

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

(agency name)

Administrative Order No. 88-9

(1) I, Kenneth O. Eikenberry, director of Attorney General of Washington

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

- New Section 44-10-300 Imposition of Fine for Manufacturer Noncompliance with an Arbitration Decision
New Section 44-10-310 Request for Review of Imposition of Fine
New Section 44-10-320 Failure by Manufacturer to Pay a Fine

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect:
thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Kenneth O. Eikenberry, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is: Chapter 19.118 RCW requires manufacturers to comply within forty days of an arbitration decision in favor of the consumer. The statute further authorizes the Attorney General to impose a fine for failure of the manufacturer to comply. The immediate adoption of the rules cited above is necessary to implement the statute and to properly protect the public interest.
These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules fill in statement (a), (b), or (c) as appropriate:

(a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

XX (b) This rule is promulgated pursuant to RCW RCW 19.118.080 which directs that the Washington State Attorney General's Office (agency)

has authority to implement the provisions of Chapter 19.118 RCW (name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the (agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED November 1 1988

STATE OF WASHINGTON FILED

NOV 1 1988

By Kenneth O. Eikenberry Attorney General of Washington Title

[Form CR-7: Rev. 7/23/82]

CODE REVISER'S OFFICE WSR 88-22-054

NEW SECTION

WAC 44-10-300 IMPOSITION OF FINE FOR MANUFACTURER
NONCOMPLIANCE WITH AN ARBITRATION DECISION

(1) Pursuant to RCW 19.118.090, the Attorney General shall impose a fine against a manufacturer if, after forty (40) calendar days from the manufacturer's receipt of Notice of Consumer's Acceptance of an arbitration decision, the manufacturer has not complied with the decision. Notice of the imposition of fine shall be to the manufacturer by certified mail or personal service.

(2) The Attorney General shall impose a fine against the manufacturer for noncompliance according to the following schedule for each day after the forty (40) day calendar period:

DAYS 1 THROUGH 10.....	\$300.00 PER DAY
DAYS 11 THROUGH 20.....	\$500.00 PER DAY
DAYS 21 THROUGH 30.....	\$700.00 PER DAY
DAYS 31 AND ON.....	\$1000.00 PER DAY

The foregoing fines shall accrue until the manufacturer complies or until one hundred thousand (100,000) dollars has accrued, whichever occurs first.

NEW SECTION

WAC 44-10-310 REQUEST FOR REVIEW OF IMPOSITION OF FINE

(1) The manufacturer shall have ten (10) days from the date of receipt of Notice of Imposition of Fine to request a review of imposition of fine by the Attorney General. The manufacturer's request for review of imposition of fine shall be in writing and shall state the reasons for the manufacturer's noncompliance with the arbitrator's decision within the forty (40) calendar day period.

(2) Upon receipt of a request for review of imposition of fine, the Attorney General shall have ten (10) days to conduct a review.

(3) The review shall be limited to determining whether the manufacturer has shown by clear and convincing evidence that any delay or failure of the manufacturer to comply within forty (40) calendar days following the manufacturer's receipt of Notice of Consumer's Acceptance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. No other issues shall be considered in the review.

(4) The Attorney General shall issue a written review determination which shall be delivered to the manufacturer by certified mail or personal service.

(5) If the Attorney General determines that the manufacturer's noncompliance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement from the consumer, the imposition of fine shall be rescinded. The imposition of fine shall be affirmed by the Attorney General where the manufacturer has failed to show clear and convincing evidence as required by WAC 44-10-310(3). If the imposition of fine is affirmed, the manufacturer shall be liable for a fine according to the schedule specified in WAC 44-10-300(2) including all days during the pendency of review under this section and until compliance with the arbitrator's decision or until one hundred thousand (100,000) dollars has accrued, whichever comes first.

(6) If a fine is rescinded under WAC 44-10-310 the Attorney General shall impose a fine against a manufacturer where a manufacturer fails to comply with the agreement between the manufacturer and the consumer, or when the manufacturer

fails to comply immediately after the circumstances no longer exist which made compliance beyond the control of the manufacturer. Notice of such fine shall be by certified mail or personal service to the manufacturer and shall be imposed according to the schedule in WAC 44-10-300 (2), and imposition of such fine may be appealed by the manufacturer under WAC 44-10-310.

(7) The imposition of a fine by the Attorney General under this section may be appealed by the manufacturer to superior court.

NEW SECTION

WAC 44-10-320 FAILURE BY THE MANUFACTURER TO PAY A FINE

If the manufacturer fails to pay a fine imposed under this section, the Attorney General shall initiate proceedings in superior court against the manufacturer to compel payment of such fine.