution for recreational dealers and**  
31 **manufacturers.** (a) A DEALER OR WARRANTOR INJURED BY ANOTHER  
32 PARTY'S VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN STATE  
33 COURT TO RECOVER ACTUAL DAMAGES. THE COURT SHALL AWARD  
34 ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN THE ACTION.  
35 VENUE FOR A CIVIL ACTION AUTHORIZED BY THIS SECTION MUST  
36 EXCLUSIVELY BE IN THE COUNTY WHERE THE DEALER IS LOCATED. IN AN  
37 ACTION INVOLVING MORE THAN ONE DEALER, VENUE MAY BE IN ANY  
38 COUNTY WHERE A DEALER WHO IS PARTY TO THE ACTION IS LOCATED.  
39 (b) (I) TO BRING AN ACTION UNDER THIS SUBSECTION (7):  
40 (A) A PERSON MUST SERVE A WRITTEN DEMAND FOR MEDIATION  
41 UPON THE ALLEGED VIOLATOR;  
42 (B) THE DEMAND FOR MEDIATION MUST BE SERVED UPON THE  
43 ALLEGED VIOLATOR BY CERTIFIED MAIL AT THE ADDRESS STATED WITHIN

1 THE SALES, SERVICE, AND PARTS AGREEMENT BETWEEN THE PARTIES  
2 UNLESS SUBSECTION (7)(b)(I)(C) APPLIES TO THE ACTION;

3 (C) IF A CIVIL ACTION IS BETWEEN TWO DEALERS, THE DEMAND  
4 MUST BE MAILED TO THE ADDRESS ON THE DEALER'S LICENSE FILED WITH  
5 THE DIRECTOR.

6 (D) THE DEMAND FOR MEDIATION MUST CONTAIN A BRIEF  
7 STATEMENT OF THE DISPUTE AND THE RELIEF SOUGHT BY THE PARTY  
8 FILING THE DEMAND.

9 (II) WITHIN TWENTY DAYS AFTER THE DEMAND FOR MEDIATION IS  
10 SERVED, THE PARTIES SHALL MUTUALLY SELECT AN INDEPENDENT  
11 CERTIFIED MEDIATOR AND MEET WITH THE MEDIATOR FOR THE PURPOSE OF  
12 ATTEMPTING TO RESOLVE THE DISPUTE. THE MEETING PLACE MUST BE IN  
13 THIS STATE IN A LOCATION SELECTED BY THE MEDIATOR. THE MEDIATOR  
14 MAY EXTEND THE DATE OF THE MEETING FOR GOOD CAUSE SHOWN BY  
15 EITHER PARTY OR UPON STIPULATION OF BOTH PARTIES.

16 (III) THE SERVICE OF A DEMAND FOR MEDIATION UNDER THIS  
17 SUBSECTION (7) STAYS THE TIME FOR THE FILING OF AN ACTION UNDER  
18 THIS SUBSECTION (7) UNTIL REPRESENTATIVES OF BOTH PARTIES HAVE MET  
19 WITH A MUTUALLY SELECTED MEDIATOR TO ATTEMPT TO RESOLVE THE  
20 DISPUTE. IF AN ACTION IS FILED BEFORE THAT MEETING, THE COURT SHALL  
21 ENTER AN ORDER SUSPENDING THE PROCEEDINGS UNTIL THE MEETING HAS  
22 OCCURRED AND MAY, UPON WRITTEN STIPULATION OF ALL PARTIES TO THE  
23 PROCEEDING THAT THEY WISH TO CONTINUE TO MEDIATE UNDER THIS  
24 SUBSECTION (7), ENTER AN ORDER SUSPENDING THE PROCEEDING OR  
25 ACTION FOR AS LONG A PERIOD AS THE COURT CONSIDERS APPROPRIATE.  
26 A SUSPENSION ORDER ISSUED UNDER THIS SUBSECTION (7)(b)(III) MAY BE  
27 REVOKED BY THE COURT.

28 (IV) IN MEDIATION, THE PARTIES TO THE MEDIATION BEAR THEIR  
29 OWN COSTS FOR ATTORNEY FEES AND DIVIDE EQUALLY THE COST OF THE  
30 MEDIATOR.

31 (c) IN ADDITION TO THE REMEDIES PROVIDED IN THIS SUBSECTION  
32 (7) AND NOTWITHSTANDING THE EXISTENCE OF ANY ADDITIONAL REMEDY  
33 AT LAW, A DEALER OR MANUFACTURER MAY APPLY TO A STATE COURT FOR  
34 THE GRANT, UPON A HEARING AND FOR CAUSE SHOWN, OF A TEMPORARY  
35 OR PERMANENT INJUNCTION RESTRAINING A PERSON FROM VIOLATING OR  
36 CONTINUING TO VIOLATE THIS SECTION. THE MOVING PARTY NEED NOT  
37 POST A BOND FOR THE INJUNCTION TO BE ISSUED. MEDIATION IS NOT  
38 REQUIRED PRIOR TO SEEKING INJUNCTIVE RELIEF. A SINGLE ACT IN  
39 VIOLATION OF THIS SECTION IS SUFFICIENT TO AUTHORIZE THE ISSUANCE  
40 OF AN INJUNCTION.

41 Renumber succeeding section accordingly.

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