
HOUSE BILL 2760

State of Washington 52nd Legislature 1992 Regular Session

By Representative Cooper; by request of Department of Licensing

Read first time 01/27/92. Referred to Committee on Transportation.

1 AN ACT Relating to vessel dealer registration; amending RCW
2 88.02.010 and 88.02.050; adding a new chapter to Title 88 RCW;
3 recodifying RCW 88.02.230; repealing RCW 88.02.023, 88.02.060,
4 88.02.078, 88.02.112, 88.02.115, 88.02.118, 88.02.125, 88.02.184,
5 88.02.188, 88.02.210, and 88.02.220; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 88.02.010 and 1983 c 7 s 14 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Vessel" means every watercraft used or capable of being used
12 as a means of transportation on the water, other than a seaplane.

1 (2) "Owner" means a person who has a lawful right to possession of
2 a vessel by purchase, exchange, gift, lease, inheritance, or legal
3 action whether or not the vessel is subject to a security interest.

4 (~~(3) ("Dealer" means a person, partnership, association, or~~
5 ~~corporation engaged in the business of selling vessels at wholesale or~~
6 ~~retail in this state.~~

7 (~~4~~)) "Department" means the department of licensing.

8 **Sec. 2.** RCW 88.02.050 and 1989 c 17 s 1 are each amended to read
9 as follows:

10 Application for a vessel registration shall be made to the
11 department or its authorized agent in the manner and upon forms
12 prescribed by the department. The application shall state the name and
13 address of each owner of the vessel and such other information as may
14 be required by the department, shall be signed by at least one owner,
15 and shall be accompanied by a vessel registration fee of six dollars
16 per year and the excise tax imposed under chapter 82.49 RCW. Any fees
17 required for licensing agents under RCW 46.01.140 shall be in addition
18 to the six-dollar annual registration fee.

19 Upon receipt of the application and the registration fee, the
20 department shall assign a registration number and issue a decal for
21 each vessel. The registration number and decal shall be issued and
22 affixed to the vessel in a manner prescribed by the department
23 consistent with the standard numbering system for vessels set forth in
24 volume 33, part 174, of the code of federal regulations. A valid decal
25 affixed as prescribed shall indicate compliance with the annual
26 registration requirements of this chapter.

27 The vessel registrations and decals are valid for a period of one
28 year, except that the director of licensing may extend or diminish
29 vessel registration periods, and the decals therefor, for the purpose

1 of staggered renewal periods. For registration periods of more or less
2 than one year, the department may collect prorated annual registration
3 fees and excise taxes based upon the number of months in the
4 registration period. Vessel registrations are renewable every year in
5 a manner prescribed by the department upon payment of the vessel
6 registration fee and excise tax. Upon renewing a vessel registration,
7 the department shall issue a new decal to be affixed as prescribed by
8 the department.

9 When the department issues either a notice to renew a vessel
10 registration or a decal for a new or renewed vessel registration, it
11 shall also provide information on the location of marine oil recycling
12 tanks and sewage holding tank pumping stations. This information will
13 be provided to the department by the state parks and recreation
14 commission in a form ready for distribution. The form will be
15 developed and prepared by the state parks and recreation commission
16 with the cooperation of the department of ecology. The department, the
17 state parks and recreation commission, and the department of ecology
18 shall enter into a memorandum of agreement to implement this process.

19 A person (~~(acquiring)~~) who acquires a vessel from other than a
20 dealer or who acquires a vessel already validly registered under this
21 chapter shall, within fifteen days of the acquisition or purchase of
22 the vessel, apply to the department or its authorized agent for
23 transfer of the vessel registration, and the application shall be
24 accompanied by a transfer fee of one dollar.

25 NEW SECTION. **Sec. 3.** The legislature finds and declares that
26 the distribution and sale of vessels in the state of Washington vitally
27 affects the general economy of the state and the public interest and
28 the public welfare. It is the intent of the legislature to regulate
29 and register vessel dealers doing business in Washington, to promote

1 honesty and fair dealing with citizens, and to preserve public
2 confidence in the vessel dealer industry.

3 NEW SECTION. **Sec. 4.** Unless the context clearly requires
4 otherwise, the definitions in this section apply throughout this
5 chapter.

