
HOUSE BILL 1215

State of Washington

61st Legislature

2009 Regular Session

By Representatives Wood, Chandler, Kirby, Ormsby, and Morrell; by request of Attorney General

Read first time 01/15/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to modifying motor vehicle warranty provisions;
2 amending RCW 19.118.021, 19.118.031, 19.118.041, 19.118.061,
3 19.118.080, 19.118.090, 19.118.095, 19.118.100, 19.118.120, and
4 19.118.160; and creating a new section.

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

6 **Sec. 1.** RCW 19.118.021 and 2007 c 425 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, value of the retail sales or use tax exclusion
15 attributable to the gross trade-in allowance for like kind property,
16 prepayment penalties, credit disability and credit life insurance costs
17 not otherwise refundable, any other insurance costs prorated for time
18 out of service, transportation charges, dealer preparation charges, or

1 any other charges for service contracts, undercoating, rustproofing, or
2 factory or dealer installed options.

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

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

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

15 (6) "Eligibility period" means the period ending three years after
16 the date of the original delivery to the consumer of a new motor
17 vehicle, or the first thirty-six thousand miles of operation, whichever
18 occurs first.

19 (7) "Incidental costs" means any reasonable expenses incurred by
20 the consumer in connection with the repair of the new motor vehicle,
21 including any towing charges and the costs of obtaining alternative
22 transportation.

23 (~~(+7)~~) (8) "Manufacturer" means any person engaged in the business
24 of constructing or assembling new motor vehicles or engaged in the
25 business of importing new motor vehicles into the United States for the
26 purpose of selling or distributing new motor vehicles to new motor
27 vehicle dealers. "Manufacturer" includes to the extent the
28 modification affects the use, value, or safety of a new motor vehicle,
29 a postmanufacturing modifier of a new motor vehicle that modifies or
30 has a modification done to a new motor vehicle before the initial
31 retail sale or lease of a new motor vehicle, except as provided in this
32 chapter. "Manufacturer" does not include any person engaged in the
33 business of set-up of motorcycles as an agent of a new motor vehicle
34 dealer if the person does not otherwise construct or assemble
35 motorcycles.

36 (~~(+8)~~) (9) "Motorcycle" means any motorcycle as defined in RCW
37 46.04.330 (~~which has an engine displacement of at least seven hundred~~

1 ~~fifty cubic centimeters))~~ with a purchase price as listed on the
2 original retail invoice, purchase order, or sales agreement as
3 exceeding four thousand five hundred dollars.

4 ~~((+9))~~ (10) "Motor home" means a vehicular unit designed to
5 provide temporary living quarters for recreational, camping, or travel
6 use, built on or permanently attached to a self-propelled motor vehicle
7 chassis or on a chassis cab or van that is an integral part of the
8 completed vehicle.

9 ~~((+10))~~ (11) "Motor home manufacturer" means the first stage
10 manufacturer, the component manufacturer, and the final stage
11 manufacturer.

12 (a) "First stage manufacturer" means a person who manufactures
13 incomplete new motor vehicles such as chassis, chassis cabs, or vans,
14 that are directly warranted by the first stage manufacturer to the
15 consumer, and are completed by a final stage manufacturer into a motor
16 home.

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

21 (c) "Final stage manufacturer" means a person who assembles,
22 installs, or permanently affixes a body, cab, or equipment to an
23 incomplete new motor vehicle such as a chassis, chassis cab, or van
24 provided by a first stage manufacturer, to complete the vehicle into a
25 motor home.

26 ~~((+11))~~ (12) "New motor vehicle" means any new self-propelled
27 vehicle, including a new motorcycle, primarily designed for the
28 transportation of persons or property over the public highways that was
29 originally purchased or leased at retail from a new motor vehicle
30 dealer or leasing company in this state, but does not include vehicles
31 purchased or leased by a business as part of a fleet of ten or more
32 vehicles at one time or under a single purchase or lease agreement.

33 This chapter shall apply to a motor vehicle purchased or leased with a
34 manufacturer written warranty by a member of the armed forces
35 regardless of in which state the vehicle was purchased or leased, if
36 the vehicle otherwise meets the definition of a new motor vehicle and
37 the consumer is a member of the armed forces stationed or residing in
38 this state at the time the consumer submits a request for arbitration

1 to the attorney general. If the motor vehicle is a motor home, this
2 chapter shall apply to the self-propelled vehicle and chassis, but does
3 not include those portions of the vehicle designated, used, or
4 maintained primarily as a mobile dwelling, office, or commercial space.
5 The term "new motor vehicle" does not include trucks with nineteen
6 thousand pounds or more gross vehicle weight rating. The term "new
7 motor vehicle" includes a demonstrator or lease-purchase vehicle as
8 long as a manufacturer's warranty was issued as a condition of sale.

9 ~~((+12+))~~ (13) "New motor vehicle dealer" means a person who holds
10 a dealer agreement with a manufacturer for the sale of new motor
11 vehicles, who is engaged in the business of purchasing, selling,
12 servicing, exchanging, or dealing in new motor vehicles, and who is
13 licensed or required to be licensed as a vehicle dealer by the state of
14 Washington.

15 ~~((+13+))~~ (14) "Nonconformity" means a defect, serious safety
16 defect, or condition that substantially impairs the use, value, or
17 safety of a new motor vehicle, but does not include a defect or
18 condition that is the result of abuse, neglect, or unauthorized
19 modification or alteration of the new motor vehicle.

