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**SUBSTITUTE HOUSE BILL 1289**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Sump, Rockefeller and Mielke)

Read first time 02/27/2001. Referred to Committee on .

1 AN ACT Relating to calculating reasonable offset for use when  
2 replacing or repurchasing a motor vehicle; and amending RCW 19.118.041.

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

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

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

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

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

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

17 (c)(i) Except as provided in (c)(ii) and (iii) of this subsection,  
18 the reasonable offset for use shall be computed as follows:

19 (A) If the repurchase or replacement is in response to a consumer's  
20 written request under this section, by multiplying the number of miles  
21 that the vehicle traveled directly attributable to use by the consumer  
22 times the purchase price, and dividing the product by one hundred  
23 twenty thousand(~~(, except in the case of a motor home, in which event~~  
24 it shall be divided by ninety thousand. However,)).

25 (B) If the repurchase or replacement is awarded by an arbitration  
26 board under RCW 19.118.090, the reasonable offset for use shall be  
27 computed by multiplying the number of miles the vehicle traveled  
28 directly attributable to use by the consumer, times the purchase price,  
29 and dividing the product by one hundred twenty thousand. However, an  
30 arbitration board under RCW 19.118.090 may modify the offset total by  
31 decreasing or increasing the offset total up to a maximum of one-third  
32 of the offset total after considering the total number of repair  
33 attempts for all nonconformities, and the cumulative total of calendar  
34 days during which the vehicle has been out of service by reason of  
35 diagnosis or repair of one or more nonconformities.

36 (ii) If the motor vehicle is a motor home, the product shall be  
37 divided by ninety thousand, and the reasonable offset for use  
38 calculation total for a motor home is subject to modification by the  
39 board by decreasing or increasing the offset total up to a maximum of

1 one-third of the offset total. The board may modify the offset total  
2 in those circumstances where the board determines that the wear and  
3 tear on those portions of the motor home designated, used, or  
4 maintained primarily as a mobile dwelling, office, or commercial space  
5 are significantly greater or significantly less than that which could  
6 be reasonably expected based on the mileage attributable to the  
7 consumer's use of the motor home.

8 (iii) Where the consumer is a second or subsequent purchaser,  
9 lessee, or transferee of the motor vehicle and the consumer selects  
10 repurchase of the motor vehicle, "the number of miles that the vehicle  
11 traveled" shall be calculated from the date of purchase or lease by the  
12 consumer. Where the consumer is a second or subsequent purchaser,  
13 lessee, or transferee of the motor vehicle and the consumer selects  
14 replacement of the motor vehicle, "the number of miles that the vehicle  
15 traveled" shall be calculated from the original purchase, lease, or in-  
16 service date.

17 (2) Reasonable number of attempts, except in the case of a new  
18 motor vehicle that is a motor home acquired after June 30, 1998, shall  
19 be deemed to have been undertaken by the manufacturer, its agent, or  
20 the new motor vehicle dealer to conform the new motor vehicle to the  
21 warranty within the warranty period, if: (a) The same serious safety  
22 defect has been subject to diagnosis or repair two or more times, at  
23 least one of which is during the period of coverage of the applicable  
24 manufacturer's written warranty, and the serious safety defect  
25 continues to exist; (b) the same nonconformity has been subject to  
26 diagnosis or repair four or more times, at least one of which is during  
27 the period of coverage of the applicable manufacturer's written  
28 warranty, and the nonconformity continues to exist; or (c) the vehicle  
29 is out of service by reason of diagnosis or repair of one or more  
30 nonconformities for a cumulative total of thirty calendar days, at  
31 least fifteen of them during the period of the applicable  
32 manufacturer's written warranty. For purposes of this subsection, the  
33 manufacturer's written warranty shall be at least one year after the  
34 date of the original delivery to the consumer of the vehicle or the  
35 first twelve thousand miles of operation, whichever occurs first.

36 (3)(a) In the case of a new motor vehicle that is a motor home  
37 acquired after June 30, 1998, a reasonable number of attempts shall be  
38 deemed to have been undertaken by the motor home manufacturers, their  
39 respective agents, or their respective new motor vehicle dealers to

1 conform the new motor vehicle to the warranty within the warranty  
2 period, if: (i) The same serious safety defect has been subject to  
3 diagnosis or repair one or more times during the period of coverage of  
4 the applicable motor home manufacturer's written warranty, plus a final  
5 attempt to repair the vehicle as provided for in (b) of this  
6 subsection, and the serious safety defect continues to exist; (ii) the  
7 same nonconformity has been subject to repair three or more times, at  
8 least one of which is during the period of coverage of the applicable  
9 motor home manufacturer's written warranty, plus a final attempt to  
10 repair the vehicle as provided for in (b) of this subsection, and the  
11 nonconformity continues to exist; or (iii) the vehicle is out of  
12 service by reason of diagnosis or repair of one or more nonconformities  
13 for a cumulative total of sixty calendar days aggregating all motor  
14 home manufacturer days out of service, and the motor home manufacturers  
15 have had at least one opportunity to coordinate and complete an  
16 inspection and any repairs of the vehicle's nonconformities after  
17 receipt of notification from the consumer as provided for in (c) of  
18 this subsection. For purposes of this subsection, each motor home  
19 manufacturer's written warranty must be at least one year after the  
20 date of the original delivery to the consumer of the vehicle or the  
21 first twelve thousand miles of operation, whichever occurs first.

22 (b) In the case of a new motor vehicle that is a motor home, after  
23 one attempt has been made to repair a serious safety defect, or after  
24 three attempts have been made to repair the same nonconformity, the  
25 consumer shall give written notification of the need to repair the  
26 nonconformity to each of the motor home manufacturers at their  
27 respective corporate, zone, or regional office addresses to allow the  
28 motor home manufacturers to coordinate and complete a final attempt to  
29 cure the nonconformity. The motor home manufacturers each have fifteen  
30 days, commencing upon receipt of the notification, to respond and  
31 inform the consumer of the location of the facility where the vehicle  
32 will be repaired. If the vehicle is unsafe to drive due to a serious  
33 safety defect, or to the extent the repair facility is more than one  
34 hundred miles from the motor home location, the motor home  
35 manufacturers are responsible for the cost of transporting the vehicle  
36 to and from the repair facility. The motor home manufacturers have a  
37 cumulative total of thirty days, commencing upon delivery of the  
38 vehicle to the designated repair facility by the consumer, to conform  
39 the vehicle to the applicable motor home manufacturer's written

1 warranty. This time period may be extended if the consumer agrees in  
2 writing. If a motor home manufacturer fails to respond to the consumer  
3 or perform the repairs within the time period prescribed, that motor  
4 home manufacturer is not entitled to a final attempt to cure the  
5 nonconformity.

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

35 (4) No new motor vehicle dealer may be held liable by the  
36 manufacturer for any collateral charges, incidental costs, purchase  
37 price refunds, or vehicle replacements. Manufacturers shall not have  
38 a cause of action against dealers under this chapter. Consumers shall  
39 not have a cause of action against dealers under this chapter, but a

1 violation of any responsibilities imposed upon dealers under this  
2 chapter is a per se violation of chapter 19.86 RCW. Consumers may  
3 pursue rights and remedies against dealers under any other law,  
4 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers  
5 may not make dealers parties to arbitration board proceedings under  
6 this chapter.

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