

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5629

54th Legislature
1995 Regular Session

Passed by the Senate April 19, 1995
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 10, 1995
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5629** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5629

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

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, or))~~ transferee and the consumer selects replacement of the motor
37 vehicle, "purchase price" means the original purchase price.

38 (13) "Reasonable offset for use" means the definition provided in
39 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 thousand.

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

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

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

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

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

25 (~~(18)~~) (19) "Warranty" means any implied warranty, any written
26 warranty of the manufacturer, or any affirmation of fact or promise
27 made by the manufacturer in connection with the sale of a new motor
28 vehicle that becomes part of the basis of the bargain. The term
29 "warranty" pertains to the obligations of the manufacturer in relation
30 to materials, workmanship, and fitness of a new motor vehicle for
31 ordinary use or reasonably intended purposes throughout the duration of
32 the warranty period as defined under this section.

33 (~~(19)~~) (20) "Warranty period" means the period ending two years
34 after the date of the original delivery to the consumer of a new motor
35 vehicle, or the first twenty-four thousand miles of operation,
36 whichever occurs first.

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

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

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

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

36 (4) Upon request from the consumer, the manufacturer or new motor
37 vehicle dealer shall provide a copy of any report or computer reading
38 compiled by the manufacturer's field or zone representative regarding
39 inspection, diagnosis, or test-drive of the consumer's new motor

1 vehicle, or shall provide a copy of any technical service bulletin
2 issued by the manufacturer regarding the year and model of the
3 consumer's new motor vehicle as it pertains to any material, feature,
4 component, or the performance thereof.

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

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

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

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

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

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

33 (a) The replacement motor vehicle shall be identical or reasonably
34 equivalent to the motor vehicle to be replaced as the motor vehicle to
35 be replaced existed at the time of original purchase or lease,
36 including any service contract, undercoating, rustproofing, and factory
37 or dealer installed options. Where the manufacturer supplies a
38 replacement motor vehicle, the manufacturer shall be responsible for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (5) After repurchase or replacement and following a manufacturer's
38 receipt of a vehicle under this section and prior to a vehicle's first
39 subsequent retail transfer by resale or lease, any intervening

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

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

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

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

33 (a) At all arbitration proceedings, the parties are entitled to
34 present oral and written testimony, to present witnesses and evidence
35 relevant to the dispute, to cross-examine witnesses, and to be
36 represented by counsel.

37 (b) A dealer, manufacturer, or other persons shall produce records
38 and documents requested by a party which are reasonably related to the

1 dispute. If a dealer, manufacturer, or other person refuses to comply
2 with such a request, a party may present a request to the board for the
3 attorney general to issue a subpoena on behalf of the board.

4 The subpoena shall be issued only for the production of records and
5 documents which the board has determined are reasonably related to the
6 dispute, including but not limited to documents described in RCW
7 19.118.031 (4) or (5).

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

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

24 (c) A party may obtain written affidavits from employees and agents
25 of a dealer, a manufacturer or other party, or from other potential
26 witnesses, and may submit such affidavits for consideration by the
27 board.

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

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

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

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

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

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

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

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

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

1 more nonconformities for a cumulative total of thirty calendar days, at
2 least fifteen of them during the period of the applicable
3 manufacturer's written warranty. For purposes of this subsection, the
4 manufacturer's written warranty shall be at least one year after the
5 date of the original delivery to the consumer of the vehicle or the
6 first twelve thousand miles of operation, whichever occurs first.

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

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

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

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

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

34 (3) The new motor vehicle arbitration board may reject for
35 arbitration any dispute that it determines to be frivolous, fraudulent,
36 filed in bad faith, res judicata or beyond its authority. Any dispute
37 deemed by the board to be ineligible for arbitration due to
38 insufficient evidence may be reconsidered by the board upon the

1 submission of other information or documents regarding the dispute that
2 would allegedly qualify for relief under this chapter. Following a
3 second review, the board may reject the dispute for arbitration if
4 evidence is still clearly insufficient to qualify the dispute for
5 relief under this chapter. A rejection by the board is subject to
6 review by the attorney general or may be appealed under RCW 19.118.100.