6 (1) "Vessel" means every watercraft used or capable of being used
7 as a means of transportation on the water, other than a seaplane.

8 (2) "Owner" means a person who has a lawful right to possession of
9 a vessel by purchase, exchange, gift, lease, inheritance, or legal
10 action whether or not the vessel is subject to a security interest.

11 (3) "Dealer" means a person, partnership, association, or
12 corporation engaged in the business of selling vessels at wholesale or
13 retail in this state.

14 (4) "Department" means the department of licensing.

15 (5) "Established place of business" means a location meeting the
16 requirements of section 8 of this act at which a vessel dealer conducts
17 business in this state.

18 NEW SECTION. **Sec. 5.** Vessel dealer display decals shall only
19 be used:

20 (1) To demonstrate vessels held for sale when operated by a
21 prospective customer holding a dated demonstration permit, and shall be
22 carried in the vessel at all times it is being operated by such
23 individual;

24 (2) On vessels owned or consigned for sale that are in fact
25 available for sale and being used only for vessel dealer business
26 purposes by an officer of the corporation, a partner, a proprietor, or
27 by a bona fide employee of the firm if a dealer identification card so

1 identifying any such individual is carried in the vessel at all times
2 it is so operated.

3 (3) On vessels being operated by the business owner, employee,
4 agent, or subcontractor for the purpose of testing, making repairs, or
5 preparing the vessel for sale. The business owner, employee, agent, or
6 subcontractor shall carry a copy of the signed work order on the vessel
7 at the time of vessel testing.

8 (4) Vessel dealer display decals shall not be used on rental
9 vessels.

10 NEW SECTION. **Sec. 6.** (1) RCW 88.02.020 does not apply to any
11 registered dealer's vessels held for sale.

12 (2) Dealer registrations are not transferable.

13 NEW SECTION. **Sec. 7.** (1) Each vessel dealer shall register
14 with the department in the manner and upon forms prescribed by the
15 department, in accordance with rules adopted under chapter 34.05 RCW.
16 After the completed vessel dealer application has been satisfactorily
17 filed and the applicant is eligible as determined by the department's
18 rules, the department shall, if no denial proceeding is in effect,
19 issue the vessel dealer's registration on the basis of staggered annual
20 expiration dates.

21 (2) Before issuing a vessel dealer's registration, the department
22 shall require the applicant to file with the department a surety bond
23 in the amount of five thousand dollars, running to the state of
24 Washington, and executed by a surety company authorized to do business
25 in the state of Washington. The bond shall be approved by the attorney
26 general as to form and conditioned that the dealer shall conduct his or
27 her business in conformity with the provisions of this chapter. Any
28 vessel consignor or purchaser who has suffered any loss or damage by

1 reason of any act or omission by a dealer that constitutes a violation
2 of this chapter may institute an action for recovery against the dealer
3 and the surety upon the bond. Successive recoveries against the bond
4 shall be permitted, but the aggregate liability of the surety to all
5 persons shall not exceed the amount of the bond. Upon exhaustion of
6 the penalty of the bond or the cancellation of the bond by the surety,
7 the vessel dealer registration shall automatically be deemed canceled.

8 (3) Vessel dealers selling fifteen vessels or fewer per year having
9 a retail value of no more than two thousand dollars each shall not be
10 subject to the provisions of subsection (2) of this section.

11 (4) For each fiscal biennia, the director shall establish the
12 amount of registration, renewal, display decal, and display decal
13 replacement fees. Such fees shall be set at a sufficient level to
14 defray the costs of administering the vessel dealer registration
15 program. All such fees shall be fixed by rule adopted by the director
16 in accordance with the administrative procedure act, chapter 34.05 RCW.
17 All fees collected under this section shall be deposited with the state
18 treasurer and credited to the general fund.

19 (5) Manufacturers who produce only documented commercial vessels
20 for commercial or governmental use are exempt from obtaining a
21 Washington state vessel dealer's license.

