
SUBSTITUTE SENATE BILL 6495

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators Schow, Roach and Heavey)

Read first time 02/06/98.

1 AN ACT Relating to modification of lemon law procedures regarding
2 motor homes without expanding or diminishing the covered defects; and
3 amending RCW 19.118.021, 19.118.031, 19.118.041, 19.118.061, and
4 19.118.090.

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

6 **Sec. 1.** RCW 19.118.021 and 1995 c 254 s 1 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Board" means new motor vehicle arbitration board.

11 (2) "Collateral charges" means any sales or lease related charges
12 including but not limited to sales tax, use tax, arbitration service
13 fees, unused license fees, unused registration fees, unused title fees,
14 finance charges, prepayment penalties, credit disability and credit
15 life insurance costs not otherwise refundable, any other insurance
16 costs prorated for time out of service, transportation charges, dealer
17 preparation charges, or any other charges for service contracts,
18 undercoating, rustproofing, or factory or dealer installed options.

1 (3) "Condition" means a general problem that results from a defect
2 or malfunction of one or more parts, or their improper installation by
3 the manufacturer, its agents, or the new motor vehicle dealer.

4 (4) "Consumer" means any person who has entered into an agreement
5 or contract for the transfer, lease, or purchase of a new motor
6 vehicle, other than for purposes of resale or sublease, during the
7 duration of the warranty period defined under this section.

8 (5) "Court" means the superior court in the county where the
9 consumer resides, except if the consumer does not reside in this state,
10 then the superior court in the county where an arbitration hearing or
11 determination was conducted or made pursuant to this chapter.

12 (6) "Incidental costs" means any reasonable expenses incurred by
13 the consumer in connection with the repair of the new motor vehicle,
14 including any towing charges and the costs of obtaining alternative
15 transportation.

16 (7) "Manufacturer" means any person engaged in the business of
17 constructing or assembling new motor vehicles or engaged in the
18 business of importing new motor vehicles into the United States for the
19 purpose of selling or distributing new motor vehicles to new motor
20 vehicle dealers. "Manufacturer" does not include any person engaged in
21 the business of set-up of motorcycles as an agent of a new motor
22 vehicle dealer if the person does not otherwise construct or assemble
23 motorcycles.

24 (8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330
25 which has an engine displacement of at least seven hundred fifty cubic
26 centimeters.

27 (9) "Motor home" means a vehicular unit designed to provide
28 temporary living quarters for recreational, camping, or travel use,
29 built on or permanently attached to a self-propelled motor vehicle
30 chassis or on a chassis cab or van that is an integral part of the
31 completed vehicle.

32 (10) "Motor home manufacturer" means the first stage manufacturer,
33 the component manufacturer, and the final stage manufacturer.

34 (a) "First stage manufacturer" means a person who manufactures
35 incomplete new motor vehicles such as chassis, chassis cabs, or vans,
36 that are directly warranted by the first stage manufacturer to the
37 consumer, and are completed by a final stage manufacturer into a motor
38 home.

1 (b) "Component manufacturer" means a person who manufactures
2 components used in the manufacture or assembly of a chassis, chassis
3 cab, or van that is completed into a motor home and whose components
4 are directly warranted by the component manufacturer to the consumer.

5 (c) "Final stage manufacturer" means a person who assembles,
6 installs, or permanently affixes a body, cab, or equipment to an
7 incomplete new motor vehicle such as a chassis, chassis cab, or van
8 provided by a first stage manufacturer, to complete the vehicle into a
9 motor home.

10 (11) "New motor vehicle" means any new self-propelled vehicle,
11 including a new motorcycle, primarily designed for the transportation
12 of persons or property over the public highways that was originally
13 purchased or leased at retail from a new motor vehicle dealer or
14 leasing company in this state, and that was initially registered in
15 this state or for which a temporary motor vehicle license was issued
16 pursuant to RCW 46.16.460, but does not include vehicles purchased or
17 leased by a business as part of a fleet of ten or more vehicles at one
18 time or under a single purchase or lease agreement. If the motor
19 vehicle is a motor home, this chapter shall apply to the self-propelled
20 vehicle and chassis, but does not include those portions of the vehicle
21 designated, used, or maintained primarily as a mobile dwelling, office,
22 or commercial space. The term "new motor vehicle" does not include
23 trucks with nineteen thousand pounds or more gross vehicle weight
24 rating. The term "new motor vehicle" includes a demonstrator or lease-
25 purchase vehicle as long as a manufacturer's warranty was issued as a
26 condition of sale.