20 ~~((+14+))~~ (15) "Purchase price" means the cash price of the new
21 motor vehicle appearing in the sales agreement or contract.

22 (a) "Purchase price" in the instance of a lease means the actual
23 written capitalized cost disclosed to the consumer contained in the
24 lease agreement. If there is no disclosed capitalized cost in the
25 lease agreement the "purchase price" is the manufacturer's suggested
26 retail price including manufacturer installed accessories or items of
27 optional equipment displayed on the manufacturer label, required by
28 U.S.C. Sec. 1232.

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

34 Where the consumer is a subsequent transferee and the consumer
35 selects repurchase of the motor vehicle, "purchase price" means the
36 consumer's subsequent purchase price. Where the consumer is a
37 subsequent transferee and the consumer selects replacement of the motor
38 vehicle, "purchase price" means the original purchase price.

1 ~~((+15+))~~ (16) "Reasonable offset for use" means the definition
2 provided in RCW 19.118.041(1)(c) ~~((for a new motor vehicle other than~~
3 ~~a new motorcycle. The reasonable offset for use for a new motorcycle~~
4 ~~shall be computed by the number of miles that the vehicle traveled~~
5 ~~before the manufacturer's acceptance of the vehicle upon repurchase or~~
6 ~~replacement multiplied by the purchase price, and divided by twenty-~~
7 ~~five thousand))~~.

8 ~~((+16+))~~ (17) "Reasonable number of attempts" means the definition
9 provided in RCW 19.118.041.

10 ~~((+17+))~~ (18) "Replacement motor vehicle" means a new motor vehicle
11 that is identical or reasonably equivalent to the motor vehicle to be
12 replaced, as the motor vehicle to be replaced existed at the time of
13 original purchase or lease, including any service contract,
14 undercoating, rustproofing, and factory or dealer installed options.

15 ~~((+18+))~~ (19) "Serious safety defect" means a life-threatening
16 malfunction or nonconformity that impedes the consumer's ability to
17 control or operate the new motor vehicle for ordinary use or reasonable
18 intended purposes or creates a risk of fire or explosion.

19 ~~((+19+))~~ (20) "Subsequent transferee" means a consumer who acquires
20 a motor vehicle, within the ~~((warranty))~~ eligibility period, as defined
21 in this section, with an applicable manufacturer's written warranty and
22 where the vehicle otherwise met the definition of a new motor vehicle
23 at the time of original retail sale or lease.

24 ~~((+20+))~~ (21) "Substantially impair" means to render the new motor
25 vehicle unreliable, or unsafe for ordinary use, or to diminish the
26 resale value of the new motor vehicle below the average resale value
27 for comparable motor vehicles.

28 ~~((+21+))~~ (22) "Warranty" means any implied warranty, any written
29 warranty of the manufacturer, or any affirmation of fact or promise
30 made by the manufacturer in connection with the sale of a new motor
31 vehicle that becomes part of the basis of the bargain. The term
32 "warranty" pertains to the obligations of the manufacturer in relation
33 to materials, workmanship, a modification by a new motor vehicle dealer
34 installing the new motor vehicle manufacturer's authorized parts or
35 their equivalent for the specific new motor vehicle pursuant to the
36 manufacturer approved specifications, and fitness of a new motor
37 vehicle for ordinary use or reasonably intended purposes throughout the

1 duration of the ((warranty)) eligibility period as defined under this
2 section.

3 ~~((22) "Warranty period" means the period ending two years after
4 the date of the original delivery to the consumer of a new motor
5 vehicle, or the first twenty four thousand miles of operation,
6 whichever occurs first.))~~

7 **Sec. 2.** RCW 19.118.031 and 1998 c 298 s 3 are each amended to read
8 as follows:

9 (1) The manufacturer shall publish an owner's manual and provide it
10 to the new motor vehicle dealer or leasing company. The owner's manual
11 shall include a list of the addresses and phone numbers for the
12 manufacturer's customer assistance division, or zone or regional
13 offices. A manufacturer shall provide to the new motor vehicle dealer
14 or leasing company all applicable manufacturer's written warranties.
15 The dealer or leasing company shall transfer to the consumer, at the
16 time of original retail sale or lease, the owner's manual and
17 applicable written warranties as provided by a manufacturer.

18 (2) At the time of purchase, the new motor vehicle dealer shall
19 provide the consumer with a written statement that explains the
20 consumer's rights under this chapter. The written statement shall be
21 prepared and supplied by the attorney general and shall contain a toll-
22 free number that the consumer can contact for information regarding the
23 procedures and remedies under this chapter. In the event a consumer
24 requests modification of the new motor vehicle in a manner which may
25 partially or completely void the manufacturer's implied or express
26 warranty, and which becomes part of the basis of the bargain of the
27 initial retail sale or lease of the vehicle, a new motor vehicle dealer
28 shall provide a clear and conspicuous written disclosure, independently
29 signed and dated by the consumer, stating "Your requested modification
30 may void all or part of a manufacturer warranty and a resulting defect
31 or condition may not be subject to remedies afforded by the motor
32 vehicle warranties act, chapter 19.118 RCW." A dealer who obtains a
33 signed written disclosure under circumstances where the warranty may be
34 void is not subject to this chapter as a manufacturer to the extent the
35 modification affects the use, value, or safety of a new motor vehicle.
36 Failure to provide the disclosure specified in this subsection does not
37 constitute a violation of chapter 19.86 RCW.