22 NEW SECTION. **Sec. 8.** (1) An "established place of business"
23 requires the following:

24 (a) A place of business in the state of Washington, in an area
25 zoned to permit that business;

26 (b) Display of a sign, permanently affixed to the land or building,
27 clearly visible to the public, identifying the nature of the business
28 as marine sales, service, repair, or manufacturing;

1 (c) A business phone at the place of business that is listed with
2 directory assistance in the business name;

3 (d) The dealer shall keep the place of business open so that the
4 public and representatives of the department may contact the vessel
5 dealer or dealer's salesperson during normal business hours;

6 (e) The books, records, and files necessary to conduct the business
7 shall be kept and maintained at the place of business listed on the
8 vessel dealer's registration, and shall be available for inspection by
9 representatives of the department during normal business hours.

10 (2) The department may waive any requirements pertaining to a
11 vessel dealer's established place of business if such waiver both
12 serves the purposes of this chapter and is necessary due to unique
13 circumstances.

14 NEW SECTION. **Sec. 9.** It is unlawful for a person, firm, or
15 association to act as a vessel dealer or vessel manufacturer, to engage
16 in the business as such, serve in the capacity as such, advertise
17 himself, herself, or themselves as such, solicit sales as such, or
18 distribute or transfer vessels for resale in this state, without first
19 holding a current registration as provided in this chapter. It is
20 unlawful for a person other than a registered vessel dealer to display
21 a vessel for sale unless the registered owner or legal owner is the
22 displayer or holds a notarized power of attorney. A person or firm
23 engaged in buying and offering for sale, or buying and selling vessels,
24 or in any other way engaged in vessel dealer activity without holding
25 a vessel dealer's registration, is guilty of a gross misdemeanor and,
26 upon conviction, is subject to a fine of up to five thousand dollars
27 for each violation and up to a year in jail. A second offense is a
28 class C felony punishable under chapter 9A.20 RCW. A violation of this

1 section is also a per se violation of chapter 19.86 RCW and is
2 considered a deceptive practice.

3 NEW SECTION. **Sec. 10.** In addition to other penalties imposed
4 by this chapter for unauthorized or personal use of vessel dealer
5 display decals, the director may confiscate all display decals for such
6 period as the director deems appropriate, and in addition, or in lieu
7 of other sanctions, the director may impose a monetary penalty not
8 exceeding twice the amount of excise tax that should have been paid to
9 register each vessel properly. A monetary penalty assessment is in
10 addition to any fees owing to register each vessel properly. Any
11 monetary penalty imposed or vessel display decals confiscated shall be
12 done in accordance with chapter 34.05 RCW. Any monetary penalty
13 imposed by the director and the delinquent excise taxes collected shall
14 be deposited in the general fund.

15 NEW SECTION. **Sec. 11.** It is a gross misdemeanor for any person
16 to obtain a vessel dealer's registration for the purpose of evading
17 excise tax on vessels under chapter 82.49 RCW.

18 NEW SECTION. **Sec. 12.** (1) Except as otherwise provided in this
19 chapter, including sections 9, 10, and 11 of this act, a violation of
20 this chapter and the rules adopted by the department pursuant to this
21 chapter, is a misdemeanor punishable only by a fine not to exceed one
22 hundred dollars per vessel for the first violation. Subsequent
23 violations in the same year are subject to the following fines:

24 (a) For the second violation, a fine of two hundred dollars per
25 vessel;

26 (b) For the third and successive violations, a fine of four hundred
27 dollars per vessel.

1 (2) After subtraction of court costs and administrative collection
2 fees, moneys collected under this section shall be credited to the
3 current expense fund of the arresting jurisdiction.

4 (3) All law enforcement officers shall have the authority to
5 enforce this chapter and the rules adopted by the department pursuant
6 to this chapter.

7 NEW SECTION. **Sec. 13.** (1) Vessel dealers shall possess a
8 certificate of title for each used vessel or a manufacturer's statement
9 of origin, a carpenter's certificate, or a factory invoice with other
10 evidence of ownership for each new vessel in the vessel dealer's
11 inventory unless the vessel for sale is consigned or subject to an
12 inventory security agreement. Each certificate of title shall be
13 either in the name of the dealer or in the name of the dealer's
14 immediate vendor properly assigned.