27 ~~((10))~~ (12) "New motor vehicle dealer" means a person who holds
28 a dealer agreement with a manufacturer for the sale of new motor
29 vehicles, who is engaged in the business of purchasing, selling,
30 servicing, exchanging, or dealing in new motor vehicles, and who is
31 licensed or required to be licensed as a vehicle dealer by the state of
32 Washington.

33 ~~((11))~~ (13) "Nonconformity" means a defect, serious safety
34 defect, or condition that substantially impairs the use, value, or
35 safety of a new motor vehicle, but does not include a defect or
36 condition that is the result of abuse, neglect, or unauthorized
37 modification or alteration of the new motor vehicle.

38 ~~((12))~~ (14) "Purchase price" means the cash price of the new
39 motor vehicle appearing in the sales agreement or contract.

1 (a) "Purchase price" in the instance of a lease means the actual
2 written capitalized cost disclosed to the consumer contained in the
3 lease agreement. If there is no disclosed capitalized cost in the
4 lease agreement the "purchase price" is the manufacturer's suggested
5 retail price including manufacturer installed accessories or items of
6 optional equipment displayed on the manufacturer label, required by 15
7 U.S.C. Sec. 1232.

8 (b) "Purchase price" in the instance of both a vehicle purchase or
9 lease agreement includes any allowance for a trade-in vehicle but does
10 not include any manufacturer-to-consumer rebate appearing in the
11 agreement or contract that the consumer received or that was applied to
12 reduce the purchase or lease cost.

13 Where the consumer is a subsequent transferee and the consumer
14 selects repurchase of the motor vehicle, "purchase price" means the
15 consumer's subsequent purchase price. Where the consumer is a
16 subsequent transferee and the consumer selects replacement of the motor
17 vehicle, "purchase price" means the original purchase price.

18 (~~(13)~~) (15) "Reasonable offset for use" means the definition
19 provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a
20 new motorcycle. The reasonable offset for use for a new motorcycle
21 shall be computed by the number of miles that the vehicle traveled
22 before the manufacturer's acceptance of the vehicle upon repurchase or
23 replacement multiplied by the purchase price, and divided by twenty-
24 five thousand.

25 (~~(14)~~) (16) "Reasonable number of attempts" means the definition
26 provided in RCW 19.118.041.

27 (~~(15)~~) (17) "Replacement motor vehicle" means a new motor vehicle
28 that is identical or reasonably equivalent to the motor vehicle to be
29 replaced, as the motor vehicle to be replaced existed at the time of
30 original purchase or lease, including any service contract,
31 undercoating, rustproofing, and factory or dealer installed options.

32 (~~(16)~~) (18) "Serious safety defect" means a life-threatening
33 malfunction or nonconformity that impedes the consumer's ability to
34 control or operate the new motor vehicle for ordinary use or reasonable
35 intended purposes or creates a risk of fire or explosion.

36 (~~(17)~~) (19) "Subsequent transferee" means a consumer who acquires
37 a motor vehicle, within the warranty period, as defined in this
38 section, with an applicable manufacturer's written warranty and where

1 the vehicle otherwise met the definition of a new motor vehicle at the
2 time of original retail sale or lease.

3 ~~((18))~~ (20) "Substantially impair" means to render the new motor
4 vehicle unreliable, or unsafe for ordinary use, or to diminish the
5 resale value of the new motor vehicle below the average resale value
6 for comparable motor vehicles.

7 ~~((19))~~ (21) "Warranty" means any implied warranty, any written
8 warranty of the manufacturer, or any affirmation of fact or promise
9 made by the manufacturer in connection with the sale of a new motor
10 vehicle that becomes part of the basis of the bargain. The term
11 "warranty" pertains to the obligations of the manufacturer in relation
12 to materials, workmanship, and fitness of a new motor vehicle for
13 ordinary use or reasonably intended purposes throughout the duration of
14 the warranty period as defined under this section.

