
ENGROSSED SUBSTITUTE SENATE BILL 5629

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Labor, Commerce & Trade (originally sponsored by Senators Pelz, Fraser, Rinehart and McCaslin; by request of Attorney General)

Read first time 03/01/95.

1 AN ACT Relating to new motor vehicle warranties; amending RCW
2 19.118.021, 19.118.031, 19.118.041, 19.118.061, 19.118.080, 19.118.090,
3 19.118.110, and 46.12.380; adding new sections to chapter 19.118 RCW;
4 and declaring an emergency.

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

6 **Sec. 1.** RCW 19.118.021 and 1990 c 239 s 1 are each amended to read
7 as follows:

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

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

11 (2) "Collateral charges" means any sales or lease related charges
12 including but not limited to sales tax, use tax, arbitration service
13 fees, unused license fees, unused registration fees, unused title fees,
14 finance charges, prepayment penalties, credit disability and credit
15 life insurance costs not otherwise refundable, any other insurance
16 costs prorated for time out of service, transportation charges, dealer
17 preparation charges, or any other charges for service contracts,
18 undercoating, rustproofing, or factory or dealer installed options.

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

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

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

12 (6) "Incidental costs" means any reasonable expenses incurred by
13 the consumer in connection with the repair of the new motor vehicle,
14 including any towing charges and the costs of obtaining alternative
15 transportation.

16 (7) "Manufacturer" means any person engaged in the business of
17 constructing or assembling new motor vehicles or engaged in the
18 business of importing new motor vehicles into the United States for the
19 purpose of selling or distributing new motor vehicles to new motor
20 vehicle dealers. "Manufacturer" does not include any person engaged in
21 the business of set-up of motorcycles as an agent of a new motor
22 vehicle dealer if the person does not otherwise construct or assemble
23 motorcycles.

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

27 (9) "New motor vehicle" means any new self-propelled vehicle,
28 including a new motorcycle, primarily designed for the transportation
29 of persons or property over the public highways that(~~(, after original~~
30 ~~retail purchase or lease)) was originally purchased or leased at retail
31 from a new motor vehicle dealer or leasing company in this state, and
32 that was initially registered in this state or for which a temporary
33 motor vehicle license was issued pursuant to RCW 46.16.460, but does
34 not include vehicles purchased or leased by a business as part of a
35 fleet of ten or more vehicles at one time or under a single purchase or
36 lease agreement. If the motor vehicle is a motor home, this chapter
37 shall apply to the self-propelled vehicle and chassis, but does not
38 include those portions of the vehicle designated, used, or maintained
39 primarily as a mobile dwelling, office, or commercial space. The term~~

1 "new motor vehicle" does not include trucks with nineteen thousand
2 pounds or more gross vehicle weight rating. The term "new motor
3 vehicle" includes a demonstrator or lease-purchase vehicle as long as
4 a manufacturer's warranty was issued as a condition of sale.

5 (10) "New motor vehicle dealer" means a person who holds a dealer
6 agreement with a manufacturer for the sale of new motor vehicles, who
7 is engaged in the business of purchasing, selling, servicing,
8 exchanging, or dealing in new motor vehicles, and who is licensed or
9 required to be licensed as a vehicle dealer by the state of Washington.

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

15 (12) "Purchase price" means the cash price of the new motor vehicle
16 appearing in the sales agreement or contract (~~(, including any allowance~~
17 ~~for a trade-in vehicle;)~~).

18 (a) "Purchase price" in the instance of a lease means the
19 (~~(purchase price or value of the vehicle declared to the department of~~
20 ~~licensing for purposes of tax collection)~~) actual written capitalized
21 cost disclosed to the consumer contained in the lease agreement. If
22 there is no disclosed capitalized cost in the lease agreement the
23 "purchase price" is the manufacturer's suggested retail price including
24 manufacturer installed accessories or items of optional equipment
25 displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

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

31 Where the consumer is a (~~(second or)~~) subsequent (~~(purchaser,~~
32 ~~lessee, or)~~) transferee and the consumer selects repurchase of the
33 motor vehicle, "purchase price" means the consumer's subsequent
34 purchase price ((of the second or subsequent purchase or lease)).
35 Where the consumer is a (~~(second or)~~) subsequent (~~(purchaser,~~
36 ~~lessee,~~
37 ~~or)~~) transferee and the consumer selects replacement of the motor
38 vehicle, "purchase price" means the original purchase price.