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

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

18 (5) The arbitration board shall award the remedies under RCW
19 19.118.041 if it finds a nonconformity and that a reasonable number of
20 attempts have been undertaken to correct the nonconformity. The board
21 shall award reasonable costs and attorneys' fees incurred by the
22 consumer ~~((in connection with board proceedings))~~ where the
23 manufacturer ~~((is))~~ has been directly represented by counsel((+)): (a)
24 In dealings with the consumer in response to a request to repurchase or
25 replace under RCW 19.118.041; (b) in settlement negotiations; (c) in
26 preparation of the manufacturer's statement; or (d) at an arbitration
27 board hearing or other board proceeding.

28 ~~((+5))~~ (6) It is an affirmative defense to any claim under this
29 chapter that: (a) The alleged nonconformity does not substantially
30 impair the use, value, or safety of the new motor vehicle; or (b) the
31 alleged nonconformity is the result of abuse, neglect, or unauthorized
32 modifications or alterations of the new motor vehicle.

33 ~~((+6))~~ (7) The board shall have forty-five calendar days from the
34 date the board receives the consumer's request for arbitration to hear
35 the dispute. If the board determines that additional information is
36 necessary, the board may continue the arbitration proceeding on a
37 subsequent date within ten calendar days of the initial hearing. The
38 board shall decide the dispute within sixty calendar days from the date
39 the board receives the consumer's request for arbitration.

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

5 ~~((+7))~~ (8) The consumer may accept the arbitration board decision
6 or appeal to superior court, pursuant to RCW 19.118.100. Upon
7 acceptance by the consumer, the arbitration board decision shall become
8 final. The consumer shall send written notification of acceptance or
9 rejection to the arbitration board within sixty days of receiving the
10 decision and the arbitration board shall immediately deliver a copy of
11 the consumer's acceptance to the manufacturer by certified mail, return
12 receipt requested, or by personal service. Failure of the consumer to
13 respond to the arbitration board within sixty calendar days of
14 receiving the decision shall be considered a rejection of the decision
15 by the consumer. The consumer shall have one hundred twenty calendar
16 days from the date of rejection to file a petition of appeal in
17 superior court. At the time the petition of appeal is filed, the
18 consumer shall deliver, by certified mail or personal service, a
19 conformed copy of such petition to the attorney general.

20 ~~((+8))~~ (9) Upon receipt of the consumer's acceptance, the
21 manufacturer shall have forty calendar days to comply with the
22 arbitration board decision or thirty calendar days to file a petition
23 of appeal in superior court. At the time the petition of appeal is
24 filed, the manufacturer shall deliver, by certified mail or personal
25 service, a conformed copy of such petition to the attorney general. If
26 the attorney general receives no notice of petition of appeal after
27 forty calendar days, the attorney general shall contact the consumer to
28 verify compliance.

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

1 ~~the maximum penalty of one hundred thousand dollars results. Where the~~
2 ~~attorney general prevails in an enforcement action regarding any fine~~
3 ~~imposed under this subsection, the attorney general shall be entitled~~
4 ~~to reasonable costs and attorneys' fees. Fines and recovered costs and~~
5 ~~fees shall be returned to the new motor vehicle arbitration account.))~~

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

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

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

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

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

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

34 The consumer may not remove any equipment or option that was
35 included in the original purchase or lease of the vehicle or that is
36 otherwise included in the repurchase or replacement award. In removing
37 any equipment not included in the original purchase or lease, the

1 consumer shall exercise reasonable care to avoid further damage to the
2 vehicle but is not required to return the vehicle to original
3 condition.

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

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

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

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

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

1 imposed under this subsection, the attorney general is entitled to
2 reasonable costs and attorneys' fees. Fines and recovered costs and
3 fees shall be returned to the new motor vehicle arbitration account.

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

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

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

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

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

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

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

36 (2) The disclosing entity shall retain the request for disclosure
37 for three years.

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

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

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

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

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

20 NEW SECTION. **Sec. 12.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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