

CERTIFICATION OF ENROLLMENT

SENATE BILL 6301

55th Legislature
1998 Regular Session

Passed by the Senate March 7, 1998
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 4, 1998
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6301** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 6301

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington **55th Legislature** **1998 Regular Session**

By Senators Schow, Horn, Franklin and Heavey

Read first time 01/15/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to franchise agreements between motor vehicle
2 manufacturers and dealers; amending RCW 19.118.021, 19.118.031,
3 19.118.041, 19.118.061, and 19.118.090; adding a new section to chapter
4 46.96 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.96 RCW
7 to read as follows:

8 (1) Each manufacturer shall specify in its franchise agreement, or
9 in a separate written agreement, with each of its dealers licensed in
10 this state, the dealer's obligation to perform warranty work or service
11 on the manufacturer's products. Each manufacturer shall provide each
12 of its dealers with a schedule of compensation to be paid to the dealer
13 for any warranty work or service, including parts, labor, and
14 diagnostic work, required of the dealer by the manufacturer in
15 connection with the manufacturer's products.

16 (2) All claims for warranty work for parts and labor made by
17 dealers under this section shall be paid by the manufacturer within
18 thirty days following receipt, provided the claim has been approved by
19 the manufacturer. The manufacturer has the right to audit claims for

1 warranty work and to charge the dealer for any unsubstantiated,
2 incorrect, or false claims for a period of one year following payment.
3 However, the manufacturer may audit and charge the dealer for any
4 fraudulent claims during any period for which an action for fraud may
5 be commenced under applicable state law.

6 (3) All claims submitted by dealers on the forms and in the manner
7 specified by the manufacturer shall be either approved or disapproved
8 within thirty days following their receipt. The manufacturer shall
9 notify the dealer in writing of any disapproved claim, and shall set
10 forth the reasons why the claim was not approved. Any claim not
11 specifically disapproved in writing within thirty days following
12 receipt is approved, and the manufacturer is required to pay that claim
13 within thirty days of receipt of the claim.

14 **Sec. 2.** RCW 19.118.021 and 1995 c 254 s 1 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Board" means new motor vehicle arbitration board.

19 (2) "Collateral charges" means any sales or lease related charges
20 including but not limited to sales tax, use tax, arbitration service
21 fees, unused license fees, unused registration fees, unused title fees,
22 finance charges, prepayment penalties, credit disability and credit
23 life insurance costs not otherwise refundable, any other insurance
24 costs prorated for time out of service, transportation charges, dealer
25 preparation charges, or any other charges for service contracts,
26 undercoating, rustproofing, or factory or dealer installed options.

27 (3) "Condition" means a general problem that results from a defect
28 or malfunction of one or more parts, or their improper installation by
29 the manufacturer, its agents, or the new motor vehicle dealer.

30 (4) "Consumer" means any person who has entered into an agreement
31 or contract for the transfer, lease, or purchase of a new motor
32 vehicle, other than for purposes of resale or sublease, during the
33 duration of the warranty period defined under this section.

34 (5) "Court" means the superior court in the county where the
35 consumer resides, except if the consumer does not reside in this state,
36 then the superior court in the county where an arbitration hearing or
37 determination was conducted or made pursuant to this chapter.

1 (6) "Incidental costs" means any reasonable expenses incurred by
2 the consumer in connection with the repair of the new motor vehicle,
3 including any towing charges and the costs of obtaining alternative
4 transportation.

5 (7) "Manufacturer" means any person engaged in the business of
6 constructing or assembling new motor vehicles or engaged in the
7 business of importing new motor vehicles into the United States for the
8 purpose of selling or distributing new motor vehicles to new motor
9 vehicle dealers. "Manufacturer" does not include any person engaged in
10 the business of set-up of motorcycles as an agent of a new motor
11 vehicle dealer if the person does not otherwise construct or assemble
12 motorcycles.

13 (8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330
14 which has an engine displacement of at least seven hundred fifty cubic
15 centimeters.

