

# HOUSE BILL REPORT

## HB 1289

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### As Reported by House Committee On:

Commerce & Labor

**Title:** An act relating to calculating reasonable offset for use when replacing or repurchasing a motor vehicle.

**Brief Description:** Calculating the repurchase price of a nonconforming motor vehicle.

**Sponsors:** Representatives Sump, Rockefeller and Mielke.

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/13/01, 2/27/01 [DPS].

#### Brief Summary of Substitute Bill

- Grants the arbitration board discretion to modify the reasonable offset for consumer use total when the board awards repurchase or replacement of a nonconforming motor vehicle.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Hunt, Kenney, Lisk and McMorris.

**Minority Report:** Do not pass. Signed by 1 member: Representative Wood, Democratic Vice Chair.

**Staff:** Sydney Forrester (786-7120).

### Background:

When enacting the current law on motor vehicle warranties, the Legislature intended to induce manufacturers to do two things: 1) improve quality control at production; and 2) provide better warranty service for vehicles sold in Washington. The law is structured to promote cooperation and communication between manufacturers and new motor vehicle

dealers, with the expectation this will increase the likelihood vehicles will be repaired within a reasonable number of attempts.

The law provides a comprehensive blend of private and public remedies, including repair, repurchase, or replacement of nonconforming vehicles, including motor homes. Repurchase and replacement are available if the vehicle is not repaired after a reasonable number of attempts.

A reasonable number of attempts for a motor vehicle that is not a motor home is defined as: 1) four attempts for the same general defect; 2) two attempts for a serious defect; or 3) a cumulative total of 30 or more days during which the vehicle is out of service for repair or diagnosis of one or more nonconformities.

After a reasonable number of attempts, a consumer may request replacement or repurchase by writing directly to the manufacturer. If the manufacturer and the consumer are unable to reach agreement, either may request arbitration. The arbitration board accepts or rejects the dispute based on certain prerequisites and eligibility criteria. If the arbitration board accepts the dispute, it may award replacement or repurchase.

In both cases of replacement or repurchase (consumer request and arbitration award), a reasonable offset for the consumer's use of the vehicle is computed. This amount either is deducted from the manufacturer's repurchase price or is charged to the consumer for a replacement vehicle. The offset for use computation uses the total number of miles the vehicle traveled directly attributable to use by the consumer, times the purchase price, divided by 120,000. The mileage factor includes all miles the consumer drives the vehicle during the period when repairs are attempted, and does not account for whether the vehicle has a defect, a serious safety defect, or a condition that substantially impairs the use, value, or safety of the new motor vehicle.

For a motor vehicle that is a motor home, an arbitration board may modify the offset for use total on a case-by-case basis to account for the condition of the motor home at replacement or repurchase. An arbitration board has no discretion to modify the offset for use total for other motor vehicles.

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### **Summary of Substitute Bill:**

If the consumer and manufacturer are unable to reach agreement and the dispute is accepted for arbitration, the arbitration board may modify the offset for use total for a motor vehicle that is not a motor home on a case-by-case basis. The arbitration board may consider multiple nonconformities, and nonconformities that are slow to manifest to a degree that would permit a consumer to request replacement or repurchase or to seek arbitration. The arbitration board may decrease or increase the offset for use total up to one-third of the offset total.

### **Substitute Bill Compared to Original Bill:**

No change is made to the calculation for computing offset for use when an arbitration board awards replacement or repurchase of a nonconforming vehicle. Modifications by the arbitration board to the offset for use total are done on a case-by-case basis. The consumer and manufacturer remain free to negotiate a mutually acceptable modification of the offset total.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) A consumer must wait until a reasonable number of attempts are made to repair the nonconformity before requesting replacement, repurchase, or seeking arbitration. From the time a consumer first reports a nonconformity for repair until the time an arbitration board finds the vehicle is defective and awards replacement or repurchase, all miles driven by the consumer count against the consumer in calculating the reasonable offset for use. When defects are slow to manifest for the fourth repair attempt, the number of miles continues to accrue and works as a disadvantage to the consumer.

**Testimony Against:** (Original bill) The current law serves consumers well. It provides for goodwill buy backs and arbitration buy backs. Changing the calculation for offset creates a better deal for the consumer and would discourage a customer from accepting a goodwill buy back. It is unclear to whom notice of the nonconformity must be given. The problem of a nonconformity is between the manufacturer and the consumer, but dealers are caught in the middle. Dealers are paid only for warranty work and only want to do repairs when needed. A dealer may not be able to detect a problem at first so a dealer may not notify a manufacturer at the start of a problem.

**Testified:** (In favor of original bill) Representative Sump.

(Opposed to original bill) Cliff Webster, General Motors; and Jim Boldt, Washington Auto Dealers Association.