15 ~~((20))~~ (22) "Warranty period" means the period ending two years
16 after the date of the original delivery to the consumer of a new motor
17 vehicle, or the first twenty-four thousand miles of operation,
18 whichever occurs first.

19 **Sec. 2.** RCW 19.118.031 and 1995 c 254 s 2 are each amended to read
20 as follows:

21 (1) The manufacturer shall publish an owner's manual and provide it
22 to the new motor vehicle dealer or leasing company. The owner's manual
23 shall include a list of the addresses and phone numbers for the
24 manufacturer's customer assistance division, or zone or regional
25 offices. A manufacturer shall provide to the new motor vehicle dealer
26 or leasing company all applicable manufacturer's written warranties.
27 The dealer or leasing company shall transfer to the consumer, at the
28 time of original retail sale or lease, the owner's manual and
29 applicable written warranties as provided by a manufacturer.

30 (2) At the time of purchase, the new motor vehicle dealer shall
31 provide the consumer with a written statement that explains the
32 consumer's rights under this chapter. The written statement shall be
33 prepared and supplied by the attorney general and shall contain a toll-
34 free number that the consumer can contact for information regarding the
35 procedures and remedies under this chapter.

36 (3) For the purposes of this chapter, if a new motor vehicle does
37 not conform to the warranty and the consumer reports the nonconformity
38 during the term of the warranty period or the period of coverage of the

1 applicable manufacturer's written warranty, whichever is less, to the
2 manufacturer, its agent, or the new motor vehicle dealer who sold the
3 new motor vehicle, the manufacturer, its agent, or the new motor
4 vehicle dealer shall make repairs as are necessary to conform the
5 vehicle to the warranty, regardless of whether such repairs are made
6 after the expiration of the warranty period. Any corrections or
7 attempted repairs undertaken by a new motor vehicle dealer under this
8 chapter shall be treated as warranty work and billed by the dealer to
9 the manufacturer in the same manner as other work under the
10 manufacturer's written warranty is billed. For purposes of this
11 subsection, the manufacturer's written warranty shall be at least one
12 year after the date of the original delivery to the consumer of the
13 vehicle or the first twelve thousand miles of operation, whichever
14 occurs first.

15 (4) Upon request from the consumer, the manufacturer or new motor
16 vehicle dealer shall provide a copy of any report or computer reading
17 compiled by the manufacturer's field or zone representative regarding
18 inspection, diagnosis, or test-drive of the consumer's new motor
19 vehicle, or shall provide a copy of any technical service bulletin
20 issued by the manufacturer regarding the year and model of the
21 consumer's new motor vehicle as it pertains to any material, feature,
22 component, or the performance thereof.

23 (5) The new motor vehicle dealer shall provide to the consumer each
24 time the consumer's vehicle is returned from being diagnosed or
25 repaired under the warranty, a fully itemized, legible statement or
26 repair order indicating any diagnosis made, and all work performed on
27 the vehicle including but not limited to, a general description of the
28 problem reported by the consumer or an identification of the defect or
29 condition, parts and labor, the date and the odometer reading when the
30 vehicle was submitted for repair, and the date when the vehicle was
31 made available to the consumer.

32 (6) No manufacturer, its agent, or the new motor vehicle dealer may
33 refuse to diagnose or repair any nonconformity covered by the warranty
34 for the purpose of avoiding liability under this chapter.

35 (7) For purposes of this chapter, consumers shall have the rights
36 and remedies, including a cause of action, against manufacturers as
37 provided in this chapter.

38 (8) The warranty period and thirty-day out-of-service period, and
39 sixty-day out-of-service period in the case of a motor home, shall be

1 extended by any time that repair services are not available to the
2 consumer as a direct result of a strike, war, invasion, fire, flood, or
3 other natural disaster.

4 **Sec. 3.** RCW 19.118.041 and 1995 c 254 s 3 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
20 costs. Compensation for a reasonable offset for use shall be paid by
21 the consumer to the manufacturer in the event that the consumer accepts
22 a replacement motor vehicle.