16 (9) "Motor home" means a vehicular unit designed to provide
17 temporary living quarters for recreational, camping, or travel use,
18 built on or permanently attached to a self-propelled motor vehicle
19 chassis or on a chassis cab or van that is an integral part of the
20 completed vehicle.

21 (10) "Motor home manufacturer" means the first stage manufacturer,
22 the component manufacturer, and the final stage manufacturer.

23 (a) "First stage manufacturer" means a person who manufactures
24 incomplete new motor vehicles such as chassis, chassis cabs, or vans,
25 that are directly warranted by the first stage manufacturer to the
26 consumer, and are completed by a final stage manufacturer into a motor
27 home.

28 (b) "Component manufacturer" means a person who manufactures
29 components used in the manufacture or assembly of a chassis, chassis
30 cab, or van that is completed into a motor home and whose components
31 are directly warranted by the component manufacturer to the consumer.

32 (c) "Final stage manufacturer" means a person who assembles,
33 installs, or permanently affixes a body, cab, or equipment to an
34 incomplete new motor vehicle such as a chassis, chassis cab, or van
35 provided by a first stage manufacturer, to complete the vehicle into a
36 motor home.

37 (11) "New motor vehicle" means any new self-propelled vehicle,
38 including a new motorcycle, primarily designed for the transportation
39 of persons or property over the public highways that was originally

1 purchased or leased at retail from a new motor vehicle dealer or
2 leasing company in this state, and that was initially registered in
3 this state or for which a temporary motor vehicle license was issued
4 pursuant to RCW 46.16.460, but does not include vehicles purchased or
5 leased by a business as part of a fleet of ten or more vehicles at one
6 time or under a single purchase or lease agreement. If the motor
7 vehicle is a motor home, this chapter shall apply to the self-propelled
8 vehicle and chassis, but does not include those portions of the vehicle
9 designated, used, or maintained primarily as a mobile dwelling, office,
10 or commercial space. The term "new motor vehicle" does not include
11 trucks with nineteen thousand pounds or more gross vehicle weight
12 rating. The term "new motor vehicle" includes a demonstrator or lease-
13 purchase vehicle as long as a manufacturer's warranty was issued as a
14 condition of sale.

15 ~~((10))~~ (12) "New motor vehicle dealer" means a person who holds
16 a dealer agreement with a manufacturer for the sale of new motor
17 vehicles, who is engaged in the business of purchasing, selling,
18 servicing, exchanging, or dealing in new motor vehicles, and who is
19 licensed or required to be licensed as a vehicle dealer by the state of
20 Washington.

21 ~~((11))~~ (13) "Nonconformity" means a defect, serious safety
22 defect, or condition that substantially impairs the use, value, or
23 safety of a new motor vehicle, but does not include a defect or
24 condition that is the result of abuse, neglect, or unauthorized
25 modification or alteration of the new motor vehicle.

26 ~~((12))~~ (14) "Purchase price" means the cash price of the new
27 motor vehicle appearing in the sales agreement or contract.

28 (a) "Purchase price" in the instance of a lease means the actual
29 written capitalized cost disclosed to the consumer contained in the
30 lease agreement. If there is no disclosed capitalized cost in the
31 lease agreement the "purchase price" is the manufacturer's suggested
32 retail price including manufacturer installed accessories or items of
33 optional equipment displayed on the manufacturer label, required by 15
34 U.S.C. Sec. 1232.

35 (b) "Purchase price" in the instance of both a vehicle purchase or
36 lease agreement includes any allowance for a trade-in vehicle but does
37 not include any manufacturer-to-consumer rebate appearing in the
38 agreement or contract that the consumer received or that was applied to
39 reduce the purchase or lease cost.

1 Where the consumer is a subsequent transferee and the consumer
2 selects repurchase of the motor vehicle, "purchase price" means the
3 consumer's subsequent purchase price. Where the consumer is a
4 subsequent transferee and the consumer selects replacement of the motor
5 vehicle, "purchase price" means the original purchase price.