1 (3) For the purposes of this chapter, if a new motor vehicle does
2 not conform to the warranty and the consumer reports the nonconformity
3 during the term of the ((warranty)) eligibility period or the period of
4 coverage of the applicable manufacturer's written warranty, whichever
5 is less, to the manufacturer, its agent, or the new motor vehicle
6 dealer who sold the new motor vehicle, the manufacturer, its agent, or
7 the new motor vehicle dealer shall make repairs as are necessary to
8 conform the vehicle to the warranty, regardless of whether such repairs
9 are made after the expiration of the ((warranty)) eligibility period.
10 Any corrections or attempted repairs undertaken by a new motor vehicle
11 dealer under this chapter shall be treated as warranty work and billed
12 by the dealer to the manufacturer in the same manner as other work
13 under the manufacturer's written warranty is billed. For purposes of
14 this subsection, the manufacturer's written warranty shall be at least
15 one year after the date of the original delivery to the consumer of the
16 vehicle or the first twelve thousand miles of operation, whichever
17 occurs first.

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

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

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

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

4 (8) The ((warranty)) eligibility period and thirty-day out-of-
5 service period, and sixty-day out-of-service period in the case of a
6 motor home, shall be extended by any time that repair services are not
7 available to the consumer as a direct result of a strike, war,
8 invasion, fire, flood, or other natural disaster.

9 **Sec. 3.** RCW 19.118.041 and 2007 c 426 s 1 are each amended to read
10 as follows:

11 (1) If the manufacturer, its agent, or the new motor vehicle dealer
12 is unable to conform the new motor vehicle to the warranty by repairing
13 or correcting any nonconformity after a reasonable number of attempts,
14 the manufacturer, within forty calendar days of a consumer's written
15 request to the manufacturer's corporate, dispute resolution, zone, or
16 regional office address shall, at the option of the consumer, replace
17 or repurchase the new motor vehicle.

18 (a) The replacement motor vehicle shall be identical or reasonably
19 equivalent to the motor vehicle to be replaced as the motor vehicle to
20 be replaced existed at the time of original purchase or lease,
21 including any service contract, undercoating, rustproofing, and factory
22 or dealer installed options. Where the manufacturer supplies a
23 replacement motor vehicle, the manufacturer shall be responsible for
24 sales tax, license, registration fees, and refund of any incidental
25 costs. Compensation for a reasonable offset for use shall be paid by
26 the consumer to the manufacturer in the event that the consumer accepts
27 a replacement motor vehicle.

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

1 the lessor's and/or lienholder's receipt of that payment and payment by
2 the consumer of any late payment charges, the consumer shall be
3 relieved of any future obligation to the lessor and/or lienholder.

4 (c) The reasonable offset for use shall be computed by multiplying
5 the number of miles that the vehicle traveled directly attributable to
6 use by the consumer during the time between the original purchase,
7 lease, or in-service date and the date beginning the first attempt to
8 diagnose or repair a nonconformity which ultimately results in the
9 repurchase or replacement of the vehicle multiplied times the purchase
10 price, and dividing the product by one hundred twenty thousand, except
11 in the case of a motor home, in which event it shall be divided by
12 ninety thousand or in the case of a motorcycle, it shall be divided by
13 forty thousand. However, the reasonable offset for use calculation
14 total for a motor home is subject to modification by the board by
15 decreasing or increasing the offset total up to a maximum of one-third
16 of the offset total. The board may modify the offset total in those
17 circumstances where the board determines that the wear and tear on
18 those portions of the motor home designated, used, or maintained
19 primarily as a mobile dwelling, office, or commercial space are
20 significantly greater or significantly less than that which could be
21 reasonably expected based on the mileage attributable to the consumer's
22 use of the motor home. Except in the case of a motor home, where a
23 manufacturer repurchases or replaces a vehicle solely due to
24 accumulated days out of service by reason of diagnosis or repair of one
25 or more nonconformities, "the number of miles that the vehicle traveled
26 directly attributable to use by the consumer" shall be limited to the
27 period between the original purchase, lease, or in-service date and the
28 date of the fifteenth cumulative calendar day out of service. Where
29 the consumer is a second or subsequent purchaser, lessee, or transferee
30 of the motor vehicle and the consumer selects repurchase of the motor
31 vehicle, "the number of miles that the vehicle traveled" directly
32 attributable to use by the consumer shall be limited to the period
33 between the date of purchase, lease by, or transfer to the consumer and
34 the date of the consumer's initial attempt to obtain diagnosis or
35 repair of a nonconformity which ultimately results in the repurchase or
36 replacement of the vehicle or which adds to thirty or more cumulative
37 calendar days out of service. Where the consumer is a second or
38 subsequent purchaser, lessee, or transferee of the motor vehicle and

1 the consumer selects replacement of the motor vehicle, "the number of
2 miles that the vehicle traveled" directly attributable to use by the
3 consumer shall be calculated from the date of the original purchase,
4 lease, or in-service date and the first attempt to diagnose or repair
5 a nonconformity which ultimately results in the replacement of the
6 vehicle. Except in the case of a motor home, where the consumer is a
7 second or subsequent purchaser, lessee, or transferee of the motor
8 vehicle and the manufacturer replaces the vehicle solely due to
9 accumulated days out of service by reason of diagnosis or repair of one
10 or more nonconformities, "the number of miles that the vehicle
11 traveled" directly attributable to use by the consumer shall be
12 calculated from the date of the original purchase, lease, or in service
13 date and the date of the fifteenth cumulative calendar day out of
14 service.

