

RCW 19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act. (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

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

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer during the time between the original purchase, lease, or in-service date and the date beginning the first attempt to diagnose or repair a nonconformity which ultimately results in the repurchase or replacement of the vehicle multiplied times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand or in the case of a motorcycle, it shall be divided by twenty-five thousand. However, the reasonable offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Except in the case of a motor home, where a manufacturer repurchases or replaces a vehicle solely due to accumulated days out of service by reason of

diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be limited to the period between the date of purchase, lease by, or transfer to the consumer and the date of the consumer's initial attempt to obtain diagnosis or repair of a nonconformity which ultimately results in the repurchase or replacement of the vehicle or which adds to thirty or more cumulative calendar days out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the first attempt to diagnose or repair a nonconformity which ultimately results in the replacement of the vehicle. Except in the case of a motor home, where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service.

(d) In the case of a motor vehicle that is a motor home, where a manufacturer repurchases or replaces a motor home from the first purchaser, lessee, or transferee or from the second or subsequent purchaser, lessee, or transferee solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that a motor home traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the thirtieth cumulative calendar day out-of-service.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home, shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the eligibility period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; (c) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty; or (d) within a twelve-month period, two or more different serious safety defects, each of which have been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of

coverage of the applicable manufacturer's written warranty and within the eligibility period. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first. A new motor vehicle is deemed to have been "subject to diagnose or repair" when a consumer presents the new motor vehicle for warranty service at a service and repair facility authorized, designated, or maintained by a manufacturer to provide warranty services or a facility to which the manufacturer or an authorized facility has directed the consumer to obtain warranty service. A new motor vehicle has not been "subject to diagnose or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle to the consumer before an attempt to diagnose or repair can be completed.

(3) (a) In the case of a new motor vehicle that is a motor home, a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the eligibility period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, for a cumulative total of sixty calendar days aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection; or (iv) within a twelve-month period, two or more different serious safety defects covered by the same manufacturer warranty have been each subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. Notice of manifestation of one or more serious safety defects to a manufacturer must be provided in writing by the consumer to the motor home manufacturer whose warranty covers the defect or all manufacturers of the motor home. The consumer shall send notices to the manufacturers in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete a comprehensive safety evaluation of the motor home. Notice of the manifestation of one or more serious safety defects should be made by the consumer as a unique notice to the manufacturers. The notice may be met by any written notification under this subsection of the need to repair a defect or condition identified by the consumer as relating to the safety of the motor home with or without a consumer's specific reference to whether the defect is a serious safety defect. Any notice of the manifestation

of one or more serious safety defects shall be considered by a manufacturer as a consumer's request for a safety evaluation of the motor home. If the manufacturer, at its option, performs a safety evaluation, the manufacturers must provide a written report to the consumer of the evaluation of the motor home's safety in a timely manner. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of a notification under this subsection (3)(b), to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including any safety evaluation, by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to

the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. A violation of any responsibilities expressly imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Except in the limited circumstances of a dealer becoming a manufacturer due to a postmanufacturing modification of a new motor vehicle as defined in RCW 19.118.021(8), consumers shall not have a cause of action against dealers under this chapter. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [2009 c 351 § 3; 2007 c 426 § 1; 1998 c 298 § 4; 1995 c 254 § 3; 1989 c 347 § 2; 1987 c 344 § 4.]

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

Severability—1998 c 298: See note following RCW 19.118.021.

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