

# SENATE BILL REPORT

## SB 5235

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As of February 6, 2009

**Title:** An act relating to modifying motor vehicle warranty provisions.

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

**Sponsors:** Senators Kohl-Welles, Honeyford, Holmquist and Keiser; by request of Attorney General.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/26/09.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Staff:** Alison Mendiola (786-7483)

**Background:** The Motor Vehicle Warranty Act (Act), commonly called the lemon law, was created in 1987 and establishes rights and responsibilities for consumers and manufacturers when new or nearly new vehicles are defective. The statute establishes three definitions of a "lemon:" (1) a vehicle with a serious safety defect that the manufacturer has unsuccessfully attempted to repair at least two times; (2) a vehicle with some other substantial defect that the manufacturer has unsuccessfully attempted to diagnose or repair at least four times; or (3) 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.

If a vehicle meets one of these definitions, the manufacturer must either replace or repurchase the vehicle, whichever remedy the consumer chooses. For the purposes of the Act, a vehicle includes motor homes and motorcycles that have an engine displacement of at least 750 cubic centimeters.

The Act applies to vehicles that the consumer (1) purchased or leased in Washington, and (2) initially registered in Washington.

**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.

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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 must 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.

**Appropriation:** None.

**Fiscal Note:** Requested January 18, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Updates are needed to Washington's Lemon Law. The issues today are more complex and the requested updates stem from consumer complaints. Washington has one of the strongest lemon law's in the country. The dealer modification language is helpful for dealers and the disclosure for modifications beyond what the manufacturer provides is helpful for consumers so they know that they may be waiving their warranties.

CON: Three new warranties are proposed. This complicates things, especially for issues with motor homes since there may be more than one manufacturer involved. This bill is an extensive rewrite of the lemon law and not all impacted parties have been involved.

**Persons Testifying:** PRO: Paul Corning, Office of the Attorney General; Scott Hazelgrove, Washington State Auto Dealer's Association.

CON: Daniel Laurence, Attorney at Law; Cliff Webster, General Motors Corporation; Ryan Spiller, Auto Alliance.