39 (13) "Reasonable offset for use" means the definition provided in
RCW 19.118.041(1)(c) for a new motor vehicle other than a new

1 motorcycle. The reasonable offset for use for a new motorcycle shall
2 be computed by the number of miles that the vehicle traveled before the
3 manufacturer's acceptance of the vehicle upon repurchase or replacement
4 multiplied by the purchase price, and divided by (~~twenty-five~~) fifty
5 thousand.

6 (14) "Reasonable number of attempts" means the definition provided
7 in RCW 19.118.041.

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

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

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

22 (18) "Substantially impair" means to render the new motor vehicle
23 unreliable, or unsafe for ordinary use, or to diminish the resale value
24 of the new motor vehicle below the average resale value for comparable
25 motor vehicles.

26 (~~(18)~~) (19) "Warranty" means any implied warranty, any written
27 warranty of the manufacturer, or any affirmation of fact or promise
28 made by the manufacturer in connection with the sale of a new motor
29 vehicle that becomes part of the basis of the bargain. The term
30 "warranty" pertains to the obligations of the manufacturer in relation
31 to materials, workmanship, and fitness of a new motor vehicle for
32 ordinary use or reasonably intended purposes throughout the duration of
33 the warranty period as defined under this section.

34 (~~(19)~~) (20) "Warranty period" means the period ending two years
35 after the date of the original delivery to the consumer of a new motor
36 vehicle, or the first twenty-four thousand miles of operation,
37 whichever occurs first.

1 **Sec. 2.** RCW 19.118.031 and 1987 c 344 s 3 are each amended to read
2 as follows:

3 (1) ~~((Each new motor vehicle dealer shall provide an owner's manual~~
4 ~~which shall be published by the manufacturer and include a list of the~~
5 ~~addresses and phone numbers for its zone or regional offices for this~~
6 ~~state.))~~ The manufacturer shall publish an owner's manual and provide
7 it to the new motor vehicle dealer or leasing company. The owner's
8 manual shall include a list of the addresses and phone numbers for the
9 manufacturer's customer assistance division, or zone or regional
10 offices. A manufacturer shall provide to the new motor vehicle dealer
11 or leasing company all applicable manufacturer's written warranties.
12 The dealer or leasing company shall transfer to the consumer, at the
13 time of original retail sale or lease, the owner's manual and
14 applicable written warranties as provided by a manufacturer.

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

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

38 (4) Upon request from the consumer, the manufacturer or new motor
39 vehicle dealer shall provide a copy of any report or computer reading

1 compiled by the manufacturer's field or zone representative regarding
2 inspection, diagnosis, or test-drive of the consumer's new motor
3 vehicle, or shall provide a copy of any technical service bulletin
4 issued by the manufacturer regarding the year and model of the
5 consumer's new motor vehicle as it pertains to any material, feature,
6 component, or the performance thereof.

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

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

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

22 (8) The warranty period and thirty-day out-of-service period shall
23 be extended by any time that repair services are not available to the
24 consumer as a direct result of a strike, war, invasion, fire, flood, or
25 other natural disaster.

26 **Sec. 3.** RCW 19.118.041 and 1989 c 347 s 2 are each amended to read
27 as follows:

28 (1) If the manufacturer, its agent, or the new motor vehicle dealer
29 is unable to conform the new motor vehicle to the warranty by repairing
30 or correcting any nonconformity after a reasonable number of attempts,
31 the manufacturer, within forty calendar days of a consumer's written
32 request to the manufacturer's corporate, dispute resolution, zone, or
33 regional office address shall, at the option of the consumer, replace
34 or repurchase the new motor vehicle.

