

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

May 1, 2018

Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

SB18-219 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 3, lines 22 and 23, strike "VEHICLE IN
2 ACCORDANCE WITH THE MANUFACTURER'S WARRANTY OBLIGATION." and
3 substitute "VEHICLE".

4 Page 4, line 23, strike "REASONABLE." and substitute "REASONABLE
5 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION THAT CONCERN
6 THE RETAIL LABOR RATE AND PARTS MARKUP PERCENTAGE."

7 Page 4, strike lines 24 and 25 and substitute:

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

9 Page 5, line 23, strike "SUBSTANTIALLY" and substitute "TEN PERCENT".

10 Page 5, line 27, strike "THE" and substitute "EXCEPT WITH REGARD TO A
11 REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION
12 (3)(c) OF THIS SECTION, THE".

13 Page 6, line 4, strike "THE" and substitute "EXCEPT WITH REGARD TO A
14 REQUEST FOR ADDITIONAL REPAIR ORDERS AS PROVIDED IN SUBSECTION
15 (3)(c) OF THIS SECTION, THE".

16 Page 8, strike lines 20 and 21 and substitute "OR IS SUBSTANTIALLY
17 DIFFERENT THAN THE RATE OF OR PERCENTAGE OF OTHER SIMILARLY

1 SITUATED SAME LINE-MAKE DEALERS WITHIN THE STATE, A
2 MANUFACTURER".

3 Page 9, line 7, strike "THE" and substitute "UPON THE DISCOVERY OF NEW
4 RELEVANT INFORMATION BY THE MANUFACTURER, THE".

5 Page 11, strike lines 18 through 20 and substitute "MANUFACTURER'S
6 PRICE SCHEDULE;".

7 Page 12, after line 13 insert:

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

- 11 (a) A MOTOR VEHICLE DEALER;
- 12 (b) A MANUFACTURER OR COMPONENT MANUFACTURER;
- 13 (c) A DISTRIBUTOR; OR
- 14 (d) A MANUFACTURER REPRESENTATIVE.

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

17 **12-6-132.6. Fulfillment of warranty and recall obligations -**
18 **recreational vehicles - definitions.** (1) **Definitions.** AS USED IN THIS
19 SECTION:

20 (a) "DEALER" MEANS A PERSON LICENSED OR REQUIRED TO BE
21 LICENSED AS A MOTOR VEHICLE DEALER THAT SELLS RECREATIONAL
22 VEHICLES.

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

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

33 (I) THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
34 REPRESENTATIVE; OR

35 (II) CONTROLLED BY A MANUFACTURER, DISTRIBUTOR, OR
36 MANUFACTURER REPRESENTATIVE.

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

1 THIS SECTION TIMES THE DEALER COST OF THE PART;
2 (c) FAIL TO FULFILL PARTS ORDERS WHEN PARTS ARE AVAILABLE;
3 (d) RETALIATE AGAINST A DEALER FOR EXERCISING THE DEALER'S
4 RIGHTS UNDER THIS SECTION; OR
5 (e) ATTEMPT TO COERCE A DEALER TO NOT EXERCISE ITS RIGHTS
6 UNDER THIS SECTION.
7 (5) THE DEALER MAY SUBMIT WARRANTY CLAIMS INVOLVING ANY
8 COMPONENT USED IN THE MANUFACTURING OF A RECREATIONAL VEHICLE
9 TO THE MANUFACTURER THAT:
10 (a) COMPLETES THE MANUFACTURING OF THE RECREATIONAL
11 VEHICLE; AND
12 (b) ISSUES THE MANUFACTURER'S CERTIFICATE OF ORIGIN.
13 (6) NOTWITHSTANDING THE TERMS OF ANY MANUFACTURER AND
14 DEALER AGREEMENT:
15 (a) A WARRANTOR SHALL INDEMNIFY AND DEFEND A DEALER
16 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR
17 DAMAGES, INCLUDING DEFENSE COSTS AND ATTORNEY FEES, TO THE
18 EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED BY THE
19 NEGLIGENCE OR WILLFUL MISCONDUCT OF THE WARRANTOR OR ANY
20 COMPONENT WARRANTOR WHOSE PRODUCT IS INCORPORATED IN THE
21 WARRANTOR'S PRODUCT. THE WARRANTOR SHALL NOT DENY THE DEALER
22 INDEMNIFICATION OR DEFENSE FOR FAILING TO DISCOVER, DISCLOSE, OR
23 REMEDY A DEFECT IN THE DESIGN OR MANUFACTURING OF A
24 RECREATIONAL VEHICLE. TO BE INDEMNIFIED OR DEFENDED, THE DEALER
25 MUST PROVIDE TO THE WARRANTOR A COPY OF ANY CLAIM IN WHICH
26 ALLEGATIONS ARE MADE THAT FALL UNDER THIS SUBSECTION (6)(a)
27 WITHIN TEN DAYS AFTER RECEIVING THE CLAIM OR SUIT.
28 (b) A DEALER SHALL INDEMNIFY AND DEFEND ITS WARRANTOR
29 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR
30 DAMAGES TO THE EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED
31 BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DEALER
32 INDEPENDENT OF ANY MANUFACTURING OR DESIGN DEFECT. TO BE
33 INDEMNIFIED OR DEFENDED, THE WARRANTOR MUST PROVIDE TO THE
34 DEALER A COPY OF ANY CLAIM IN WHICH ALLEGATIONS ARE MADE THAT
35 FALL UNDER THIS SUBSECTION (6)(b) WITHIN TEN DAYS AFTER RECEIVING
36 THE CLAIM OR SUIT.
37 (7) **Dispute resolution for recreational dealers and**
38 **manufacturers.** (a) A DEALER OR WARRANTOR INJURED BY ANOTHER
39 PARTY'S VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN STATE
40 COURT TO RECOVER ACTUAL DAMAGES. THE COURT SHALL AWARD
41 ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN THE ACTION.