15 (d) In the case of a motor vehicle that is a motor home, where a
16 manufacturer repurchases or replaces a motor home from the first
17 purchaser, lessee, or transferee or from the second or subsequent
18 purchaser, lessee, or transferee solely due to accumulated days out of
19 service by reason of diagnosis or repair of one or more
20 nonconformities, "the number of miles that a motor home traveled
21 directly attributable to use by the consumer" shall be limited to the
22 period between the original purchase, lease, or in-service date and the
23 date of the thirtieth cumulative calendar day out-of-service.

24 (2) Reasonable number of attempts, except in the case of a new
25 motor vehicle that is a motor home acquired after June 30, 1998, shall
26 be deemed to have been undertaken by the manufacturer, its agent, or
27 the new motor vehicle dealer to conform the new motor vehicle to the
28 warranty within the (~~warranty~~) eligibility period, if: (a) The same
29 serious safety defect has been subject to diagnosis or repair two 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 serious safety
32 defect continues to exist; (b) the same nonconformity has been subject
33 to diagnosis or repair four or more times, at least one of which is
34 during the period of coverage of the applicable manufacturer's written
35 warranty, and the nonconformity continues to exist; (~~or~~) (c) the
36 vehicle is out of service by reason of diagnosis or repair of one or
37 more nonconformities for a cumulative total of thirty calendar days, at
38 least fifteen of them during the period of the applicable

1 manufacturer's written warranty; (d) two or more different serious
2 safety defects have been subject to diagnosis or repair one or more
3 times, where at least one attempt for each serious safety defect or
4 nonconformity occurs during the period of coverage of the applicable
5 manufacturer's written warranty and within the eligibility period; (e)
6 five or more different nonconformities have been subject to diagnosis
7 or repair one or more times, where at least one attempt for each
8 serious safety defect or nonconformity occurs during the period of
9 coverage of the applicable manufacturer's written warranty; or (f)
10 twelve or more attempts to diagnose or repair one or more
11 nonconformities, where at least one attempt for each nonconformity
12 occurs during the period of coverage of the applicable manufacturer's
13 written warranty and the eligibility period. For purposes of this
14 subsection, the manufacturer's written warranty shall be at least one
15 year after the date of the original delivery to the consumer of the
16 vehicle or the first twelve thousand miles of operation, whichever
17 occurs first. A new motor vehicle is deemed to have been "subject to
18 diagnose or repair" when a consumer presents the new motor vehicle for
19 warranty service at a service and repair facility authorized,
20 designated, or maintained by a manufacturer to provide warranty
21 services or a facility to which the manufacturer or an authorized
22 facility has directed the consumer to obtain warranty service. A new
23 motor vehicle has not been "subject to diagnose or repair" if the
24 consumer refuses to allow the facility to attempt or complete a
25 recommended warranty repair, or demands return of the vehicle to the
26 consumer before an attempt to diagnose or repair can be completed.

27 (3)(a) In the case of a new motor vehicle that is a motor home
28 acquired after June 30, 1998, a reasonable number of attempts shall be
29 deemed to have been undertaken by the motor home manufacturers, their
30 respective agents, or their respective new motor vehicle dealers to
31 conform the new motor vehicle to the warranty within the ((warranty))
32 eligibility period, if: (i) The same serious safety defect has been
33 subject to diagnosis or repair one or more times during the period of
34 coverage of the applicable motor home manufacturer's written warranty,
35 plus a final attempt to repair the vehicle as provided for in (b) of
36 this subsection, and the serious safety defect continues to exist; (ii)
37 the same nonconformity has been subject to repair three or more times,
38 at least one of which is during the period of coverage of the

1 applicable motor home manufacturer's written warranty, plus a final
2 attempt to repair the vehicle as provided for in (b) of this
3 subsection, and the nonconformity continues to exist; ~~((e))~~ (iii) the
4 vehicle is out of service by reason of diagnosis or repair of one or
5 more nonconformities for a cumulative total of sixty calendar days
6 aggregating all motor home manufacturer days out of service, and the
7 motor home manufacturers have had at least one opportunity to
8 coordinate and complete an inspection and any repairs of the vehicle's
9 nonconformities after receipt of notification from the consumer as
10 provided for in (c) of this subsection; (iv) two or more different
11 serious safety defects have been subject to diagnosis or repair one or
12 more times, where at least one attempt for each serious safety defect
13 or nonconformity occurs during the period of coverage of the applicable
14 manufacturer's written warranty and within the eligibility period.
15 Requests or notices for a final repair attempt are not required; (v)
16 five or more different nonconformities have been subject to diagnosis
17 or repair one or more times, where at least one attempt for each
18 serious safety defect or nonconformity occurs during the period of
19 coverage of the applicable manufacturer's written warranty and requests
20 or notices for a final repair attempt are not required; or (vi) twelve
21 or more attempts to diagnose or repair one or more nonconformities,
22 where at least one attempt for each nonconformity occurs during the
23 period of coverage of the applicable manufacturer's written warranty
24 and the eligibility period. Requests or notices for a final repair
25 attempt are not required. For purposes of this subsection, each motor
26 home manufacturer's written warranty must be at least one year after
27 the date of the original delivery to the consumer of the vehicle or the
28 first twelve thousand miles of operation, whichever occurs first.