6 (~~(13)~~) (15) "Reasonable offset for use" means the definition
7 provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a
8 new motorcycle. The reasonable offset for use for a new motorcycle
9 shall be computed by the number of miles that the vehicle traveled
10 before the manufacturer's acceptance of the vehicle upon repurchase or
11 replacement multiplied by the purchase price, and divided by twenty-
12 five thousand.

13 (~~(14)~~) (16) "Reasonable number of attempts" means the definition
14 provided in RCW 19.118.041.

15 (~~(15)~~) (17) "Replacement motor vehicle" means a new motor vehicle
16 that is identical or reasonably equivalent to the motor vehicle to be
17 replaced, as the motor vehicle to be replaced existed at the time of
18 original purchase or lease, including any service contract,
19 undercoating, rustproofing, and factory or dealer installed options.

20 (~~(16)~~) (18) "Serious safety defect" means a life-threatening
21 malfunction or nonconformity that impedes the consumer's ability to
22 control or operate the new motor vehicle for ordinary use or reasonable
23 intended purposes or creates a risk of fire or explosion.

24 (~~(17)~~) (19) "Subsequent transferee" means a consumer who acquires
25 a motor vehicle, within the warranty period, as defined in this
26 section, with an applicable manufacturer's written warranty and where
27 the vehicle otherwise met the definition of a new motor vehicle at the
28 time of original retail sale or lease.

29 (~~(18)~~) (20) "Substantially impair" means to render the new motor
30 vehicle unreliable, or unsafe for ordinary use, or to diminish the
31 resale value of the new motor vehicle below the average resale value
32 for comparable motor vehicles.

33 (~~(19)~~) (21) "Warranty" means any implied warranty, any written
34 warranty of the manufacturer, or any affirmation of fact or promise
35 made by the manufacturer in connection with the sale of a new motor
36 vehicle that becomes part of the basis of the bargain. The term
37 "warranty" pertains to the obligations of the manufacturer in relation
38 to materials, workmanship, and fitness of a new motor vehicle for

1 ordinary use or reasonably intended purposes throughout the duration of
2 the warranty period as defined under this section.

3 ~~((+20+))~~ (22) "Warranty period" means the period ending two years
4 after the date of the original delivery to the consumer of a new motor
5 vehicle, or the first twenty-four thousand miles of operation,
6 whichever occurs first.

7 **Sec. 3.** RCW 19.118.031 and 1995 c 254 s 2 are each amended to read
8 as follows:

9 (1) The manufacturer shall publish an owner's manual and provide it
10 to the new motor vehicle dealer or leasing company. The owner's manual
11 shall include a list of the addresses and phone numbers for the
12 manufacturer's customer assistance division, or zone or regional
13 offices. A manufacturer shall provide to the new motor vehicle dealer
14 or leasing company all applicable manufacturer's written warranties.
15 The dealer or leasing company shall transfer to the consumer, at the
16 time of original retail sale or lease, the owner's manual and
17 applicable written warranties as provided by a manufacturer.

18 (2) At the time of purchase, the new motor vehicle dealer shall
19 provide the consumer with a written statement that explains the
20 consumer's rights under this chapter. The written statement shall be
21 prepared and supplied by the attorney general and shall contain a toll-
22 free number that the consumer can contact for information regarding the
23 procedures and remedies under this chapter.

24 (3) For the purposes of this chapter, if a new motor vehicle does
25 not conform to the warranty and the consumer reports the nonconformity
26 during the term of the warranty period or the period of coverage of the
27 applicable manufacturer's written warranty, whichever is less, to the
28 manufacturer, its agent, or the new motor vehicle dealer who sold the
29 new motor vehicle, the manufacturer, its agent, or the new motor
30 vehicle dealer shall make repairs as are necessary to conform the
31 vehicle to the warranty, regardless of whether such repairs are made
32 after the expiration of the warranty period. Any corrections or
33 attempted repairs undertaken by a new motor vehicle dealer under this
34 chapter shall be treated as warranty work and billed by the dealer to
35 the manufacturer in the same manner as other work under the
36 manufacturer's written warranty is billed. For purposes of this
37 subsection, the manufacturer's written warranty shall be at least one
38 year after the date of the original delivery to the consumer of the

1 vehicle or the first twelve thousand miles of operation, whichever
2 occurs first.

