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**Commerce & Labor Committee**

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**HB 1215**

**Brief Description:** Modifying motor vehicle warranty provisions.

**Sponsors:** Representatives Wood, Chandler, Kirby, Ormsby and Morrell; by request of Attorney General.

**Brief Summary of Bill**

- Extends the application of the Motor Vehicle Warranty Act and bases for claims under the Act.
- Modifies provisions related to the arbitration process, required disclosures by vehicle dealers, and the titles of vehicles reacquired by manufacturers.

**Hearing Date:** 1/21/09

**Staff:** Alison Hellberg (786-7152)

**Background:**

The Motor Vehicle Warranty Act (Act), also known as the state's "Lemon Law," establishes the rights and responsibilities of consumers, dealers, and manufacturers when new or nearly new vehicles are defective. Motorcycles are considered motor vehicles for application of the Act.

The Act requires that notice of manufacturers' warranties be given to consumers along with information to assist the consumer who needs to repair a defective vehicle. Once repair is requested, the manufacturer must make a reasonable effort to repair the vehicle. If, after reasonable attempts to repair the vehicle, the defects continue to exist, the consumer may request replacement of the vehicle or repurchase of the defective vehicle by the manufacturer.

The Act establishes three bases for a claim:

- a vehicle with a serious safety defect that the manufacturer has unsuccessfully attempted to repair at least two times;

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- a vehicle with some other substantial defect that the manufacturer has unsuccessfully attempted to diagnose or repair at least four times; or
- a vehicle that has been out of service for 30 cumulative calendar days with at least 15 of those days occurring during the warranty period.

At least one of the repair attempts needs to happen during the "warranty period," which is within two years of the vehicle being delivered to the customer or the first 24,000 miles of operation, whichever occurs first.

If either party disputes the need to impose a remedy, a party may first seek arbitration of the dispute. The Attorney General manages the arbitration process and contracts with private arbitration boards. Arbitration boards may award either replacement or repurchase of the vehicle by the manufacturer and a consumer's attorneys' fees for the arbitration process if the manufacturer is represented by an attorney.

If arbitration fails, the parties may ultimately take their dispute to superior court. If a customer prevails in the superior court, recovery includes the monetary value of the award, attorneys' fees, and costs incurred. If the arbitration board awarded the consumer replacement or repurchase of the vehicle and the manufacturer did not comply, the manufacturer must pay continuing damages of \$25 per day that the manufacturer does not provide the consumer with a loaner replacement vehicle.

When a manufacturer repurchases a vehicle, the manufacturer must pay the consumer the purchase price of the vehicle, all collateral charges, and incidental costs, less a reasonable offset for use. Collateral charges are any sales or lease-related charges including sales tax, use tax, arbitration service fees, unused license fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs, transportation charges, dealer preparation charges, or any other service contracts, undercoating, rust-proofing, or factory or dealer installed options.

Manufacturers may resell a nonconforming vehicle if the nonconformity can be eliminated and the manufacturer so warrants. Designations must be placed on the title of vehicles that have been returned to the manufacturer under the Lemon Law and then resold.

A violation of the provisions of the Act is also a violation of the Consumer Protection Act.

### **Summary of Bill:**

Numerous changes are made to the provisions of the Act in the bases for a claim, the warranty period, the application of the Act to motorcycles, circumstances related to modifications of a vehicle by a dealer, the arbitration process, the sale of reacquired vehicles, and the application of the Act to vehicles sold or leased to armed services personnel.

In addition to the three existing bases for claims under the Act, three bases are added:

- two or more serious safety defects (a serious safety defect is a life threatening malfunction or nonconformity);
- five or more nonconformities (a nonconformity is a defect that substantially impairs the use, value, or safety of a motor vehicle); and

- twelve or more cumulative number of attempts to diagnose or repair nonconformities.

The term "warranty period" is replaced with the term "eligibility period" and that period is extended from two years after the delivery date or the first 24,000 miles of operation to three years after the delivery period or the first 36,000 miles of operation, whichever occurs first.

The application of the Act to motorcycles is defined by price rather than engine displacement. A motorcycle that costs more than \$4,500 is covered by the Act.

Warranties include modifications by new motor vehicle dealers if the dealer is installing the manufacturer's authorized parts for the specific vehicle according to the manufacturer's specifications. The definition of manufacturer is extended to include a post-manufacturing modifier of a motor vehicle that modifies the vehicle prior to the initial retail sale or lease.

If a customer requests a modification that would partially or completely void the manufacturer's warranty, a dealer is required to provide a disclosure, signed and dated by the customer, that says: "Your requested modification may void all or part of a manufacturer warranty and a resulting defect or condition may not be subject to remedies afforded by the Motor Vehicle Warranties Act, chapter 19.118 RCW."

The warranty provisions are extended to motor vehicles purchased or leased by members of the armed forces regardless of whether the vehicle was purchased or leased in the state.

Changes are also made to the arbitration process. The Attorney General may manage certain aspects of the process rather than contracting out to an arbitration board for the entire process. The period in which a manufacturer is required to submit to an arbitration requested by a consumer is extended from 30 months from the time the vehicle was delivered to 42 months. The penalty for a manufacturer not providing a loaner vehicle when required is raised from \$25 per day to \$75 per day.

In addition to the other collateral charges a manufacturer must pay when repurchasing a vehicle, the manufacturer must also pay the value of the retail sales or use tax exclusion attributable to the gross trade-in allowance for like-kind property.

Prior to selling a reacquired vehicle, the manufacturer must apply for a new title with the Department of Licensing. The Department of Licensing must issue a new title with a title brand indicating that the vehicle was returned to the manufacturer under the Act and provide information that the nonconformity has been corrected.

The provisions are remedial in nature and apply retroactively to the effective date of the act.

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/18/09.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.