

By Mr. Morrissey, petition (accompanied by bill, Senate, No. 81) of Michael W. Morrissey for legislation to further regulate the sale and repair of certain new boats. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT FURTHER REGULATING THE SALE AND REPAIR OF CERTAIN NEW
BOATS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 90B of the General Laws is hereby amended by adding
2 the following section: —

3 Section 36. (1) For purposes of this section the following
4 terms shall have the following meanings: —

5 “Consumer”, the purchaser, other than for purposes of resale,
6 of a vessel, normally used for personal, family, or household
7 purposes and subject to a warranty, any person to whom such
8 vessel is transferred during the duration of an express warranty
9 applicable to such vessel, and any other person entitled by the
10 terms of such warranty to enforce the obligations of the warranty.

11 “Express warranty” or “warranty”, any written affirmation of
12 fact or written promise made in connection with the sale of a
13 vessel, or component part by a supplier to a consumer which
14 relates to the nature of the material or workmanship and affirms
15 or promises that such material or workmanship is defect free or
16 will meet a specified level of performance over a specified period
17 of time; or any undertaking in writing in connection with the sale
18 by a supplier of a vessel, or component part to refund, repair,
19 replace, or take other remedial action with respect to such vessel
20 or part in the event that such vessel or part fails to meet the
21 specifications set forth in the undertaking, which written affirma-
22 tion, promise, or undertaking is furnished to the consumer at or
23 near the time of purchase.

24 “Manufacturer”, any person who is engaged in the business of
25 manufacturing vessels, or, in the case of vessels not manufactured
26 in the United States, any person who is engaged in the business
27 of importing vessels.

28 “Nonconformity”, any specific or generic defect or malfunction,
29 or any concurrent combination of such defects or malfunctions
30 that substantially impairs the use, market value or safety of a
31 vessel.

32 “Supplier”, any person engaged in the business of making a
33 vessel or component part directly or indirectly available to
34 consumers; such term shall include the manufacturer, distributor
35 or dealer of a vessel or any of its component parts.

36 “Term of Protection”, two years from the date of original
37 delivery of a new vessel to the consumer; or in the case of a
38 replacement vessel provided by a manufacturer to a consumer
39 under this section, two years from the date of delivery to the
40 consumer of said replacement vessel.

41 “Vessel”, every watercraft, other than a seaplane, used or
42 capable of being used as a means of transportation on water,
43 which is sold in the commonwealth; provided, however, that such
44 term shall not include lifeboats, vessels used exclusively for racing,
45 and any vessel which is not equipped with a motor by which it
46 may be mechanically propelled.

47 (2) If a new vessel does not conform to all applicable express
48 warranties during the term of protection, the consumer shall
49 during such period report the nonconformity to the manufacturer,
50 its agent or its authorized dealer. If the notification is received
51 by a manufacturer’s agent or an authorized dealer, the agent or
52 dealer shall within seven days forward written notice thereof to
53 the manufacturer by certified mail, return receipt requested. The
54 manufacturer, agent or authorized dealer shall correct said
55 nonconformity at no charge to the consumer, notwithstanding the
56 fact that such repairs are made after the expiration of such term
57 of protection.

58 (3) If within the term of protection the manufacturer, its agent
59 or authorized dealer does not conform the vessel to any such
60 applicable express warranty by curing any nonconformity after
61 a reasonable number of attempts, the manufacturer shall accept
62 return of the vessel from the consumer and refund the full contract

63 price of the vessel including all credits and allowances for any
64 trade-in vessel less any cash award that was made by the
65 manufacturer in an attempt to resolve the dispute and was
66 accepted by the consumer, and a reasonable allowance for use,
67 or shall offer to replace the vessel; provided, however, that the
68 consumer shall have an unqualified right to reject a manu-
69 facturer's offer of replacement and demand a refund. In instances
70 in which a vessel is replaced by a manufacturer under the
71 provisions of this section, said manufacturer shall reimburse the
72 consumer for any fees for the transfer of registration or any sales
73 tax incurred by the consumer as a result of such replacement. In
74 instances in which a vessel which was financed by the
75 manufacturer, its subsidiary or agent is replaced under the
76 provisions of this section, said manufacturer, subsidiary or agent
77 shall not require the consumer to enter into any refinancing
78 agreement which would create any financial obligations upon such
79 consumer beyond those implied by the original financing
80 agreement. In instances in which a refund is tendered under the
81 provisions of this section, the manufacturer shall also reimburse
82 the consumer for incidental costs including sales tax, registration
83 fee, finance charges and any cost of options added by an
84 authorized dealer. Refunds shall be made to the consumer and
85 lienholder, if any, as their interests may appear.