3 (4) Upon request from the consumer, the manufacturer or new motor
4 vehicle dealer shall provide a copy of any report or computer reading
5 compiled by the manufacturer's field or zone representative regarding
6 inspection, diagnosis, or test-drive of the consumer's new motor
7 vehicle, or shall provide a copy of any technical service bulletin
8 issued by the manufacturer regarding the year and model of the
9 consumer's new motor vehicle as it pertains to any material, feature,
10 component, or the performance thereof.

11 (5) The new motor vehicle dealer shall provide to the consumer each
12 time the consumer's vehicle is returned from being diagnosed or
13 repaired under the warranty, a fully itemized, legible statement or
14 repair order indicating any diagnosis made, and all work performed on
15 the vehicle including but not limited to, a general description of the
16 problem reported by the consumer or an identification of the defect or
17 condition, parts and labor, the date and the odometer reading when the
18 vehicle was submitted for repair, and the date when the vehicle was
19 made available to the consumer.

20 (6) No manufacturer, its agent, or the new motor vehicle dealer may
21 refuse to diagnose or repair any nonconformity covered by the warranty
22 for the purpose of avoiding liability under this chapter.

23 (7) For purposes of this chapter, consumers shall have the rights
24 and remedies, including a cause of action, against manufacturers as
25 provided in this chapter.

26 (8) The warranty period and thirty-day out-of-service period, and
27 sixty-day out-of-service period in the case of a motor home, shall be
28 extended by any time that repair services are not available to the
29 consumer as a direct result of a strike, war, invasion, fire, flood, or
30 other natural disaster.

31 **Sec. 4.** RCW 19.118.041 and 1995 c 254 s 3 are each amended to read
32 as follows:

33 (1) If the manufacturer, its agent, or the new motor vehicle dealer
34 is unable to conform the new motor vehicle to the warranty by repairing
35 or correcting any nonconformity after a reasonable number of attempts,
36 the manufacturer, within forty calendar days of a consumer's written
37 request to the manufacturer's corporate, dispute resolution, zone, or

1 regional office address shall, at the option of the consumer, replace
2 or repurchase the new motor vehicle.

3 (a) The replacement motor vehicle shall be identical or reasonably
4 equivalent to the motor vehicle to be replaced as the motor vehicle to
5 be replaced existed at the time of original purchase or lease,
6 including any service contract, undercoating, rustproofing, and factory
7 or dealer installed options. Where the manufacturer supplies a
8 replacement motor vehicle, the manufacturer shall be responsible for
9 sales tax, license, registration fees, and refund of any incidental
10 costs. Compensation for a reasonable offset for use shall be paid by
11 the consumer to the manufacturer in the event that the consumer accepts
12 a replacement motor vehicle.

13 (b) When repurchasing the new motor vehicle, the manufacturer shall
14 refund to the consumer the purchase price, all collateral charges, and
15 incidental costs, less a reasonable offset for use. When repurchasing
16 the new motor vehicle, in the instance of a lease, the manufacturer
17 shall refund to the consumer all payments made by the consumer under
18 the lease including but not limited to all lease payments, trade-in
19 value or inception payment, security deposit, all collateral charges
20 and incidental costs less a reasonable offset for use. The
21 manufacturer shall make such payment to the lessor and/or lienholder of
22 record as necessary to obtain clear title to the motor vehicle and upon
23 the lessor's and/or lienholder's receipt of that payment and payment by
24 the consumer of any late payment charges, the consumer shall be
25 relieved of any future obligation to the lessor and/or lienholder.