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

36 (c) The reasonable offset for use shall be computed by multiplying
37 the number of miles that the vehicle traveled directly attributable to
38 use by the consumer times the purchase price, and dividing the product

1 by one hundred twenty thousand, except in the case of a motor home, in
2 which event it shall be divided by ninety thousand. However, the
3 reasonable offset for use calculation total for a motor home is subject
4 to modification by the board by decreasing or increasing the offset
5 total up to a maximum of one-third of the offset total. The board may
6 modify the offset total in those circumstances where the board
7 determines that the wear and tear on those portions of the motor home
8 designated, used, or maintained primarily as a mobile dwelling, office,
9 or commercial space are significantly greater or significantly less
10 than that which could be reasonably expected based on the mileage
11 attributable to the consumer's use of the motor home. Where the
12 consumer is a second or subsequent purchaser, lessee, or transferee of
13 the motor vehicle and the consumer selects repurchase of the motor
14 vehicle, "the number of miles that the vehicle traveled" shall be
15 calculated from the date of purchase or lease by the consumer. Where
16 the consumer is a second or subsequent purchaser, lessee, or transferee
17 of the motor vehicle and the consumer selects replacement of the motor
18 vehicle, "the number of miles that the vehicle traveled" shall be
19 calculated from the original purchase, lease, or in-service date.

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

1 (3)(a) In the case of a new motor vehicle that is a motor home
2 acquired after June 30, 1998, a reasonable number of attempts shall be
3 deemed to have been undertaken by the motor home manufacturers, their
4 respective agents, or their respective new motor vehicle dealers to
5 conform the new motor vehicle to the warranty within the warranty
6 period, if: (i) The same serious safety defect has been subject to
7 diagnosis or repair one or more times during the period of coverage of
8 the applicable motor home manufacturer's written warranty, plus a final
9 attempt to repair the vehicle as provided for in (b) of this
10 subsection, and the serious safety defect continues to exist; (ii) the
11 same nonconformity has been subject to repair three or more times, at
12 least one of which is during the period of coverage of the applicable
13 motor home manufacturer's written warranty, plus a final attempt to
14 repair the vehicle as provided for in (b) of this subsection, and the
15 nonconformity continues to exist; or (iii) the vehicle is out of
16 service by reason of diagnosis or repair of one or more nonconformities
17 for a cumulative total of sixty calendar days aggregating all motor
18 home manufacturer days out-of-service, and the motor home manufacturers
19 have had at least one opportunity to coordinate and complete an
20 inspection and any repairs of the vehicle's nonconformities after
21 receipt of notification from the consumer as provided for in (c) of
22 this subsection. For purposes of this subsection, each motor home
23 manufacturer's written warranty must be at least one year after the
24 date of the original delivery to the consumer of the vehicle or the
25 first twelve thousand miles of operation, whichever occurs first.

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

1 to and from the repair facility. The motor home manufacturers have a
2 cumulative total of thirty days, commencing upon delivery of the
3 vehicle to the designated repair facility by the consumer, to conform
4 the vehicle to the applicable motor home manufacturer's written
5 warranty. This time period may be extended if the consumer agrees in
6 writing. If a motor home manufacturer fails to respond to the consumer
7 or perform the repairs within the time period prescribed, that motor
8 home manufacturer is not entitled to a final attempt to cure the
9 nonconformity.

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

1 (4) No new motor vehicle dealer may be held liable by the
2 manufacturer for any collateral charges, incidental costs, purchase
3 price refunds, or vehicle replacements. Manufacturers shall not have
4 a cause of action against dealers under this chapter. Consumers shall
5 not have a cause of action against dealers under this chapter, but a
6 violation of any responsibilities imposed upon dealers under this
7 chapter is a per se violation of chapter 19.86 RCW. Consumers may
8 pursue rights and remedies against dealers under any other law,
9 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers
10 may not make dealers parties to arbitration board proceedings under
11 this chapter.

12 **Sec. 4.** RCW 19.118.061 and 1995 c 254 s 4 are each amended to read
13 as follows:

14 (1) A manufacturer shall be prohibited from reselling any motor
15 vehicle determined or adjudicated as having a serious safety defect
16 unless the serious safety defect has been corrected and the
17 manufacturer warrants upon the first subsequent resale that the defect
18 has been corrected.

