
HOUSE BILL 1289

State of Washington

57th Legislature

2001 Regular Session

By Representatives Sump, Rockefeller and Mielke

Read first time 01/23/2001. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to calculating reasonable offset for use when
2 replacing or repurchasing a motor vehicle; and amending RCW 19.118.041.

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

4 **Sec. 1.** RCW 19.118.041 and 1998 c 298 s 4 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

1 costs. Compensation for a reasonable offset for use shall be paid by
2 the consumer to the manufacturer in the event that the consumer accepts
3 a replacement motor vehicle.

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

17 (c)(i) Except as provided in (c)(ii) and (iii) of this subsection,
18 the reasonable offset for use shall be computed as follows:

19 (A) If the repurchase or replacement is in response to a consumer's
20 written request under this section, by multiplying the number of miles
21 that the vehicle traveled directly attributable to use by the consumer
22 times the purchase price, and dividing the product by one hundred
23 twenty thousand(~~(, except in the case of a motor home, in which event~~
24 it shall be divided by ninety thousand. However,)).

25 (B) If the repurchase or replacement is awarded by an arbitration
26 board under RCW 19.118.090, the reasonable offset for use shall be
27 computed by multiplying the number of miles the vehicle traveled
28 directly attributable to use by the consumer up to the time the
29 consumer reported the nonconformity to the manufacturer, its agent, or
30 the new motor vehicle dealer times the purchase price, and dividing the
31 product by one hundred twenty thousand.

32 (ii) If the motor vehicle is a motor home, the product shall be
33 divided by ninety thousand, and the reasonable offset for use
34 calculation total for a motor home is subject to modification by the
35 board by decreasing or increasing the offset total up to a maximum of
36 one-third of the offset total. The board may modify the offset total
37 in those circumstances where the board determines that the wear and
38 tear on those portions of the motor home designated, used, or
39 maintained primarily as a mobile dwelling, office, or commercial space

1 are significantly greater or significantly less than that which could
2 be reasonably expected based on the mileage attributable to the
3 consumer's use of the motor home.

4 (iii) Where the consumer is a second or subsequent purchaser,
5 lessee, or transferee of the motor vehicle and the consumer selects
6 repurchase of the motor vehicle, "the number of miles that the vehicle
7 traveled" shall be calculated from the date of purchase or lease by the
8 consumer. Where the consumer is a second or subsequent purchaser,
9 lessee, or transferee of the motor vehicle and the consumer selects
10 replacement of the motor vehicle, "the number of miles that the vehicle
11 traveled" shall be calculated from the original purchase, lease, or in-
12 service date.

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

32 (3)(a) In the case of a new motor vehicle that is a motor home
33 acquired after June 30, 1998, a reasonable number of attempts shall be
34 deemed to have been undertaken by the motor home manufacturers, their
35 respective agents, or their respective new motor vehicle dealers to
36 conform the new motor vehicle to the warranty within the warranty
37 period, if: (i) The same serious safety defect has been subject to
38 diagnosis or repair one or more times during the period of coverage of
39 the applicable motor home manufacturer's written warranty, plus a final

1 attempt to repair the vehicle as provided for in (b) of this
2 subsection, and the serious safety defect continues to exist; (ii) the
3 same nonconformity has been subject to repair three or more times, at
4 least one of which is during the period of coverage of the applicable
5 motor home manufacturer's written warranty, plus a final attempt to
6 repair the vehicle as provided for in (b) of this subsection, and the
7 nonconformity continues to exist; or (iii) the vehicle is out of
8 service by reason of diagnosis or repair of one or more nonconformities
9 for a cumulative total of sixty calendar days aggregating all motor
10 home manufacturer days out of service, and the motor home manufacturers
11 have had at least one opportunity to coordinate and complete an
12 inspection and any repairs of the vehicle's nonconformities after
13 receipt of notification from the consumer as provided for in (c) of
14 this subsection. For purposes of this subsection, each motor home
15 manufacturer's written warranty must be at least one year after the
16 date of the original delivery to the consumer of the vehicle or the
17 first twelve thousand miles of operation, whichever occurs first.

18 (b) In the case of a new motor vehicle that is a motor home, after
19 one attempt has been made to repair a serious safety defect, or after
20 three attempts have been made to repair the same nonconformity, the
21 consumer shall give written notification of the need to repair the
22 nonconformity to each of the motor home manufacturers at their
23 respective corporate, zone, or regional office addresses to allow the
24 motor home manufacturers to coordinate and complete a final attempt to
25 cure the nonconformity. The motor home manufacturers each have fifteen
26 days, commencing upon receipt of the notification, to respond and
27 inform the consumer of the location of the facility where the vehicle
28 will be repaired. If the vehicle is unsafe to drive due to a serious
29 safety defect, or to the extent the repair facility is more than one
30 hundred miles from the motor home location, the motor home
31 manufacturers are responsible for the cost of transporting the vehicle
32 to and from the repair facility. The motor home manufacturers have a
33 cumulative total of thirty days, commencing upon delivery of the
34 vehicle to the designated repair facility by the consumer, to conform
35 the vehicle to the applicable motor home manufacturer's written
36 warranty. This time period may be extended if the consumer agrees in
37 writing. If a motor home manufacturer fails to respond to the consumer
38 or perform the repairs within the time period prescribed, that motor

1 home manufacturer is not entitled to a final attempt to cure the
2 nonconformity.

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

32 (4) No new motor vehicle dealer may be held liable by the
33 manufacturer for any collateral charges, incidental costs, purchase
34 price refunds, or vehicle replacements. Manufacturers shall not have
35 a cause of action against dealers under this chapter. Consumers shall
36 not have a cause of action against dealers under this chapter, but a
37 violation of any responsibilities imposed upon dealers under this
38 chapter is a per se violation of chapter 19.86 RCW. Consumers may
39 pursue rights and remedies against dealers under any other law,

1 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers
2 may not make dealers parties to arbitration board proceedings under
3 this chapter.

--- END ---