29 (b) In the case of a new motor vehicle that is a motor home, after
30 one attempt has been made to repair a serious safety defect, or after
31 three attempts have been made to repair the same nonconformity, the
32 consumer shall give written notification of the need to repair the
33 nonconformity to each of the motor home manufacturers at their
34 respective corporate, zone, or regional office addresses to allow the
35 motor home manufacturers to coordinate and complete a final attempt to
36 cure the nonconformity. The motor home manufacturers each have fifteen
37 days, commencing upon receipt of the notification, to respond and
38 inform the consumer of the location of the facility where the vehicle

1 will be repaired. If the vehicle is unsafe to drive due to a serious
2 safety defect, or to the extent the repair facility is more than one
3 hundred miles from the motor home location, the motor home
4 manufacturers are responsible for the cost of transporting the vehicle
5 to and from the repair facility. The motor home manufacturers have a
6 cumulative total of thirty days, commencing upon delivery of the
7 vehicle to the designated repair facility by the consumer, to conform
8 the vehicle to the applicable motor home manufacturer's written
9 warranty. This time period may be extended if the consumer agrees in
10 writing. If a motor home manufacturer fails to respond to the consumer
11 or perform the repairs within the time period prescribed, that motor
12 home manufacturer is not entitled to a final attempt to cure the
13 nonconformity.

14 (c) In the case of a new motor vehicle that is a motor home, if the
15 vehicle is out of service by reason of diagnosis or repair of one or
16 more nonconformities by the motor home manufacturers, their respective
17 agents, or their respective new motor vehicle dealers for a cumulative
18 total of thirty or more days aggregating all motor home manufacturer
19 days out of service, the consumer shall so notify each motor home
20 manufacturer in writing at their respective corporate, zone, or
21 regional office addresses to allow the motor home manufacturers, their
22 respective agents, or their respective new motor vehicle dealers an
23 opportunity to coordinate and complete an inspection and any repairs of
24 the vehicle's nonconformities. The motor home manufacturers have
25 fifteen days, commencing upon receipt of the notification, to respond
26 and inform the consumer of the location of the facility where the
27 vehicle will be repaired. If the vehicle is unsafe to drive due to a
28 serious safety defect, or to the extent the repair facility is more
29 than one hundred miles from the motor home location, the motor home
30 manufacturers are responsible for the cost of transporting the vehicle
31 to and from the repair facility. Once the buyer delivers the vehicle
32 to the designated repair facility, the inspection and repairs must be
33 completed by the motor home manufacturers either (i) within ten days or
34 (ii) before the vehicle is out of service by reason of diagnosis or
35 repair of one or more nonconformities for sixty days, whichever time
36 period is longer. This time period may be extended if the consumer
37 agrees in writing. If a motor home manufacturer fails to respond to
38 the consumer or perform the repairs within the time period prescribed,

1 that motor home manufacturer is not entitled to at least one
2 opportunity to inspect and repair the vehicle's nonconformities after
3 receipt of notification from the buyer as provided for in this
4 subsection (3)(c).

5 (4) No new motor vehicle dealer may be held liable by the
6 manufacturer for any collateral charges, incidental costs, purchase
7 price refunds, or vehicle replacements. Manufacturers shall not have
8 a cause of action against dealers under this chapter. (~~Consumers~~
9 ~~shall not have a cause of action against dealers under this chapter,~~
10 ~~but a violation of any responsibilities imposed upon dealers under this~~
11 ~~chapter is a per se violation of chapter 19.86 RCW.)) A violation of
12 any responsibilities expressly imposed upon dealers under this chapter
13 is a per se violation of chapter 19.86 RCW. Except in the limited
14 circumstances of a dealer becoming a manufacturer due to a
15 postmanufacturing modification of a new motor vehicle as defined in RCW
16 19.118.021(8), consumers shall not have a cause of action against
17 dealers under this chapter. Consumers may pursue rights and remedies
18 against dealers under any other law, including chapters 46.70 and 46.71
19 RCW. Manufacturers and consumers may not make dealers parties to
20 arbitration board proceedings under this chapter.~~

21 **Sec. 4.** RCW 19.118.061 and 1998 c 298 s 5 are each amended to read
22 as follows:

23 (1) A manufacturer shall be prohibited from reselling any motor
24 vehicle determined or adjudicated as having a serious safety defect
25 unless the serious safety defect has been corrected and the
26 manufacturer warrants upon the first subsequent resale that the defect
27 has been corrected.

28 (2) Before any sale or transfer of a vehicle that has been replaced
29 or repurchased by the manufacturer (~~that was determined or adjudicated~~
30 ~~as having a nonconformity or to have been out of service for thirty or~~
31 ~~more calendar days, or sixty or more calendar days in the case of a~~
32 ~~motor home,~~) after a determination, adjudication, or settlement of a
33 claim under this chapter, the manufacturer shall:

34 (a) Notify the attorney general (~~and the department of licensing,~~
35 ~~by certified mail or by personal service,~~) upon receipt of the motor
36 vehicle and title of the motor vehicle in the name of the manufacturer
37 within sixty days;

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

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

7 (3) Upon the first subsequent resale, either at wholesale or
8 retail, or transfer of title of a motor vehicle and which was
9 previously returned after a final determination, adjudication, or
10 settlement under this chapter or under a similar statute of any other
11 state, the manufacturer, its agent, or the new motor vehicle dealer who
12 has actual knowledge of said final determination, adjudication or
13 settlement, shall execute and deliver to the buyer before sale an
14 instrument in writing setting forth information identifying the
15 nonconformity in a manner to be specified by the attorney general, and
16 the department of licensing shall place on the certificate of title
17 information indicating the vehicle was returned under this chapter.