15 (2) A vessel dealer may display and sell consigned vessels or
16 vessels subject to an inventory security agreement if there is a
17 written and signed consignment agreement for each vessel or an
18 inventory security agreement covering all inventory vessels. The
19 consignment agreement shall include verification by the vessel dealer
20 that a vessel title or manufacturer's statement of origin exists and
21 its location, the name and address of the registered owner, and the
22 legal owner, if any. Vessels that are subject to an inventory security
23 interest shall be supported with a certificate of title or
24 manufacturer's statement of origin that is in the dealer's possession
25 or the possession of the inventory security party. Upon payment of the
26 debt secured for that vessel, the secured party shall deliver the
27 certificate of title or the manufacturer's statement of origin,
28 appropriately released, to the dealer. It is the vessel dealer's

1 responsibility to ensure that title documents are available for title
2 transfer upon the sale of the vessel.

3 (3) Following the retail sale of any vessel, the dealer shall
4 promptly make application and execute the assignment and warranty of
5 the certificate of title. Such assignment shall show any secured party
6 holding a security interest created at the time of sale. The dealer
7 shall deliver the certificate of title and application for registration
8 to the department.

9 NEW SECTION. **Sec. 14.** (1) The department may authorize vessel
10 dealers properly registered pursuant to this chapter to issue temporary
11 permits to operate vessels under such rules as the department adopts.

12 (2) The fee for each temporary permit application distributed to an
13 authorized vessel dealer shall be five dollars, which shall be credited
14 to the payment of registration fees at the time application for
15 registration is made.

16 NEW SECTION. **Sec. 15.** For the purposes of an investigation or
17 proceeding under this chapter the director or an officer designated by
18 the director may administer oaths and affirmations, subpoena witnesses
19 and records, compel their attendance, take evidence, and require the
20 production of books, papers, correspondence, memoranda, agreements, or
21 other documents or records that the director deems relevant or material
22 to the inquiry.

23 In case of contumacy by, or refusal to obey a subpoena issued to,
24 a person, a court of competent jurisdiction, upon application by the
25 director or the officer designated by the director, may order the
26 person to produce documentary or other evidence touching the matter
27 under investigation or in question. The failure to obey an order of
28 the court may be punished as contempt.

1 NEW SECTION. **Sec. 16.** Except as otherwise provided in this
2 chapter, the director may by order deny, suspend, or revoke the
3 registration of any vessel dealer, or in lieu thereof or in addition
4 thereto, may by order assess monetary penalties of a civil nature not
5 to exceed one thousand dollars per violation, if the director finds
6 that the applicant or registrant:

7 (1) Is applying for a dealer's registration or has obtained a
8 dealer's registration for the purpose of evading excise taxes on
9 vessels;

10 (2) Has been adjudged guilty of a felony that directly relates to
11 marine trade and the time elapsed since the adjudication is less than
12 ten years. For purposes of this section, adjudged guilty means, in
13 addition to a final conviction in court, an unvacated forfeiture of
14 bail or collateral deposited to secure a defendant's appearance in
15 court, the payment of a fine, a plea of guilty, or a finding of guilt
16 regardless of whether the sentence is deferred or the penalty is
17 suspended;

18 (3) Has failed to comply with the trust account requirements of
19 this chapter;

20 (4) Has failed to transfer a certificate of title to a purchaser as
21 required in this chapter;

22 (5) Has misrepresented the facts at the time of application for
23 registration or renewal; or

24 (6) Has failed to comply with applicable provisions of, or any
25 rules adopted under, this chapter.

26 NEW SECTION. **Sec. 17.** If it appears to the director that a
27 person has engaged or is about to engage in an act or practice
28 constituting a violation of this chapter, or a rule adopted or an order
29 issued under this chapter, the director may issue an order directing

1 the person to cease and desist from continuing the act or practice.
2 The director shall give reasonable notice of an opportunity for a
3 hearing. The director may issue a temporary order pending a hearing.
4 The temporary order remains in effect until ten days after the hearing
5 is held and becomes final if the person to whom the notice is addressed
6 does not request a hearing within twenty days after receipt of the
7 notice.

8 NEW SECTION. **Sec. 18.** The director may bring an action in
9 superior court against a person who has violated an order issued under
10 this chapter, to enforce such an order, or to restrain or prevent an
11 act or practice prohibited under this chapter. In an action to
12 enforce an injunction, the director may petition for the recovery of
13 civil penalties of not more than twenty-five thousand dollars.