26 (c) The reasonable offset for use shall be computed by multiplying
27 the number of miles that the vehicle traveled directly attributable to
28 use by the consumer times the purchase price, and dividing the product
29 by one hundred twenty thousand, except in the case of a motor home, in
30 which event it shall be divided by ninety thousand. However, the
31 reasonable offset for use calculation total for a motor home is subject
32 to modification by the board by decreasing or increasing the offset
33 total up to a maximum of one-third of the offset total. The board may
34 modify the offset total in those circumstances where the board
35 determines that the wear and tear on those portions of the motor home
36 designated, used, or maintained primarily as a mobile dwelling, office,
37 or commercial space are significantly greater or significantly less
38 than that which could be reasonably expected based on the mileage
39 attributable to the consumer's use of the motor home. Where the

1 consumer is a second or subsequent purchaser, lessee, or transferee of
2 the motor vehicle and the consumer selects repurchase of the motor
3 vehicle, "the number of miles that the vehicle traveled" shall be
4 calculated from the date of purchase or lease by the consumer. Where
5 the consumer is a second or subsequent purchaser, lessee, or transferee
6 of the motor vehicle and the consumer selects replacement of the motor
7 vehicle, "the number of miles that the vehicle traveled" shall be
8 calculated from the original purchase, lease, or in-service date.

9 (2) Reasonable number of attempts, except in the case of a new
10 motor vehicle that is a motor home acquired after June 30, 1998, shall
11 be deemed to have been undertaken by the manufacturer, its agent, or
12 the new motor vehicle dealer to conform the new motor vehicle to the
13 warranty within the warranty period, if: (a) The same serious safety
14 defect has been subject to diagnosis or repair two or more times, at
15 least one of which is during the period of coverage of the applicable
16 manufacturer's written warranty, and the serious safety defect
17 continues to exist; (b) the same nonconformity has been subject to
18 diagnosis or repair four or more times, at least one of which is during
19 the period of coverage of the applicable manufacturer's written
20 warranty, and the nonconformity continues to exist; or (c) the vehicle
21 is out-of-service by reason of diagnosis or repair of one or more
22 nonconformities for a cumulative total of thirty calendar days, at
23 least fifteen of them during the period of the applicable
24 manufacturer's written warranty. For purposes of this subsection, the
25 manufacturer's written warranty shall be at least one year after the
26 date of the original delivery to the consumer of the vehicle or the
27 first twelve thousand miles of operation, whichever occurs first.

28 (3)(a) In the case of a new motor vehicle that is a motor home
29 acquired after June 30, 1998, a reasonable number of attempts shall be
30 deemed to have been undertaken by the motor home manufacturers, their
31 respective agents, or their respective new motor vehicle dealers to
32 conform the new motor vehicle to the warranty within the warranty
33 period, if: (i) The same serious safety defect has been subject to
34 diagnosis or repair one or more times during the period of coverage of
35 the applicable motor home manufacturer's written warranty, plus a final
36 attempt to repair the vehicle as provided for in (b) of this
37 subsection, and the serious safety defect continues to exist; (ii) the
38 same nonconformity has been subject to repair three or more times, at
39 least one of which is during the period of coverage of the applicable

1 motor home manufacturer's written warranty, plus a final attempt to
2 repair the vehicle as provided for in (b) of this subsection, and the
3 nonconformity continues to exist; or (iii) the vehicle is out of
4 service by reason of diagnosis or repair of one or more nonconformities
5 for a cumulative total of sixty calendar days aggregating all motor
6 home manufacturer days out-of-service, and the motor home manufacturers
7 have had at least one opportunity to coordinate and complete an
8 inspection and any repairs of the vehicle's nonconformities after
9 receipt of notification from the consumer as provided for in (c) of
10 this subsection. For purposes of this subsection, each motor home
11 manufacturer's written warranty must be at least one year after the
12 date of the original delivery to the consumer of the vehicle or the
13 first twelve thousand miles of operation, whichever occurs first.