18 (4) Upon receipt of the manufacturer's notification under
19 subsection (2) of this section that the nonconformity has been
20 corrected and ~~((upon))~~ the manufacturer's ~~((request and payment of any
21 fees))~~ application for title in the name of the manufacturer under this
22 section, the department of licensing shall issue a new title with
23 ~~((information))~~ a title brand indicating the vehicle was returned under
24 this chapter and information that the nonconformity has been corrected.
25 Upon the first subsequent resale, either at wholesale or retail, or
26 transfer of title of a motor vehicle, as provided under ~~((subsection
27 (2)(c) of))~~ this section, the manufacturer shall warrant upon the
28 resale that the nonconformity has been corrected, and the manufacturer,
29 its agent, or the new motor vehicle dealer who has actual knowledge of
30 the corrected nonconformity, shall execute and deliver to the buyer
31 before sale an instrument in writing setting forth information
32 identifying the nonconformity and indicating that it has been corrected
33 in a manner to be specified by the attorney general.

34 (5) After repurchase or replacement and following a manufacturer's
35 receipt of a vehicle under this section and prior to a vehicle's first
36 subsequent retail transfer by resale or lease, any intervening
37 transferor of a vehicle subject to the requirements of this section who
38 has received the disclosure, correction and warranty documents, as

1 specified by the attorney general and required under this chapter,
2 shall deliver the documents with the vehicle to the next transferor,
3 purchaser or lessee to ensure proper and timely notice and disclosure.
4 Any intervening transferor who fails to comply with this subsection
5 shall, at the option of the subsequent transferor or first subsequent
6 retail purchaser or lessee: (a) Indemnify any subsequent transferor or
7 first subsequent retail purchaser for all damages caused by such
8 violation; or (b) repurchase the vehicle at the full purchase price
9 including all fees, taxes and costs incurred for goods and services
10 which were included in the subsequent transaction.

11 **Sec. 5.** RCW 19.118.080 and 1998 c 245 s 7 are each amended to read
12 as follows:

13 (1) Except as provided in RCW 19.118.160, the attorney general
14 shall contract with one or more (~~private~~) entities to conduct
15 arbitration proceedings in order to settle disputes between consumers
16 and manufacturers as provided in this chapter, and each (~~private~~)
17 entity shall constitute a new motor vehicle arbitration board for
18 purposes of this chapter. The entities shall not be affiliated with
19 any manufacturer or new motor vehicle dealer and shall have available
20 the services of persons with automotive technical expertise to assist
21 in resolving disputes under this chapter. No (~~private~~) entity or its
22 officers or employees conducting board proceedings and no arbitrator
23 presiding at such proceedings shall be directly involved in the
24 manufacture, distribution, sale, or warranty service of any motor
25 vehicle. Payment to the entities for the arbitration services shall be
26 made from the new motor vehicle arbitration account.

27 (2) The attorney general shall adopt rules for the uniform conduct
28 of the arbitrations by the boards whether conducted by (~~a private~~) an
29 entity or by the attorney general pursuant to RCW 19.118.160, which
30 rules shall include but not be limited to the following procedures:

31 (a) At all arbitration proceedings, the parties are entitled to
32 present oral and written testimony, to present witnesses and evidence
33 relevant to the dispute, to cross-examine witnesses, and to be
34 represented by counsel.

35 (b) A dealer, manufacturer, or other persons shall produce records
36 and documents requested by a party which are reasonably related to the

1 dispute. If a dealer, manufacturer, or other person refuses to comply
2 with such a request, a party may present a request (~~(to the board)~~) for
3 the attorney general to issue a subpoena (~~(on behalf of the board)~~).

4 The subpoena shall be issued only for the production of records and
5 documents which the (~~board~~) attorney general has determined are
6 reasonably related to the dispute, including but not limited to
7 documents described in RCW 19.118.031 (4) or (5).

8 If a party fails to comply with the subpoena, the arbitrator may at
9 the outset of the arbitration hearing impose any of the following
10 sanctions: (i) Find that the matters which were the subject of the
11 subpoena, or any other designated facts, shall be taken to be
12 established for purposes of the hearing in accordance with the claim of
13 the party which requested the subpoena; (ii) refuse to allow the
14 disobedient party to support or oppose the designated claims or
15 defenses, or prohibit that party from introducing designated matters
16 into evidence; (iii) strike claims or defenses, or parts thereof; or
17 (iv) render a decision by default against the disobedient party.

18 If a nonparty fails to comply with a subpoena and upon an
19 arbitrator finding that without such compliance there is insufficient
20 evidence to render a decision in the dispute, the attorney general
21 (~~shall~~) may enforce such subpoena in superior court and the
22 arbitrator shall continue the arbitration hearing until such time as
23 the nonparty complies with the subpoena or the subpoena is quashed.

24 (c) A party may obtain written affidavits from employees and agents
25 of a dealer, a manufacturer or other party, or from other potential
26 witnesses, and may submit such affidavits for consideration by the
27 board.

28 (d) Records of the board proceedings shall be open to the public.
29 The hearings shall be open to the public to the extent practicable.

30 (e) (~~Where the board proceedings are conducted by one or more~~
31 ~~private entities,~~) A single arbitrator may be designated to preside at
32 such proceedings.

33 (3) A consumer shall exhaust the new motor vehicle arbitration
34 board remedy or informal dispute resolution settlement procedure under
35 RCW 19.118.150 before filing any superior court action.

36 (4) The attorney general shall maintain records of each dispute
37 submitted to the new motor vehicle arbitration board, including an
38 index of new motor vehicles by year, make, and model.