14 NEW SECTION. **Sec. 19.** Any vessel dealer or manufacturer, by or
15 against whom a petition in bankruptcy has been filed, shall within ten
16 days of the filing notify the department of the proceedings in
17 bankruptcy, including the identity and location of the court in which
18 the proceedings are pending.

19 NEW SECTION. **Sec. 20.** (1) A vessel dealer shall complete and
20 maintain for a period of at least three years a record of the purchase
21 and sale of all vessels purchased or consigned and sold by the vessel
22 dealer. Records shall be made available for inspection by the
23 department during normal business hours. The records shall consist of:

24 (a) The registration and title numbers of the state in which the
25 vessel was last registered;

26 (b) A description of the vessel, including the documented name,
27 documentation number, hull identification number, and name of vessel;

1 (c) The name and address of the person from whom the vessel was
2 purchased;

3 (d) The name of the legal owner, if any;

4 (e) The name and address of the purchaser;

5 (f) If purchased from a dealer, the name, business address, dealer
6 registration number, and resale tax number of the dealer;

7 (g) The written consignment or listing agreement allowing a vessel
8 dealer to sell the vessel;

9 (h) Trust account records of receipt, deposits, and withdrawals;

10 (i) All sale documents, which shall show the full name of the
11 dealer or employee involved in the sale;

12 (j) Evidence of title transfer; and

13 (k) Any additional information the department may require. The
14 dealer shall maintain the records separate and apart from all other
15 business records of the dealer and shall keep them on file at the
16 dealer's established place of business.

17 (2) Before renewal of the vessel dealer registration, the
18 department shall require, on the forms prescribed, a record of the
19 number of vessels sold during the registration year. Vessel dealers
20 who assert that they qualify for the exemption provided in section 7(3)
21 of this act shall also record, on forms prescribed, the highest retail
22 value of any vessel sold in the registration year.

23 NEW SECTION. **Sec. 21.** A vessel dealer who receives cash or a
24 negotiable instrument of deposit in excess of one thousand dollars, or
25 a deposit of any amount that will be held for more than fourteen
26 calendar days, shall place the funds in a separate trust account.

27 (1) The cash or negotiable instrument must be set aside immediately
28 upon receipt for the trust account, or endorsed to such a trust account
29 immediately upon receipt.

1 (2) The cash or negotiable instrument must be deposited in the
2 trust account by the close of banking hours on the day following the
3 receipt.

4 (3) After delivery of the purchaser's vessel the vessel dealer
5 shall remove the deposited funds from the trust account.

6 (4) The dealer shall not commingle the purchaser's funds with any
7 other funds at any time.

8 (5) The funds shall remain in the trust account until the delivery
9 of the purchased vessel. However, upon written agreement from the
10 purchaser, the vessel dealer may remove and release trust funds before
11 delivery.

12 NEW SECTION. **Sec. 22.** The department may adopt rules under
13 chapter 34.05 RCW to implement this chapter.

14 NEW SECTION. **Sec. 23.** No suit or action may be commenced or
15 prosecuted against the department of licensing or the state of
16 Washington by reason of any act or omission in the administration of
17 the duties and responsibilities imposed upon the department under this
18 chapter.

19 NEW SECTION. **Sec. 24.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 88.02.023 and 1987 c 149 s 4;

22 (2) RCW 88.02.060 and 1987 c 149 s 1 & 1983 c 7 s 19;

23 (3) RCW 88.02.078 and 1987 c 149 s 2;

24 (4) RCW 88.02.112 and 1987 c 149 s 3;

25 (5) RCW 88.02.115 and 1987 c 149 s 6;

26 (6) RCW 88.02.118 and 1987 c 149 s 7;

27 (7) RCW 88.02.125 and 1987 c 149 s 8;

- 1 (8) RCW 88.02.184 and 1987 c 149 s 9;
2 (9) RCW 88.02.188 and 1987 c 149 s 12;
3 (10) RCW 88.02.210 and 1987 c 149 s 10; and
4 (11) RCW 88.02.220 and 1991 c 339 s 33 & 1987 c 149 s 11.

5 NEW SECTION. **Sec. 25.** RCW 88.02.230 is recodified as a section
6 in chapter 88.--- RCW (sections 3 through 23 of this act).

7 NEW SECTION. **Sec. 26.** Sections 3 through 23 of this act shall
8 constitute a new chapter in Title 88 RCW.