35 (a) The replacement motor vehicle shall be identical or reasonably
36 equivalent to the motor vehicle to be replaced as the motor vehicle to
37 be replaced existed at the time of original purchase or lease,
38 including any service contract, undercoating, rustproofing, and factory

1 or dealer installed options. Where the manufacturer supplies a
2 replacement motor vehicle, the manufacturer shall be responsible for
3 sales tax, license, ~~((and))~~ registration fees, and refund of any
4 incidental costs. Compensation for a reasonable offset for use shall
5 be paid by the consumer to the manufacturer in the event that the
6 consumer accepts a replacement motor vehicle.

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

20 (c) The reasonable offset for use shall be computed by multiplying
21 the number of miles that the vehicle traveled directly attributable to
22 use by the consumer times the purchase price, and dividing the product
23 by one hundred twenty thousand. Where the consumer is a second or
24 subsequent purchaser, lessee, or transferee of the motor vehicle and
25 the consumer selects repurchase of the motor vehicle, "the number of
26 miles that the vehicle traveled" shall be calculated from the date of
27 purchase or lease by the consumer. Where the consumer is a second or
28 subsequent purchaser, lessee, or transferee of the motor vehicle and
29 the consumer selects replacement of the motor vehicle, "the number of
30 miles that the vehicle traveled" shall be calculated from the original
31 purchase, lease, or in-service date.

32 (2) Reasonable number of attempts shall be deemed to have been
33 undertaken by the manufacturer, its agent, or the new motor vehicle
34 dealer to conform the new motor vehicle to the warranty within the
35 warranty period, if: (a) The same serious safety defect has been
36 subject to diagnosis or repair two or more times, at least one of which
37 is during the period of coverage of the applicable manufacturer's
38 written warranty, and the serious safety defect continues to exist; (b)
39 the same nonconformity has been subject to diagnosis or repair four or

1 more times, at least one of which is during the period of coverage of
2 the applicable manufacturer's written warranty, and the nonconformity
3 continues to exist; or (c) the vehicle is out-of-service by reason of
4 diagnosis or repair of one or more nonconformities for a cumulative
5 total of thirty calendar days, at least fifteen of them during the
6 period of the applicable manufacturer's written warranty. For purposes
7 of this subsection, the manufacturer's written warranty shall be at
8 least one year after the date of the original delivery to the consumer
9 of the vehicle or the first twelve thousand miles of operation,
10 whichever occurs first.

11 (3) No new motor vehicle dealer may be held liable by the
12 manufacturer for any collateral charges, incidental costs, purchase
13 price refunds, or vehicle replacements. Manufacturers shall not have
14 a cause of action against dealers under this chapter. Consumers shall
15 not have a cause of action against dealers under this chapter, but a
16 violation of any responsibilities imposed upon dealers under this
17 chapter is a per se violation of chapter 19.86 RCW. Consumers may
18 pursue rights and remedies against dealers under any other law,
19 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers
20 may not make dealers parties to arbitration board proceedings under
21 this chapter.

22 **Sec. 4.** RCW 19.118.061 and 1989 c 347 s 3 are each amended to read
23 as follows:

24 (1) A manufacturer shall be prohibited from reselling any motor
25 vehicle determined or adjudicated as having a serious safety defect
26 unless the serious safety defect has been corrected and the
27 manufacturer warrants upon the first subsequent resale that the defect
28 has been corrected.

29 (~~(2) ((After the replacement or repurchase of a motor vehicle
30 determined to have a nonconformity or to have been out of service for
31 thirty or more calendar days pursuant to this chapter, the manufacturer
32 shall notify the attorney general and the department of licensing, by
33 certified mail or by personal service, upon receipt of the motor
34 vehicle. If the nonconformity in the motor vehicle is corrected, the
35 manufacturer shall notify the attorney general and the department of
36 licensing of such correction.))~~ Before any sale or transfer of a
37 vehicle that has been replaced or repurchased by the manufacturer that
38 was determined or adjudicated as having a nonconformity or to have been

1 out of service for thirty or more calendar days under this chapter, the
2 manufacturer shall:

3 (a) Notify the attorney general and the department of licensing, by
4 certified mail or by personal service, upon receipt of the motor
5 vehicle;

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

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

12 (3) Upon the first subsequent resale, either at wholesale or
13 retail, or transfer of title of a motor vehicle and which was
14 previously returned after a final determination, adjudication, or
15 settlement under this chapter or under a similar statute of any other
16 state, the manufacturer, its agent, or the new motor vehicle dealer who
17 has actual knowledge of said final determination, adjudication or
18 settlement, shall execute and deliver to the buyer before sale an
19 instrument in writing setting forth information identifying the
20 nonconformity in a manner to be specified by the attorney general, and
21 the department of licensing shall place on the certificate of title
22 information indicating the vehicle was returned under this chapter.

23 (4) Upon receipt of the manufacturer's notification under
24 subsection (2) of this section that the nonconformity has been
25 corrected and upon the manufacturer's request and payment of any fees,
26 the department of licensing shall issue a new title with information
27 indicating the vehicle was returned under this chapter and that the
28 nonconformity has been corrected. Upon the first subsequent resale,
29 either at wholesale or retail, or transfer of title of a motor vehicle
30 ~~((for which a new title has been issued under this subsection)),~~ as
31 provided under subsection (2)(c) of this section, the manufacturer
32 shall warrant upon the resale that the nonconformity has been
33 corrected, and the manufacturer, its agent, or the new motor vehicle
34 dealer who has actual knowledge of the corrected nonconformity, shall
35 execute and deliver to the buyer before sale an instrument in writing
36 setting forth information identifying the nonconformity and indicating
37 that it has been corrected in a manner to be specified by the attorney
38 general.

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

16 **Sec. 5.** RCW 19.118.080 and 1989 c 347 s 4 are each amended to read
17 as follows:

18 (1) Except as provided in RCW 19.118.160, the attorney general
19 shall contract with one or more private entities to conduct arbitration
20 proceedings in order to settle disputes between consumers and
21 manufacturers as provided in this chapter, and each private entity
22 shall constitute a new motor vehicle arbitration board for purposes of
23 this chapter. The entities shall not be affiliated with any
24 manufacturer or new motor vehicle dealer and shall have available the
25 services of persons with automotive technical expertise to assist in
26 resolving disputes under this chapter. No private entity or its
27 officers or employees conducting board proceedings and no arbitrator
28 presiding at such proceedings shall be directly involved in the
29 manufacture, distribution, sale, or warranty service of any motor
30 vehicle. Payment to the entities for the arbitration services shall be
31 made from the new motor vehicle arbitration account.

32 (2) The attorney general shall adopt rules for the uniform conduct
33 of the arbitrations by the boards whether conducted by a private entity
34 or by the attorney general pursuant to RCW 19.118.160, which rules
35 shall include but not be limited to the following procedures:

36 (a) At all arbitration proceedings, the parties are entitled to
37 present oral and written testimony, to present witnesses and evidence

1 relevant to the dispute, to cross-examine witnesses, and to be
2 represented by counsel.

3 (b) A dealer, manufacturer, or other persons shall produce records
4 and documents requested by a party which are reasonably related to the
5 dispute. If a dealer, manufacturer, or other person refuses to comply
6 with such a request, a party may present a request to the board for the
7 attorney general to issue a subpoena on behalf of the board.

8 The subpoena shall be issued only for the production of records and
9 documents which the board has determined are reasonably related to the
10 dispute, including but not limited to documents described in RCW
11 19.118.031 (4) or (5).

12 If a party fails to comply with the subpoena, the arbitrator may at
13 the outset of the arbitration hearing impose any of the following
14 sanctions: (i) Find that the matters which were the subject of the
15 subpoena, or any other designated facts, shall be taken to be
16 established for purposes of the hearing in accordance with the claim of
17 the party which requested the subpoena; (ii) refuse to allow the
18 disobedient party to support or oppose the designated claims or
19 defenses, or prohibit that party from introducing designated matters
20 into evidence; (iii) strike claims or defenses, or parts thereof; or
21 (iv) render a decision by default against the disobedient party.