14 (b) In the case of a new motor vehicle that is a motor home, after
15 one attempt has been made to repair a serious safety defect, or after
16 three attempts have been made to repair the same nonconformity, the
17 consumer shall give written notification of the need to repair the
18 nonconformity to each of the motor home manufacturers at their
19 respective corporate, zone, or regional office addresses to allow the
20 motor home manufacturers to coordinate and complete a final attempt to
21 cure the nonconformity. The motor home manufacturers each have fifteen
22 days, commencing upon receipt of the notification, to respond and
23 inform the consumer of the location of the facility where the vehicle
24 will be repaired. If the vehicle is unsafe to drive due to a serious
25 safety defect, or to the extent the repair facility is more than one
26 hundred miles from the motor home location, the motor home
27 manufacturers are responsible for the cost of transporting the vehicle
28 to and from the repair facility. The motor home manufacturers have a
29 cumulative total of thirty days, commencing upon delivery of the
30 vehicle to the designated repair facility by the consumer, to conform
31 the vehicle to the applicable motor home manufacturer's written
32 warranty. This time period may be extended if the consumer agrees in
33 writing. If a motor home manufacturer fails to respond to the consumer
34 or perform the repairs within the time period prescribed, that motor
35 home manufacturer is not entitled to a final attempt to cure the
36 nonconformity.

37 (c) In the case of a new motor vehicle that is a motor home, if the
38 vehicle is out of service by reason of diagnosis or repair of one or
39 more nonconformities by the motor home manufacturers, their respective

1 agents, or their respective new motor vehicle dealers for a cumulative
2 total of thirty or more days aggregating all motor home manufacturer
3 days out of service, the consumer shall so notify each motor home
4 manufacturer in writing at their respective corporate, zone, or
5 regional office addresses to allow the motor home manufacturers, their
6 respective agents, or their respective new motor vehicle dealers an
7 opportunity to coordinate and complete an inspection and any repairs of
8 the vehicle's nonconformities. The motor home manufacturers have
9 fifteen days, commencing upon receipt of the notification, to respond
10 and inform the consumer of the location of the facility where the
11 vehicle will be repaired. If the vehicle is unsafe to drive due to a
12 serious safety defect, or to the extent the repair facility is more
13 than one hundred miles from the motor home location, the motor home
14 manufacturers are responsible for the cost of transporting the vehicle
15 to and from the repair facility. Once the buyer delivers the vehicle
16 to the designated repair facility, the inspection and repairs must be
17 completed by the motor home manufacturers either (i) within ten days or
18 (ii) before the vehicle is out of service by reason of diagnosis or
19 repair of one or more nonconformities for sixty days, whichever time
20 period is longer. This time period may be extended if the consumer
21 agrees in writing. If a motor home manufacturer fails to respond to
22 the consumer or perform the repairs within the time period prescribed,
23 that motor home manufacturer is not entitled to at least one
24 opportunity to inspect and repair the vehicle's nonconformities after
25 receipt of notification from the buyer as provided for in this
26 subsection (3)(c).

27 (4) No new motor vehicle dealer may be held liable by the
28 manufacturer for any collateral charges, incidental costs, purchase
29 price refunds, or vehicle replacements. Manufacturers shall not have
30 a cause of action against dealers under this chapter. Consumers shall
31 not have a cause of action against dealers under this chapter, but a
32 violation of any responsibilities imposed upon dealers under this
33 chapter is a per se violation of chapter 19.86 RCW. Consumers may
34 pursue rights and remedies against dealers under any other law,
35 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers
36 may not make dealers parties to arbitration board proceedings under
37 this chapter.

1 **Sec. 5.** RCW 19.118.061 and 1995 c 254 s 4 are each amended to read
2 as follows:

3 (1) A manufacturer shall be prohibited from reselling any motor
4 vehicle determined or adjudicated as having a serious safety defect
5 unless the serious safety defect has been corrected and the
6 manufacturer warrants upon the first subsequent resale that the defect
7 has been corrected.

8 (2) Before any sale or transfer of a vehicle that has been replaced
9 or repurchased by the manufacturer that was determined or adjudicated
10 as having a nonconformity or to have been out of service for thirty or
11 more calendar days, or sixty or more calendar days in the case of a
12 motor home, under this chapter, the manufacturer shall:

13 (a) Notify the attorney general and the department of licensing, by
14 certified mail or by personal service, upon receipt of the motor
15 vehicle;

16 (b) Attach a resale disclosure notice to the vehicle in a manner
17 and form to be specified by the attorney general. Only the retail
18 purchaser may remove the resale disclosure notice after execution of
19 the disclosure form required under subsection (3) of this section; and

20 (c) Notify the attorney general and the department of licensing if
21 the nonconformity in the motor vehicle is corrected.