19 (2) Before any sale or transfer of a vehicle that has been replaced
20 or repurchased by the manufacturer that was determined or adjudicated
21 as having a nonconformity or to have been out of service for thirty or
22 more calendar days, or sixty or more calendar days in the case of a
23 motor home, under this chapter, the manufacturer shall:

24 (a) Notify the attorney general and the department of licensing, by
25 certified mail or by personal service, upon receipt of the motor
26 vehicle;

27 (b) Attach a resale disclosure notice to the vehicle in a manner
28 and form to be specified by the attorney general. Only the retail
29 purchaser may remove the resale disclosure notice after execution of
30 the disclosure form required under subsection (3) of this section; and

31 (c) Notify the attorney general and the department of licensing if
32 the nonconformity in the motor vehicle is corrected.

33 (3) Upon the first subsequent resale, either at wholesale or
34 retail, or transfer of title of a motor vehicle and which was
35 previously returned after a final determination, adjudication, or
36 settlement under this chapter or under a similar statute of any other
37 state, the manufacturer, its agent, or the new motor vehicle dealer who
38 has actual knowledge of said final determination, adjudication or

1 settlement, shall execute and deliver to the buyer before sale an
2 instrument in writing setting forth information identifying the
3 nonconformity in a manner to be specified by the attorney general, and
4 the department of licensing shall place on the certificate of title
5 information indicating the vehicle was returned under this chapter.

6 (4) Upon receipt of the manufacturer's notification under
7 subsection (2) of this section that the nonconformity has been
8 corrected and upon the manufacturer's request and payment of any fees,
9 the department of licensing shall issue a new title with information
10 indicating the vehicle was returned under this chapter and that the
11 nonconformity has been corrected. Upon the first subsequent resale,
12 either at wholesale or retail, or transfer of title of a motor vehicle,
13 as provided under subsection (2)(c) of this section, the manufacturer
14 shall warrant upon the resale that the nonconformity has been
15 corrected, and the manufacturer, its agent, or the new motor vehicle
16 dealer who has actual knowledge of the corrected nonconformity, shall
17 execute and deliver to the buyer before sale an instrument in writing
18 setting forth information identifying the nonconformity and indicating
19 that it has been corrected in a manner to be specified by the attorney
20 general.

21 (5) After repurchase or replacement and following a manufacturer's
22 receipt of a vehicle under this section and prior to a vehicle's first
23 subsequent retail transfer by resale or lease, any intervening
24 transferor of a vehicle subject to the requirements of this section who
25 has received the disclosure, correction and warranty documents, as
26 specified by the attorney general and required under this chapter,
27 shall deliver the documents with the vehicle to the next transferor,
28 purchaser or lessee to ensure proper and timely notice and disclosure.
29 Any intervening transferor who fails to comply with this subsection
30 shall, at the option of the subsequent transferor or first subsequent
31 retail purchaser or lessee: (a) Indemnify (~~and any~~) any subsequent
32 transferor or first subsequent retail purchaser for all damages caused
33 by such violation; or (b) repurchase the vehicle at the full purchase
34 price including all fees, taxes and costs incurred for goods and
35 services which were included in the subsequent transaction.

36 **Sec. 5.** RCW 19.118.090 and 1995 c 254 s 6 are each amended to read
37 as follows:

1 (1) A consumer may request arbitration under this chapter by
2 submitting the request to the attorney general. Within ten days after
3 receipt of an arbitration request, the attorney general shall make a
4 reasonable determination of the cause of the request for arbitration
5 and provide necessary information to the consumer regarding the
6 consumer's rights and remedies under this chapter. The attorney
7 general shall assign the dispute to a board, except that if it clearly
8 appears from the materials submitted by the consumer that the dispute
9 is not eligible for arbitration, the attorney general may refuse to
10 assign the dispute and shall explain any required procedures to the
11 consumer.

12 (2) Manufacturers shall submit to arbitration if such arbitration
13 is requested by the consumer within thirty months from the date of the
14 original delivery of the new motor vehicle to a consumer at retail and
15 if the consumer's dispute is deemed eligible for arbitration by the
16 board. In the case of a motor home, the thirty-month period will be
17 extended by the amount of time it takes the motor home manufacturers to
18 complete the final repair attempt at the designated repair facility as
19 provided for in RCW 19.118.041(3)(b).