22 If a nonparty fails to comply with a subpoena and upon an
23 arbitrator finding that without such compliance there is insufficient
24 evidence to render a decision in the dispute, the attorney general
25 shall enforce such subpoena in superior court and the arbitrator shall
26 continue the arbitration hearing until such time as the nonparty
27 complies with the subpoena or the subpoena is quashed.

28 (c) A party may obtain written affidavits from employees and agents
29 of a dealer, a manufacturer or other party, or from other potential
30 witnesses, and may submit such affidavits for consideration by the
31 board.

32 (d) Records of the board proceedings shall be open to the public.
33 The hearings shall be open to the public to the extent practicable.

34 (e) Where the board proceedings are conducted by one or more
35 private entities, a single arbitrator may be designated to preside at
36 such proceedings.

37 (3) A consumer shall exhaust the new motor vehicle arbitration
38 board remedy or informal dispute resolution settlement procedure under
39 RCW 19.118.150 before filing any superior court action.

1 (4) The attorney general shall maintain records of each dispute
2 submitted to the new motor vehicle arbitration board, including an
3 index of new motor vehicles by year, make, and model.

4 (5) The attorney general shall compile aggregate annual statistics
5 for all disputes submitted to, and decided by, the new motor vehicle
6 arbitration board, as well as annual statistics for each manufacturer
7 that include, but shall not be limited to, the number and percent of:
8 (a) Replacement motor vehicle requests; (b) purchase price refund
9 requests; (c) replacement motor vehicles obtained in prehearing
10 settlements; (d) purchase price refunds obtained in prehearing
11 settlements; (e) replacement motor vehicles awarded in arbitration; (f)
12 purchase price refunds awarded in arbitration; (g) board decisions
13 neither complied with during the forty calendar day period nor
14 petitioned for appeal within the thirty calendar day period; (h) board
15 decisions appealed categorized by consumer or manufacturer; (i) the
16 nature of the court decisions and who the prevailing party was; (j)
17 appeals that were held by the court to be brought without good cause;
18 and (k) appeals that were held by the court to be brought solely for
19 the purpose of harassment. The statistical compilations shall be
20 public information.

21 (6) The attorney general shall submit biennial reports of the
22 information in this section to the senate and house of representatives
23 committees on commerce and labor, with the first report due January 1,
24 1990.

25 (7) The attorney general shall adopt rules to implement this
26 chapter. Such rules shall include uniform standards by which the
27 boards shall make determinations under this chapter, including but not
28 limited to rules which provide:

29 (a) A board shall find that a nonconformity exists if it determines
30 that the consumer's new motor vehicle has a defect, serious safety
31 defect, or condition that substantially impairs the use, value, or
32 safety of the vehicle.

33 (b) A board shall find that a reasonable number of attempts to
34 repair a nonconformity have been undertaken if: (i) The same serious
35 safety defect has been subject to diagnosis or repair two or more
36 times, at least one of which is during the period of coverage of the
37 applicable manufacturer's written warranty, and the serious safety
38 defect continues to exist; (ii) the same nonconformity has been subject
39 to diagnosis or repair four or more times, at least one of which is

1 during the period of coverage of the applicable manufacturer's written
2 warranty, and the nonconformity continues to exist; or (iii) the
3 vehicle is out-of-service by reason of diagnosis or repair of one or
4 more nonconformities for a cumulative total of thirty calendar days, at
5 least fifteen of them during the period of the applicable
6 manufacturer's written warranty. For purposes of this subsection, the
7 manufacturer's written warranty shall be at least one year after the
8 date of the original delivery to the consumer of the vehicle or the
9 first twelve thousand miles of operation, whichever occurs first.

10 (c) A board shall find that a manufacturer has failed to comply
11 with RCW 19.118.041 if it finds that the manufacturer, its agent, or
12 the new motor vehicle dealer has failed to correct a nonconformity
13 after a reasonable number of attempts and the manufacturer has failed,
14 within forty days of the consumer's written request, to repurchase the
15 vehicle or replace the vehicle with a vehicle identical or reasonably
16 equivalent to the vehicle being replaced.

