
HOUSE BILL 2151

State of Washington

56th Legislature

1999 Regular Session

By Representatives Clements and Conway

Read first time 02/17/1999. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to motor vehicle arbitration boards; amending RCW
2 19.118.080 and 19.118.160; and declaring an emergency.

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

4 **Sec. 1.** RCW 19.118.080 and 1998 c 245 s 7 are each amended to read
5 as follows:

6 (1) Except as provided in RCW 19.118.160, the attorney general
7 shall contract with one or more ((private)) entities to conduct
8 arbitration proceedings in order to settle disputes between consumers
9 and manufacturers as provided in this chapter, and each ((private))
10 entity shall constitute a new motor vehicle arbitration board for
11 purposes of this chapter. The entities shall not be affiliated with
12 any manufacturer or new motor vehicle dealer and shall have available
13 the services of persons with automotive technical expertise to assist
14 in resolving disputes under this chapter. No ((private)) entity or its
15 officers or employees conducting board proceedings and no arbitrator
16 presiding at such proceedings shall be directly involved in the
17 manufacture, distribution, sale, or warranty service of any motor
18 vehicle. To the extent feasible, the identity of the bidding entity
19 shall be excluded from the bid review process. Payment to the entities

1 for the arbitration services shall be made from the new motor vehicle
2 arbitration account.

3 (2) The attorney general shall adopt rules for the uniform conduct
4 of the arbitrations by the boards whether conducted by (~~a private~~) an
5 entity or by the attorney general pursuant to RCW 19.118.160, which
6 rules shall include but not be limited to the following procedures:

7 (a) At all arbitration proceedings, the parties are entitled to
8 present oral and written testimony, to present witnesses and evidence
9 relevant to the dispute, to cross-examine witnesses, and to be
10 represented by counsel.

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

16 The subpoena shall be issued only for the production of records and
17 documents which the board has determined are reasonably related to the
18 dispute, including but not limited to documents described in RCW
19 19.118.031 (4) or (5).

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

30 If a nonparty fails to comply with a subpoena and upon an
31 arbitrator finding that without such compliance there is insufficient
32 evidence to render a decision in the dispute, the attorney general
33 shall enforce such subpoena in superior court and the arbitrator shall
34 continue the arbitration hearing until such time as the nonparty
35 complies with the subpoena or the subpoena is quashed.

36 (c) A party may obtain written affidavits from employees and agents
37 of a dealer, a manufacturer or other party, or from other potential
38 witnesses, and may submit such affidavits for consideration by the
39 board.

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

3 (e) Where the board proceedings are conducted by one or more
4 (~~private~~) entities, a single arbitrator may be designated to preside
5 at such proceedings.

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

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

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

29 (6) The attorney general shall adopt rules to implement this
30 chapter. Such rules shall include uniform standards by which the
31 boards shall make determinations under this chapter, including but not
32 limited to rules which provide:

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

37 (b) A board shall find that a reasonable number of attempts to
38 repair a nonconformity have been undertaken if: (i) The same serious
39 safety defect has been subject to diagnosis or repair two or more

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

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

21 (7) The attorney general shall provide consumers with information
22 regarding the procedures and remedies under this chapter.

23 **Sec. 2.** RCW 19.118.160 and 1989 c 347 s 9 are each amended to read
24 as follows:

25 If the attorney general is unable at any time to contract with
26 ((private)) entities to conduct arbitrations under the procedures and
27 standards in this chapter, the attorney general shall establish one or
28 more new motor vehicle arbitration boards. Each such board shall
29 consist of three members appointed by the attorney general, only one of
30 whom may be directly involved in the manufacture, distribution, sale,
31 or service of any motor vehicle. Board members shall be reimbursed for
32 travel expenses in accordance with RCW 43.03.050 and 43.03.060 and
33 shall be compensated pursuant to RCW 43.03.240.

34 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

--- END ---