1 (5) The attorney general shall compile aggregate annual statistics
2 for all disputes submitted to, and decided by, the new motor vehicle
3 arbitration board, as well as annual statistics for each manufacturer
4 that include, but shall not be limited to, the number and percent of:
5 (a) Replacement motor vehicle requests; (b) purchase price refund
6 requests; (c) replacement motor vehicles obtained in prehearing
7 settlements; (d) purchase price refunds obtained in prehearing
8 settlements; (e) replacement motor vehicles awarded in arbitration; (f)
9 purchase price refunds awarded in arbitration; (g) board decisions
10 neither complied with during the forty calendar day period nor
11 petitioned for appeal within the thirty calendar day period; (h) board
12 decisions appealed categorized by consumer or manufacturer; (i) the
13 nature of the court decisions and who the prevailing party was; (j)
14 appeals that were held by the court to be brought without good cause;
15 and (k) appeals that were held by the court to be brought solely for
16 the purpose of harassment. The statistical compilations shall be
17 public information.

18 (6) The attorney general shall adopt rules to implement this
19 chapter. Such rules shall include uniform standards by which the
20 boards shall make determinations under this chapter, including but not
21 limited to rules which provide:

22 (a) A board shall find that a nonconformity exists if it determines
23 that the consumer's new motor vehicle has a defect, serious safety
24 defect, or condition that substantially impairs the use, value, or
25 safety of the vehicle.

26 (b) A board shall find that a reasonable number of attempts to
27 repair a nonconformity have been undertaken if ~~((:—(i) The same serious~~
28 ~~safety defect has been subject to diagnosis or repair two or more~~
29 ~~times, at least one of which is during the period of coverage of the~~
30 ~~applicable manufacturer's written warranty, and the serious safety~~
31 ~~defect continues to exist; (ii) the same nonconformity has been subject~~
32 ~~to diagnosis or repair four or more times, at least one of which is~~
33 ~~during the period of coverage of the applicable manufacturer's written~~
34 ~~warranty, and the nonconformity continues to exist; or (iii) the~~
35 ~~vehicle is out of service by reason of diagnosis or repair of one or~~
36 ~~more nonconformities for a cumulative total of thirty calendar days, at~~
37 ~~least fifteen of them during the period of the applicable~~
38 ~~manufacturer's written warranty. For purposes of this subsection, the~~

1 manufacturer's written warranty shall be at least one year after the
2 date of the original delivery to the consumer of the vehicle or the
3 first twelve thousand miles of operation, whichever occurs first)) the
4 history of attempts to diagnose or repair defects or conditions in the
5 new motor vehicle meets or exceeds those identified in RCW 19.118.041.

6 (c) A board shall find that a manufacturer has failed to comply
7 with RCW 19.118.041 if it finds that the manufacturer, its agent, or
8 the new motor vehicle dealer has failed to correct a nonconformity
9 after a reasonable number of attempts and the manufacturer has failed,
10 within forty days of the consumer's written request, to repurchase the
11 vehicle or replace the vehicle with a vehicle identical or reasonably
12 equivalent to the vehicle being replaced.

13 (7) The attorney general shall provide consumers with information
14 regarding the procedures and remedies under this chapter.

15 **Sec. 6.** RCW 19.118.090 and 1998 c 298 s 6 are each amended to read
16 as follows:

17 (1) A consumer may request arbitration under this chapter by
18 submitting the request to the attorney general. Within ten days after
19 receipt of an arbitration request, the attorney general shall make a
20 reasonable determination of the cause of the request for arbitration
21 and provide necessary information to the consumer regarding the
22 consumer's rights and remedies under this chapter. The attorney
23 general shall (~~assign the dispute to a board, except that if it~~
24 ~~clearly appears from the materials submitted by the consumer that the~~
25 ~~dispute is not eligible for arbitration, the attorney general may~~
26 ~~refuse to assign the dispute and shall explain any required procedures~~
27 ~~to the consumer)) accept a request for arbitration, except where it
28 clearly appears from the materials submitted by the consumer that the
29 dispute is not eligible because it is lacking a statement of a claim,
30 incomplete, untimely, frivolous, fraudulent, filed in bad faith, res
31 judicata, or beyond the authority established in this chapter. A
32 dispute found to be ineligible for arbitration because it lacks a
33 statement of a claim or is incomplete may be reconsidered by the
34 attorney general upon the submission of other information or documents
35 regarding the dispute.~~

36 (2) After a dispute is accepted, the attorney general shall assign
37 the dispute to the board. From the date the consumer's request for

1 arbitration is assigned by the attorney general, the board shall have
2 forty-five calendar days to have an arbitrator hear the dispute and
3 sixty days for the board to submit a decision to the attorney general.
4 If the board determines that additional information is necessary to
5 make a fair and reasoned decision, the arbitrator may continue the
6 arbitration proceeding on a subsequent date within ten calendar days of
7 the initial hearing. The board may require a party to submit
8 additional information or request that the attorney general issue a
9 subpoena to a nonparty for documents and records for a continued
10 hearing.

11 ((+2)) (3) Manufacturers shall submit to arbitration if such
12 arbitration is requested by the consumer within ((thirty)) forty-two
13 months from the date of the original delivery of the new motor vehicle
14 to a consumer at retail and if the consumer's dispute is ((deemed
15 eligible)) accepted for arbitration by the ((board)) attorney general.
16 In the case of a motor home, the ((thirty-)) forty-two month period
17 will be extended by the amount of time it takes the motor home
18 manufacturers to complete the final repair attempt at the designated
19 repair facility as 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)) attorney general
37 within ten calendar days from the date of the manufacturer's receipt of
38 ((the board's)) notice of ((acceptance)) the attorney general's

1 assignment of a dispute for arbitration. The manufacturer response
2 shall include all issues and affirmative defenses related to the
3 nonconformities identified in the consumer's request for arbitration
4 that the manufacturer intends to raise at the arbitration hearing.