17 (8) The attorney general shall provide consumers with information
18 regarding the procedures and remedies under this chapter.

19 **Sec. 6.** RCW 19.118.090 and 1989 c 347 s 5 are each amended to read
20 as follows:

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

32 (2) Manufacturers shall submit to arbitration if such arbitration
33 is requested by the consumer within thirty months from the date of the
34 original delivery of the new motor vehicle to a consumer at retail and
35 if the consumer's dispute is deemed eligible for arbitration by the
36 board.

37 (3) The new motor vehicle arbitration board may reject for
38 arbitration any dispute that it determines to be frivolous, fraudulent,

1 filed in bad faith, res judicata or beyond its authority. Any dispute
2 deemed by the board to be ineligible for arbitration due to
3 insufficient evidence may be reconsidered by the board upon the
4 submission of other information or documents regarding the dispute that
5 would allegedly qualify for relief under this chapter. Following a
6 second review, the board may reject the dispute for arbitration if
7 evidence is still clearly insufficient to qualify the dispute for
8 relief under this chapter. A rejection by the board is subject to
9 review by the attorney general or may be appealed under RCW 19.118.100.

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

13 (4) The manufacturer shall complete a written manufacturer response
14 to the consumer's request for arbitration. The manufacturer shall
15 provide a response to the consumer and the board within ten calendar
16 days from the date of the manufacturer's receipt of the board's notice
17 of acceptance of a dispute for arbitration. The manufacturer response
18 shall include all issues and affirmative defenses related to the
19 nonconformities identified in the consumer's request for arbitration
20 that the manufacturer intends to raise at the arbitration hearing.

21 (5) The arbitration board shall award the remedies under RCW
22 19.118.041 if it finds a nonconformity and that a reasonable number of
23 attempts have been undertaken to correct the nonconformity. The board
24 shall award reasonable costs and attorneys' fees incurred by the
25 consumer ~~((in connection with board proceedings))~~ where the
26 manufacturer ~~((is))~~ has been directly represented by counsel~~((-))~~: (a)
27 In dealings with the consumer in response to a request to repurchase or
28 replace under RCW 19.118.041; (b) in settlement negotiations; (c) in
29 preparation of the manufacturer's statement; or (d) at an arbitration
30 board hearing or other board proceeding.

31 ~~((+5))~~ (6) It is an affirmative defense to any claim under this
32 chapter that: (a) The alleged nonconformity does not substantially
33 impair the use, value, or safety of the new motor vehicle; or (b) the
34 alleged nonconformity is the result of abuse, neglect, or unauthorized
35 modifications or alterations of the new motor vehicle.

36 ~~((+6))~~ (7) The board shall have forty-five calendar days from the
37 date the board receives the consumer's request for arbitration to hear
38 the dispute. If the board determines that additional information is
39 necessary, the board may continue the arbitration proceeding on a

1 subsequent date within ten calendar days of the initial hearing. The
2 board shall decide the dispute within sixty calendar days from the date
3 the board receives the consumer's request for arbitration.

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

8 ~~((+7))~~ (8) The consumer may accept the arbitration board decision
9 or appeal to superior court, pursuant to RCW 19.118.100. Upon
10 acceptance by the consumer, the arbitration board decision shall become
11 final. The consumer shall send written notification of acceptance or
12 rejection to the arbitration board within sixty days of receiving the
13 decision and the arbitration board shall immediately deliver a copy of
14 the consumer's acceptance to the manufacturer by certified mail, return
15 receipt requested, or by personal service. Failure of the consumer to
16 respond to the arbitration board within sixty calendar days of
17 receiving the decision shall be considered a rejection of the decision
18 by the consumer. The consumer shall have one hundred twenty calendar
19 days from the date of rejection to file a petition of appeal in
20 superior court. At the time the petition of appeal is filed, the
21 consumer shall deliver, by certified mail or personal service, a
22 conformed copy of such petition to the attorney general.

