

RCW 19.118.080 New motor vehicle arbitration boards—Arbitration proceedings—Prerequisite to filing action in superior court. (1)

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

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

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

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

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

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

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

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

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

(e) A single arbitrator may be designated to preside at such proceedings.

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

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

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

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

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

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if the history of attempts to diagnose or repair defects or conditions in the new motor vehicle meets or exceeds those identified in RCW 19.118.041.

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

(7) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter. [2009 c 351 s 5; 1998 c 245 s 7; 1995 c 254 s 5; 1989 c 347 s 4; 1987 c 344 s 6.]

Application—2009 c 351: See note following RCW 19.118.021.

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.