1 VENUE FOR A CIVIL ACTION AUTHORIZED BY THIS SECTION MUST
2 EXCLUSIVELY BE IN THE COUNTY WHERE THE DEALER IS LOCATED. IN AN
3 ACTION INVOLVING MORE THAN ONE DEALER, VENUE MAY BE IN ANY
4 COUNTY WHERE A DEALER WHO IS PARTY TO THE ACTION IS LOCATED.

5 (b) (I) TO BRING AN ACTION UNDER THIS SUBSECTION (7):

6 (A) A PERSON MUST SERVE A WRITTEN DEMAND FOR MEDIATION
7 UPON THE ALLEGED VIOLATOR;

8 (B) THE DEMAND FOR MEDIATION MUST BE SERVED UPON THE
9 ALLEGED VIOLATOR BY CERTIFIED MAIL AT THE ADDRESS STATED WITHIN
10 THE SALES, SERVICE, AND PARTS AGREEMENT BETWEEN THE PARTIES
11 UNLESS SUBSECTION (7)(b)(I)(C) APPLIES TO THE ACTION;

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

15 (D) THE DEMAND FOR MEDIATION MUST CONTAIN A BRIEF
16 STATEMENT OF THE DISPUTE AND THE RELIEF SOUGHT BY THE PARTY
17 FILING THE DEMAND.

18 (II) WITHIN TWENTY DAYS AFTER THE DEMAND FOR MEDIATION IS
19 SERVED, THE PARTIES SHALL MUTUALLY SELECT AN INDEPENDENT
20 CERTIFIED MEDIATOR AND MEET WITH THE MEDIATOR FOR THE PURPOSE OF
21 ATTEMPTING TO RESOLVE THE DISPUTE. THE MEETING PLACE MUST BE IN
22 THIS STATE IN A LOCATION SELECTED BY THE MEDIATOR. THE MEDIATOR
23 MAY EXTEND THE DATE OF THE MEETING FOR GOOD CAUSE SHOWN BY
24 EITHER PARTY OR UPON STIPULATION OF BOTH PARTIES.

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

37 (IV) IN MEDIATION, THE PARTIES TO THE MEDIATION BEAR THEIR
38 OWN COSTS FOR ATTORNEY FEES AND DIVIDE EQUALLY THE COST OF THE
39 MEDIATOR.

40 (c) IN ADDITION TO THE REMEDIES PROVIDED IN THIS SUBSECTION
41 (7) AND NOTWITHSTANDING THE EXISTENCE OF ANY ADDITIONAL REMEDY

1 AT LAW, A DEALER OR MANUFACTURER MAY APPLY TO A STATE COURT FOR
2 THE GRANT, UPON A HEARING AND FOR CAUSE SHOWN, OF A TEMPORARY
3 OR PERMANENT INJUNCTION RESTRAINING A PERSON FROM VIOLATING OR
4 CONTINUING TO VIOLATE THIS SECTION. THE MOVING PARTY NEED NOT
5 POST A BOND FOR THE INJUNCTION TO BE ISSUED. MEDIATION IS NOT
6 REQUIRED PRIOR TO SEEKING INJUNCTIVE RELIEF. A SINGLE ACT IN
7 VIOLATION OF THIS SECTION IS SUFFICIENT TO AUTHORIZE THE ISSUANCE
8 OF AN INJUNCTION."

9 Renumber succeeding section accordingly.

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