23 ~~((+8))~~ (9) Upon receipt of the consumer's acceptance, the
24 manufacturer shall have forty calendar days to comply with the
25 arbitration board decision or thirty calendar days to file a petition
26 of appeal in superior court. At the time the petition of appeal is
27 filed, the manufacturer shall deliver, by certified mail or personal
28 service, a conformed copy of such petition to the attorney general. If
29 the attorney general receives no notice of petition of appeal after
30 forty calendar days, the attorney general shall contact the consumer to
31 verify compliance.

32 ~~((+9) If, at the end of the forty calendar day period, neither
33 compliance with, nor a petition to appeal the board's decision has
34 occurred, the attorney general may impose a fine of one thousand
35 dollars per day until compliance occurs or a maximum penalty of one
36 hundred thousand dollars accrues unless the manufacturer can provide
37 clear and convincing evidence that any delay or failure was beyond its
38 control or was acceptable to the consumer as evidenced by a written
39 statement signed by the consumer. If the manufacturer fails to provide~~

1 ~~such evidence or fails to pay the fine, the attorney general shall~~
2 ~~initiate proceedings against the manufacturer for failure to pay any~~
3 ~~fine that accrues until compliance with the board's decision occurs or~~
4 ~~the maximum penalty of one hundred thousand dollars results. Where the~~
5 ~~attorney general prevails in an enforcement action regarding any fine~~
6 ~~imposed under this subsection, the attorney general shall be entitled~~
7 ~~to reasonable costs and attorneys' fees. Fines and recovered costs and~~
8 ~~fees shall be returned to the new motor vehicle arbitration account.))~~

9 **Sec. 7.** RCW 19.118.110 and 1989 c 347 s 7 are each amended to read
10 as follows:

11 A (~~five-dollar~~) three-dollar arbitration fee shall be collected
12 by either the new motor vehicle dealer or vehicle lessor from the
13 consumer upon execution of a retail sale or lease agreement. The fee
14 shall be forwarded to the department of licensing at the time of title
15 application for deposit in the new motor vehicle arbitration account
16 hereby created in the state treasury. Moneys in the account shall be
17 used for the purposes of this chapter, subject to appropriation.

18 At the end of each fiscal year, the attorney general shall prepare
19 a report listing the annual revenue generated and the expenses incurred
20 in implementing and operating the arbitration program under this
21 chapter.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.118 RCW
23 to read as follows:

24 (1) Compliance with an arbitration board decision under this
25 chapter must be accomplished at a time, place, and in a manner to be
26 determined by the mutual agreement of the consumer and manufacturer.

27 (a) The consumer shall make the motor vehicle available to the
28 manufacturer free of damage other than that related to any
29 nonconformity, defect, or condition to which a warranty applied, or
30 that can reasonably be expected in the use of the vehicle for ordinary
31 or reasonably intended purposes and in consideration of the mileage
32 attributable to the consumer's use. Any insurance claims or settlement
33 proceeds for repair of damage to the vehicle due to fire, theft,
34 vandalism, or collision must be assigned to the manufacturer or, at the
35 consumer's option, the repair must be completed before return of the
36 vehicle to the manufacturer.

1 The consumer may not remove any equipment or option that was
2 included in the original purchase or lease of the vehicle or that is
3 otherwise included in the repurchase or replacement award. In removing
4 any equipment not included in the original purchase or lease, the
5 consumer shall exercise reasonable care to avoid further damage to the
6 vehicle but is not required to return the vehicle to original
7 condition.

8 (b) At the time of compliance with an arbitration board decision
9 that awards repurchase, the manufacturer shall make full payment to the
10 consumers and either the lessor or lienholder, or both, or provide
11 verification to the consumer of prior payment to either the lessor or
12 lienholder, or both.

13 At the time of compliance with an arbitration board decision that
14 awards replacement, the manufacturer shall provide the replacement
15 vehicle together with any refund of incidental costs.

