

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5050

60th Legislature
2007 Regular Session

Passed by the Senate April 14, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 9, 2007
YEAS 66 NAYS 32

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5050** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5050

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Franklin, Kauffman, Rockefeller, Oemig, Murray, Rasmussen, Keiser and Kohl-Welles)

READ FIRST TIME 02/05/07.

1 AN ACT Relating to mileage tolling of nonconforming vehicles; and
2 amending RCW 19.118.041.

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

4 **Sec. 1.** RCW 19.118.041 and 1998 c 298 s 4 are each amended to read
5 as follows:

6 (1) If the manufacturer, its agent, or the new motor vehicle dealer
7 is unable to conform the new motor vehicle to the warranty by repairing
8 or correcting any nonconformity after a reasonable number of attempts,
9 the manufacturer, within forty calendar days of a consumer's written
10 request to the manufacturer's corporate, dispute resolution, zone, or
11 regional office address shall, at the option of the consumer, replace
12 or repurchase the new motor vehicle.

13 (a) The replacement motor vehicle shall be identical or reasonably
14 equivalent to the motor vehicle to be replaced as the motor vehicle to
15 be replaced existed at the time of original purchase or lease,
16 including any service contract, undercoating, rustproofing, and factory
17 or dealer installed options. Where the manufacturer supplies a
18 replacement motor vehicle, the manufacturer shall be responsible for
19 sales tax, license, registration fees, and refund of any incidental

1 costs. Compensation for a reasonable offset for use shall be paid by
2 the consumer to the manufacturer in the event that the consumer accepts
3 a replacement motor vehicle.

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

17 (c) The reasonable offset for use shall be computed by multiplying
18 the number of miles that the vehicle traveled directly attributable to
19 use by the consumer during the time between the original purchase,
20 lease, or in-service date and the date beginning the first attempt to
21 diagnose or repair a nonconformity which ultimately results in the
22 repurchase or replacement of the vehicle multiplied times the purchase
23 price, and dividing the product by one hundred twenty thousand, except
24 in the case of a motor home, in which event it shall be divided by
25 ninety thousand. However, the reasonable offset for use calculation
26 total for a motor home is subject to modification by the board by
27 decreasing or increasing the offset total up to a maximum of one-third
28 of the offset total. The board may modify the offset total in those
29 circumstances where the board determines that the wear and tear on
30 those portions of the motor home designated, used, or maintained
31 primarily as a mobile dwelling, office, or commercial space are
32 significantly greater or significantly less than that which could be
33 reasonably expected based on the mileage attributable to the consumer's
34 use of the motor home. Except in the case of a motor home, where a
35 manufacturer repurchases or replaces a vehicle solely due to
36 accumulated days out of service by reason of diagnosis or repair of one
37 or more nonconformities, "the number of miles that the vehicle traveled
38 directly attributable to use by the consumer" shall be limited to the

1 period between the original purchase, lease, or in-service date and the
2 date of the fifteenth cumulative calendar day out of service. Where
3 the consumer is a second or subsequent purchaser, lessee, or transferee
4 of the motor vehicle and the consumer selects repurchase of the motor
5 vehicle, "the number of miles that the vehicle traveled" directly
6 attributable to use by the consumer shall be ~~((calculated from))~~
7 limited to the period between the date of purchase ((or)), lease by, or
8 transfer to the consumer and the date of the consumer's initial attempt
9 to obtain diagnosis or repair of a nonconformity which ultimately
10 results in the repurchase or replacement of the vehicle or which adds
11 to thirty or more cumulative calendar days out of service. Where the
12 consumer is a second or subsequent purchaser, lessee, or transferee of
13 the motor vehicle and the consumer selects replacement of the motor
14 vehicle, "the number of miles that the vehicle traveled" directly
15 attributable to use by the consumer shall be calculated from the date
16 of the original purchase, lease, or in-service date and the first
17 attempt to diagnose or repair a nonconformity which ultimately results
18 in the replacement of the vehicle. Except in the case of a motor home,
19 where the consumer is a second or subsequent purchaser, lessee, or
20 transferee of the motor vehicle and the manufacturer replaces the
21 vehicle solely due to accumulated days out of service by reason of
22 diagnosis or repair of one or more nonconformities, "the number of
23 miles that the vehicle traveled" directly attributable to use by the
24 consumer shall be calculated from the date of the original purchase,
25 lease, or in service date and the date of the fifteenth cumulative
26 calendar day out of service.

27 (d) In the case of a motor vehicle that is a motor home, where a
28 manufacturer repurchases or replaces a motor home from the first
29 purchaser, lessee, or transferee or from the second or subsequent
30 purchaser, lessee, or transferee solely due to accumulated days out of
31 service by reason of diagnosis or repair of one or more
32 nonconformities, "the number of miles that a motor home traveled
33 directly attributable to use by the consumer" shall be limited to the
34 period between the original purchase, lease, or in-service date and the
35 date of the thirtieth cumulative calendar day out-of-service.

36 (2) Reasonable number of attempts, except in the case of a new
37 motor vehicle that is a motor home acquired after June 30, 1998, shall
38 be deemed to have been undertaken by the manufacturer, its agent, or

1 the new motor vehicle dealer to conform the new motor vehicle to the
2 warranty within the warranty period, if: (a) The same serious safety
3 defect has been subject to diagnosis or repair two or more times, at
4 least one of which is during the period of coverage of the applicable
5 manufacturer's written warranty, and the serious safety defect
6 continues to exist; (b) the same nonconformity has been subject to
7 diagnosis or repair four or more times, at least one of which is during
8 the period of coverage of the applicable manufacturer's written
9 warranty, and the nonconformity continues to exist; or (c) the vehicle
10 is out of service by reason of diagnosis or repair of one or more
11 nonconformities for a cumulative total of thirty calendar days, at
12 least fifteen of them during the period of the applicable
13 manufacturer's written warranty. For purposes of this subsection, the
14 manufacturer's written warranty shall be at least one year after the
15 date of the original delivery to the consumer of the vehicle or the
16 first twelve thousand miles of operation, whichever occurs first. A
17 new motor vehicle is deemed to have been "subject to diagnose or
18 repair" when a consumer presents the new motor vehicle for warranty
19 service at a service and repair facility authorized, designated, or
20 maintained by a manufacturer to provide warranty services or a facility
21 to which the manufacturer or an authorized facility has directed the
22 consumer to obtain warranty service. A new motor vehicle has not been
23 "subject to diagnose or repair" if the consumer refuses to allow the
24 facility to attempt or complete a recommended warranty repair, or
25 demands return of the vehicle to the consumer before an attempt to
26 diagnose or repair can be completed.

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

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

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

1 may not make dealers parties to arbitration board proceedings under
2 this chapter.

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