86 It shall be an affirmative defense to any claim under this section:
87 (i) that an alleged nonconformity does not substantially impair
88 the use, market value or safety of the vessel; (ii) that a non-
89 conformity is the result of owner negligence, damage caused by
90 accident, vandalism, or attempt to repair the vessel by a person
91 other than the manufacturer, its agent or authorized dealer; or
92 (iii) that a nonconformity is the result of any attempt substantially
93 to modify the vessel which was not authorized by the manu-
94 facturer.

95 A consumer shall have the option of retaining the use of any
96 vessel returned under the provisions of this section until such time
97 as said consumer has been tendered a full refund or replacement
98 that is acceptable to the consumer. The use of any vessel retained
99 by a consumer after its return to a manufacturer under the provi-
100 sions of this section, shall, in instances in which a refund is
101 tendered, be reflected in the above mentioned reasonable allow-
102 ance for use.

103 (4) It shall be presumed that a reasonable number of attempts
104 have been undertaken to conform the vessel to the applicable
105 express warranties, if (a) the same nonconformity has been subject
106 to repair four or more times by the manufacturer, its agents or
107 authorized dealers within the term of protection, but such
108 nonconformity continues to exist or such nonconformity has
109 recurred within the term of protection, or (b) the product is out
110 of service by reason of repair for a cumulative total of sixty or
111 more calendar days during such period. The presumption in this
112 paragraph may be rebutted by the consumer, and the remedies
113 provided in this section available upon proof of evidence that,
114 among other things, (a) the manufacturer, its agent or authorized
115 dealer has failed without reasonable excuse to correct the
116 nonconformity within six months of the date the consumer
117 reported a nonconformity subject to this section, or (b) any other
118 evidence tending to show that further attempts at repair would
119 have been futile.

120 (5) The term of express warranty, the term of protection and
121 the sixty day out of service period shall be extended by (a) any
122 period of time during which repair services are not available to
123 the consumer because of war, invasion, strike, fire, flood or other
124 natural disaster, or (b) any period of time the vessel is undergoing
125 repair under this section; provided, however, that such periods
126 shall not be extended for any period attributable to the consumer's
127 failure to obey any reasonable instructions by the manufacturer,
128 its agents or authorized dealers concerning delivery of the vessel
129 to the same for the purpose of fulfilling the obligations under this
130 section. For the purposes of this section, the period of time, the
131 vessel is undergoing repair shall mean any period beginning on
132 the date the consumer reports a nonconformity to the manu-
133 facturer, its agents or its authorized dealer, and ending on the date
134 any of these parties delivers the vessel to the consumer after
135 attempting to correct the nonconformity.

136 (6) In the event an action is brought against a manufacturer
137 under this section, the manufacturer may implead the distributor,
138 authorized dealer or any other responsible party in accordance
139 with the civil practice law and rules and the impleaded party shall
140 bear such liability as the court may find.

141 (7) Notwithstanding any other provision of law, with respect
142 to a sale of a vessel to a consumer, for the term of protection,
143 no manufacturer, dealer, distributor or other person shall:

144 (a) exclude, modify or otherwise limit any implied warranty of
145 merchantability, as defined in section 2-314 of the uniform com-
146 mercial code, or fitness for a particular purpose, as defined in sec-
147 tion 2-315 of such code; or

148 (b) exclude, modify or otherwise limit any remedy provided by
149 law, including the measure of damages available, for a breach of
150 any such implied warranty. Any disclaimer, modification or
151 limitation in violation of this subsection shall be unenforceable
152 and void.

153 (8) Nothing in this section shall in any way limit the rights or
154 remedies which are otherwise available to a consumer or manu-
155 facturer under any other law.

156 (9) Any agreement entered into by a consumer for the purchase
157 of a new vessel which waives, limits, or disclaims the rights set
158 forth in this section shall be unenforceable and void as contrary
159 to public policy.

160 (10) The rights provided under this section shall inure to a
161 subsequent transferee of such vessel.

162 (11) Any provision of any agreement entered into by a con-
163 sumer for the purchase of a new vessel which includes as an
164 additional cost for such vessel an expense identified as being for
165 the purpose of affording such consumer his rights under this
166 section shall be void as contrary to public policy.

167 (12) A court may award reasonable attorney's fees and costs
168 to a prevailing plaintiff in any action arising under this section.

169 (13) The seller shall provide a notice to the original purchaser
170 of a new vessel outlining the provisions of this section and the
171 rights and remedies provided thereunder.