16 (c) At any time before compliance a party may request the board to
17 resolve disputes regarding compliance with the arbitration board
18 decision including but not limited to time and place for compliance,
19 condition of the vehicle to be returned, clarification or recalculation
20 of refund amounts under the award, or a determination if an offered
21 vehicle is reasonably equivalent to the vehicle being replaced. In
22 resolving compliance disputes the board may not review, alter, or
23 otherwise change the findings of a decision or extend the time for
24 compliance beyond the time necessary for the board to resolve the
25 dispute.

26 (d) Failure of the consumer to make the vehicle available within
27 sixty calendar days in response to a manufacturer's unconditional
28 tender of compliance is considered a rejection of the arbitration
29 decision by the consumer, except as provided in (c) of this subsection
30 or subsection (2) of this section.

31 (2) If, at the end of the forty calendar day period, neither
32 compliance with nor a petition to appeal the board's decision has
33 occurred, the attorney general may impose a fine of up to one thousand
34 dollars per day until compliance occurs or a maximum penalty of one
35 hundred thousand dollars accrues unless the manufacturer can provide
36 clear and convincing evidence that any delay or failure was beyond its
37 control or was acceptable to the consumer as evidenced by a written
38 statement signed by the consumer. If the manufacturer fails to provide
39 the evidence or fails to pay the fine, the attorney general may

1 initiate proceedings against the manufacturer for failure to pay any
2 fine that accrues until compliance with the board's decision occurs or
3 the maximum penalty of one hundred thousand dollars results. If the
4 attorney general prevails in an enforcement action regarding any fine
5 imposed under this subsection, the attorney general is entitled to
6 reasonable costs and attorneys' fees. Fines and recovered costs and
7 fees shall be returned to the new motor vehicle arbitration account.

8 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.118 RCW
9 to read as follows:

10 Notwithstanding RCW 46.12.380, the department of licensing shall
11 make available to the registered owner all title history information
12 regarding the vehicle upon request of the registered owner and receipt
13 of a statement that he or she is investigating or pursuing rights under
14 this chapter.

15 **Sec. 10.** RCW 46.12.380 and 1990 c 232 s 2 are each amended to read
16 as follows:

17 (1) Notwithstanding the provisions of chapter 42.17 RCW, the name
18 or address of an individual vehicle owner shall not be released by the
19 department, county auditor, or agency or firm authorized by the
20 department except under the following circumstances:

21 (a) The requesting party is a business entity that requests the
22 information for use in the course of business;

23 (b) The request is a written request that is signed by the person
24 requesting disclosure that contains the full legal name and address of
25 the requesting party, that specifies the purpose for which the
26 information will be used; and

27 (c) The requesting party enters into a disclosure agreement with
28 the department in which the party promises that the party will use the
29 information only for the purpose stated in the request for the
30 information; and that the party does not intend to use, or facilitate
31 the use of, the information for the purpose of making any unsolicited
32 business contact with a person named in the disclosed information. The
33 term "unsolicited business contact" means a contact that is intended to
34 result in, or promote, the sale of any goods or services to a person
35 named in the disclosed information. The term does not apply to
36 situations where the requesting party and such person have been
37 involved in a business transaction prior to the date of the disclosure

1 request and where the request is made in connection with the
2 transaction.

3 (2) The disclosing entity shall retain the request for disclosure
4 for three years.

5 (3) Whenever the disclosing entity grants a request for information
6 under this section by an attorney or private investigator, the
7 disclosing entity shall provide notice to the vehicle owner, to whom
8 the information applies, that the request has been granted. The notice
9 also shall contain the name and address of the requesting party.

10 (4) Any person who is furnished vehicle owner information under
11 this section shall be responsible for assuring that the information
12 furnished is not used for a purpose contrary to the agreement between
13 the person and the department.

14 (5) This section shall not apply to requests for information by
15 governmental entities or requests that may be granted under any other
16 provision of this title expressly authorizing the disclosure of the
17 names or addresses of vehicle owners.

18 (6) This section shall not apply to title history information under
19 section 9 of this act.

20 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and shall take
23 effect immediately.

24 NEW SECTION. **Sec. 12.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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