22 (3) Upon the first subsequent resale, either at wholesale or
23 retail, or transfer of title of a motor vehicle and which was
24 previously returned after a final determination, adjudication, or
25 settlement under this chapter or under a similar statute of any other
26 state, the manufacturer, its agent, or the new motor vehicle dealer who
27 has actual knowledge of said final determination, adjudication or
28 settlement, shall execute and deliver to the buyer before sale an
29 instrument in writing setting forth information identifying the
30 nonconformity in a manner to be specified by the attorney general, and
31 the department of licensing shall place on the certificate of title
32 information indicating the vehicle was returned under this chapter.

33 (4) Upon receipt of the manufacturer's notification under
34 subsection (2) of this section that the nonconformity has been
35 corrected and upon the manufacturer's request and payment of any fees,
36 the department of licensing shall issue a new title with information
37 indicating the vehicle was returned under this chapter and that the
38 nonconformity has been corrected. Upon the first subsequent resale,
39 either at wholesale or retail, or transfer of title of a motor vehicle,

1 as provided under subsection (2)(c) of this section, the manufacturer
2 shall warrant upon the resale that the nonconformity has been
3 corrected, and the manufacturer, its agent, or the new motor vehicle
4 dealer who has actual knowledge of the corrected nonconformity, shall
5 execute and deliver to the buyer before sale an instrument in writing
6 setting forth information identifying the nonconformity and indicating
7 that it has been corrected in a manner to be specified by the attorney
8 general.

9 (5) After repurchase or replacement and following a manufacturer's
10 receipt of a vehicle under this section and prior to a vehicle's first
11 subsequent retail transfer by resale or lease, any intervening
12 transferor of a vehicle subject to the requirements of this section who
13 has received the disclosure, correction and warranty documents, as
14 specified by the attorney general and required under this chapter,
15 shall deliver the documents with the vehicle to the next transferor,
16 purchaser or lessee to ensure proper and timely notice and disclosure.
17 Any intervening transferor who fails to comply with this subsection
18 shall, at the option of the subsequent transferor or first subsequent
19 retail purchaser or lessee: (a) Indemnify (~~and any~~) any subsequent
20 transferor or first subsequent retail purchaser for all damages caused
21 by such violation; or (b) repurchase the vehicle at the full purchase
22 price including all fees, taxes and costs incurred for goods and
23 services which were included in the subsequent transaction.

24 **Sec. 6.** RCW 19.118.090 and 1995 c 254 s 6 are each amended to read
25 as follows:

26 (1) A consumer may request arbitration under this chapter by
27 submitting the request to the attorney general. Within ten days after
28 receipt of an arbitration request, the attorney general shall make a
29 reasonable determination of the cause of the request for arbitration
30 and provide necessary information to the consumer regarding the
31 consumer's rights and remedies under this chapter. The attorney
32 general shall assign the dispute to a board, except that if it clearly
33 appears from the materials submitted by the consumer that the dispute
34 is not eligible for arbitration, the attorney general may refuse to
35 assign the dispute and shall explain any required procedures to the
36 consumer.

37 (2) Manufacturers shall submit to arbitration if such arbitration
38 is requested by the consumer within thirty months from the date of the

1 original delivery of the new motor vehicle to a consumer at retail and
2 if the consumer's dispute is deemed eligible for arbitration by the
3 board. In the case of a motor home, the thirty-month period will be
4 extended by the amount of time it takes the motor home manufacturers to
5 complete the final repair attempt at the designated repair facility as
6 provided for in RCW 19.118.041(3)(b).