20 (3) The new motor vehicle arbitration board may reject for
21 arbitration any dispute that it determines to be frivolous, fraudulent,
22 filed in bad faith, res judicata or beyond its authority. Any dispute
23 deemed by the board to be ineligible for arbitration due to
24 insufficient evidence may be reconsidered by the board upon the
25 submission of other information or documents regarding the dispute that
26 would allegedly qualify for relief under this chapter. Following a
27 second review, the board may reject the dispute for arbitration if
28 evidence is still clearly insufficient to qualify the dispute for
29 relief under this chapter. A rejection by the board is subject to
30 review by the attorney general or may be appealed under RCW 19.118.100.

31 A decision to reject any dispute for arbitration shall be sent by
32 certified mail to the consumer and the manufacturer, and shall contain
33 a brief explanation as to the reason therefor.

34 (4) The manufacturer shall complete a written manufacturer response
35 to the consumer's request for arbitration. The manufacturer shall
36 provide a response to the consumer and the board within ten calendar
37 days from the date of the manufacturer's receipt of the board's notice
38 of acceptance of a dispute for arbitration. The manufacturer response
39 shall include all issues and affirmative defenses related to the

1 nonconformities identified in the consumer's request for arbitration
2 that the manufacturer intends to raise at the arbitration hearing.

3 (5) The arbitration board shall award the remedies under RCW
4 19.118.041 if it finds a nonconformity and that a reasonable number of
5 attempts have been undertaken to correct the nonconformity. The board
6 shall award reasonable costs and attorneys' fees incurred by the
7 consumer where the manufacturer has been directly represented by
8 counsel: (a) In dealings with the consumer in response to a request to
9 repurchase or replace under RCW 19.118.041; (b) in settlement
10 negotiations; (c) in preparation of the manufacturer's statement; or
11 (d) at an arbitration board hearing or other board proceeding.

12 In the case of an arbitration involving a motor home, the board may
13 allocate liability among the motor home manufacturers.

14 (6) It is an affirmative defense to any claim under this chapter
15 that: (a) The alleged nonconformity does not substantially impair the
16 use, value, or safety of the new motor vehicle; or (b) the alleged
17 nonconformity is the result of abuse, neglect, or unauthorized
18 modifications or alterations of the new motor vehicle.

19 (7) The board shall have forty-five calendar days from the date the
20 board receives the consumer's request for arbitration to hear the
21 dispute. If the board determines that additional information is
22 necessary, the board may continue the arbitration proceeding on a
23 subsequent date within ten calendar days of the initial hearing. The
24 board shall decide the dispute within sixty calendar days from the date
25 the board receives the consumer's request for arbitration.

26 The decision of the board shall be delivered by certified mail or
27 personal service to the consumer and the manufacturer, and shall
28 contain a written finding of whether the new motor vehicle meets the
29 standards set forth under this chapter.

30 (8) The consumer may accept the arbitration board decision or
31 appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance
32 by the consumer, the arbitration board decision shall become final.
33 The consumer shall send written notification of acceptance or rejection
34 to the arbitration board within sixty days of receiving the decision
35 and the arbitration board shall immediately deliver a copy of the
36 consumer's acceptance to the manufacturer by certified mail, return
37 receipt requested, or by personal service. Failure of the consumer to
38 respond to the arbitration board within sixty calendar days of
39 receiving the decision shall be considered a rejection of the decision

1 by the consumer. The consumer shall have one hundred twenty calendar
2 days from the date of rejection to file a petition of appeal in
3 superior court. At the time the petition of appeal is filed, the
4 consumer shall deliver, by certified mail or personal service, a
5 conformed copy of such petition to the attorney general.

6 (9) Upon receipt of the consumer's acceptance, the manufacturer
7 shall have forty calendar days to comply with the arbitration board
8 decision or thirty calendar days to file a petition of appeal in
9 superior court. At the time the petition of appeal is filed, the
10 manufacturer shall deliver, by certified mail or personal service, a
11 conformed copy of such petition to the attorney general. If the
12 attorney general receives no notice of petition of appeal after forty
13 calendar days, the attorney general shall contact the consumer to
14 verify compliance.

15 NEW SECTION. **Sec. 6.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

--- END ---