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SENATE BILL 6495

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State of Washington

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1998 Regular Session

By Senators Schow, Roach and Heavey

Read first time 01/20/98. Referred to Committee on Commerce & Labor.

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

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



1       (3)(a) In the case of a new motor vehicle that is a motor home, a  
2 reasonable number of attempts shall be deemed to have been undertaken  
3 by the motor home manufacturers, their respective agents, or their  
4 respective new motor vehicle dealers to conform the new motor vehicle  
5 to the warranty within the warranty period, if: (i) The same serious  
6 safety defect has been subject to diagnosis or repair one or more times  
7 during the period of coverage of the applicable motor home  
8 manufacturer's written warranty, plus a final attempt to repair the  
9 vehicle as provided for in (b) of this subsection, and the serious  
10 safety defect continues to exist; (ii) the same nonconformity has been  
11 subject to repair three or more times, at least one of which is during  
12 the period of coverage of the applicable motor home manufacturer's  
13 written warranty, plus a final attempt to repair the vehicle as  
14 provided for in (b) of this subsection, and the nonconformity continues  
15 to exist; or (iii) the vehicle is out of service by reason of diagnosis  
16 or repair of one or more nonconformities for a cumulative total of  
17 sixty calendar days aggregating all motor home manufacturer days out-  
18 of-service, and the motor home manufacturers have had at least one  
19 opportunity to coordinate and complete an inspection and any repairs of  
20 the vehicle's nonconformities after receipt of notification from the  
21 consumer as provided for in (c) of this subsection. For purposes of  
22 this subsection, each motor home manufacturer's written warranty must  
23 be at least one year after the date of the original delivery to the  
24 consumer of the vehicle or the first twelve thousand miles of  
25 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 its corporate,  
31 zone, or regional office address to allow the motor home manufacturers  
32 to coordinate and complete a final attempt to cure the nonconformity.  
33 The motor home manufacturers each have fifteen days, commencing upon  
34 receipt of the notification, to respond and inform the consumer of the  
35 location of the facility where the vehicle will be repaired. If the  
36 vehicle is unsafe to drive due to a serious safety defect, or to the  
37 extent the repair facility is more than one hundred miles from the  
38 motor home location, the motor home manufacturers are responsible for  
39 the cost of transporting the vehicle to and from the repair facility.

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

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

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

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

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

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

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

20 (a) Notify the attorney general and the department of licensing, by  
21 certified mail or by personal service, upon receipt of the motor  
22 vehicle;

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

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

29 (3) Upon the first subsequent resale, either at wholesale or  
30 retail, or transfer of title of a motor vehicle and which was  
31 previously returned after a final determination, adjudication, or  
32 settlement under this chapter or under a similar statute of any other  
33 state, the manufacturer, its agent, or the new motor vehicle dealer who  
34 has actual knowledge of said final determination, adjudication or  
35 settlement, shall execute and deliver to the buyer before sale an  
36 instrument in writing setting forth information identifying the  
37 nonconformity in a manner to be specified by the attorney general, and

1 the department of licensing shall place on the certificate of title  
2 information indicating the vehicle was returned under this chapter.

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

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

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

35 (1) A consumer may request arbitration under this chapter by  
36 submitting the request to the attorney general. Within ten days after  
37 receipt of an arbitration request, the attorney general shall make a  
38 reasonable determination of the cause of the request for arbitration

1 and provide necessary information to the consumer regarding the  
2 consumer's rights and remedies under this chapter. The attorney  
3 general shall assign the dispute to a board, except that if it clearly  
4 appears from the materials submitted by the consumer that the dispute  
5 is not eligible for arbitration, the attorney general may refuse to  
6 assign the dispute and shall explain any required procedures to the  
7 consumer.

8 (2) Manufacturers shall submit to arbitration if such arbitration  
9 is requested by the consumer within thirty months from the date of the  
10 original delivery of the new motor vehicle to a consumer at retail and  
11 if the consumer's dispute is deemed eligible for arbitration by the  
12 board.

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

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

27 (4) The manufacturer shall complete a written manufacturer response  
28 to the consumer's request for arbitration. The manufacturer shall  
29 provide a response to the consumer and the board within ten calendar  
30 days from the date of the manufacturer's receipt of the board's notice  
31 of acceptance of a dispute for arbitration. The manufacturer response  
32 shall include all issues and affirmative defenses related to the  
33 nonconformities identified in the consumer's request for arbitration  
34 that the manufacturer intends to raise at the arbitration hearing.

35 (5) The arbitration board shall award the remedies under RCW  
36 19.118.041 if it finds a nonconformity and that a reasonable number of  
37 attempts have been undertaken to correct the nonconformity. The board  
38 shall award reasonable costs and attorneys' fees incurred by the  
39 consumer where the manufacturer has been directly represented by

1 counsel: (a) In dealings with the consumer in response to a request to  
2 repurchase or replace under RCW 19.118.041; (b) in settlement  
3 negotiations; (c) in preparation of the manufacturer's statement; or  
4 (d) at an arbitration board hearing or other board proceeding.

5 In the case of an arbitration involving a motor home, the  
6 arbitration board may allocate liability among the motor home  
7 manufacturers.

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

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

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

24 (8) The consumer may accept the arbitration board decision or  
25 appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance  
26 by the consumer, the arbitration board decision shall become final.  
27 The consumer shall send written notification of acceptance or rejection  
28 to the arbitration board within sixty days of receiving the decision  
29 and the arbitration board shall immediately deliver a copy of the  
30 consumer's acceptance to the manufacturer by certified mail, return  
31 receipt requested, or by personal service. Failure of the consumer to  
32 respond to the arbitration board within sixty calendar days of  
33 receiving the decision shall be considered a rejection of the decision  
34 by the consumer. The consumer shall have one hundred twenty calendar  
35 days from the date of rejection to file a petition of appeal in  
36 superior court. At the time the petition of appeal is filed, the  
37 consumer shall deliver, by certified mail or personal service, a  
38 conformed copy of such petition to the attorney general.

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

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