7 (3) The new motor vehicle arbitration board may reject for
8 arbitration any dispute that it determines to be frivolous, fraudulent,
9 filed in bad faith, res judicata or beyond its authority. Any dispute
10 deemed by the board to be ineligible for arbitration due to
11 insufficient evidence may be reconsidered by the board upon the
12 submission of other information or documents regarding the dispute that
13 would allegedly qualify for relief under this chapter. Following a
14 second review, the board may reject the dispute for arbitration if
15 evidence is still clearly insufficient to qualify the dispute for
16 relief under this chapter. A rejection by the board is subject to
17 review by the attorney general or may be appealed under RCW 19.118.100.

18 A decision to reject any dispute for arbitration shall be sent by
19 certified mail to the consumer and the manufacturer, and shall contain
20 a brief explanation as to the reason therefor.

21 (4) The manufacturer shall complete a written manufacturer response
22 to the consumer's request for arbitration. The manufacturer shall
23 provide a response to the consumer and the board within ten calendar
24 days from the date of the manufacturer's receipt of the board's notice
25 of acceptance of a dispute for arbitration. The manufacturer response
26 shall include all issues and affirmative defenses related to the
27 nonconformities identified in the consumer's request for arbitration
28 that the manufacturer intends to raise at the arbitration hearing.

29 (5) The arbitration board shall award the remedies under RCW
30 19.118.041 if it finds a nonconformity and that a reasonable number of
31 attempts have been undertaken to correct the nonconformity. The board
32 shall award reasonable costs and attorneys' fees incurred by the
33 consumer where the manufacturer has been directly represented by
34 counsel: (a) In dealings with the consumer in response to a request to
35 repurchase or replace under RCW 19.118.041; (b) in settlement
36 negotiations; (c) in preparation of the manufacturer's statement; or
37 (d) at an arbitration board hearing or other board proceeding.

38 In the case of an arbitration involving a motor home, the board may
39 allocate liability among the motor home manufacturers.

1 (6) It is an affirmative defense to any claim under this chapter
2 that: (a) The alleged nonconformity does not substantially impair the
3 use, value, or safety of the new motor vehicle; or (b) the alleged
4 nonconformity is the result of abuse, neglect, or unauthorized
5 modifications or alterations of the new motor vehicle.

6 (7) The board shall have forty-five calendar days from the date the
7 board receives the consumer's request for arbitration to hear the
8 dispute. If the board determines that additional information is
9 necessary, the board may continue the arbitration proceeding on a
10 subsequent date within ten calendar days of the initial hearing. The
11 board shall decide the dispute within sixty calendar days from the date
12 the board receives the consumer's request for arbitration.

13 The decision of the board shall be delivered by certified mail or
14 personal service to the consumer and the manufacturer, and shall
15 contain a written finding of whether the new motor vehicle meets the
16 standards set forth under this chapter.

17 (8) The consumer may accept the arbitration board decision or
18 appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance
19 by the consumer, the arbitration board decision shall become final.
20 The consumer shall send written notification of acceptance or rejection
21 to the arbitration board within sixty days of receiving the decision
22 and the arbitration board shall immediately deliver a copy of the
23 consumer's acceptance to the manufacturer by certified mail, return
24 receipt requested, or by personal service. Failure of the consumer to
25 respond to the arbitration board within sixty calendar days of
26 receiving the decision shall be considered a rejection of the decision
27 by the consumer. The consumer shall have one hundred twenty calendar
28 days from the date of rejection to file a petition of appeal in
29 superior court. At the time the petition of appeal is filed, the
30 consumer shall deliver, by certified mail or personal service, a
31 conformed copy of such petition to the attorney general.

32 (9) Upon receipt of the consumer's acceptance, the manufacturer
33 shall have forty calendar days to comply with the arbitration board
34 decision or thirty calendar days to file a petition of appeal in
35 superior court. At the time the petition of appeal is filed, the
36 manufacturer shall deliver, by certified mail or personal service, a
37 conformed copy of such petition to the attorney general. If the
38 attorney general receives no notice of petition of appeal after forty

1 calendar days, the attorney general shall contact the consumer to
2 verify compliance.

3 NEW SECTION. **Sec. 7.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- END ---