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

14 ~~In the case of an arbitration involving a motor home, the board may
15 allocate liability among the motor home manufacturers.~~

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

21 ~~(7) The board shall have forty five calendar days from the date the
22 board receives the consumer's request for arbitration to hear the
23 dispute. If the board determines that additional information is
24 necessary, the board may continue the arbitration proceeding on a
25 subsequent date within ten calendar days of the initial hearing. The
26 board shall decide the dispute within sixty calendar days from the date
27 the board receives the consumer's request for arbitration.)~~ It is an
28 affirmative defense to any claim under this chapter that: (a) The
29 alleged nonconformity does not substantially impair the use, value, or
30 safety of the new motor vehicle; or (b) the alleged nonconformity is
31 the result of abuse, neglect, or unauthorized modifications or
32 alterations of the new motor vehicle.

33 (6) The arbitration decision ((of the board shall be delivered by
34 certified mail or personal service to the consumer and the
35 manufacturer, and shall)) must contain a written finding of whether the
36 new motor vehicle ((meets)) should be repurchased or replaced pursuant
37 to the standards set forth under this chapter.

1 ~~((+8))~~ (a) The board shall award the remedies under this chapter
2 if a finding is made pursuant to RCW 19.118.041 that one or more
3 nonconformities have been subject to a reasonable number of attempts.

4 (b) If the board awards remedies under this chapter after a finding
5 is made pursuant to RCW 19.118.041 that one or more nonconformities
6 have been subject to a reasonable number of attempts, the board shall
7 award reasonable costs and attorneys' fees incurred by the consumer
8 where the manufacturer has been directly represented by counsel: (i)
9 In dealings with the consumer in response to a request to repurchase or
10 replace under RCW 19.118.041; (ii) in settlement negotiations; (iii) in
11 preparation of the manufacturer's statement; or (iv) at an arbitration
12 hearing or other arbitration proceeding. In the case of an arbitration
13 involving a motor home, the board may allocate liability among the
14 motor home manufacturers.

15 (c) The decision of the board shall be submitted to the attorney
16 general who shall deliver it by certified mail, electronic mail
17 confirmed by an electronic notice of delivery status or similar
18 confirmation, or personal service to the consumer and the manufacturer.

19 (7) The consumer may accept or reject the arbitration board
20 decision (~~or appeal to superior court, pursuant to RCW 19.118.100~~).
21 Upon acceptance by the consumer, the arbitration board decision shall
22 become final. The consumer shall send written notification of
23 acceptance or rejection to the (~~arbitration board~~) attorney general
24 within sixty days of receiving the decision and the (~~arbitration~~
25 board) attorney general shall immediately deliver a copy of the
26 consumer's acceptance to the manufacturer by certified mail, return
27 receipt requested, electronic mail confirmed by an electronic notice of
28 delivery status or similar confirmation, or by personal service.
29 Failure of the consumer to respond to the (~~arbitration board~~)
30 attorney general within sixty calendar days of receiving the decision
31 shall be considered a rejection of the decision by the consumer.

32 (8) Where a consumer rejects an arbitration decision, the consumer
33 may appeal to superior court pursuant to RCW 19.118.100. The consumer
34 shall have one hundred twenty calendar days from the date of rejection
35 to file a petition of appeal in superior court. At the time the
36 petition of appeal is filed, the consumer shall deliver, by certified
37 mail or personal service, a conformed copy of such petition to the
38 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.

10 **Sec. 7.** RCW 19.118.095 and 1995 c 254 s 8 are each amended to read
11 as follows:

12 (1) Compliance with an arbitration board decision under this
13 chapter must be accomplished at a time, place, and in a manner to be
14 determined by the mutual agreement of the consumer and manufacturer.

15 (a) The consumer shall make the motor vehicle available to the
16 manufacturer free of damage other than that related to any
17 nonconformity, defect, or condition to which a warranty applied, or
18 that can reasonably be expected in the use of the vehicle for ordinary
19 or reasonably intended purposes and in consideration of the (~~mileage~~
20 ~~attributable to the consumer's use~~) miles traveled by the vehicle.
21 Any insurance claims or settlement proceeds for repair of damage to the
22 vehicle due to fire, theft, vandalism, or collision must be assigned to
23 the manufacturer or, at the consumer's option, the repair must be
24 completed before return of the vehicle to the manufacturer.

25 The consumer may not remove any equipment or option that was
26 included in the original purchase or lease of the vehicle or that is
27 otherwise included in the repurchase or replacement award. In removing
28 any equipment not included in the original purchase or lease, the
29 consumer shall exercise reasonable care to avoid further damage to the
30 vehicle but is not required to return the vehicle to original
31 condition.

32 (b) At the time of compliance with an arbitration board decision
33 that awards repurchase, the manufacturer shall make full payment to the
34 consumers and either the lessor or lienholder, or both, or provide
35 verification to the consumer of prior payment to either the lessor or
36 lienholder, or both.

1 At the time of compliance with an arbitration board decision that
2 awards replacement, the manufacturer shall provide the replacement
3 vehicle together with any refund of incidental costs.

4 (c) At any time before compliance a party may request the ((board))
5 attorney general to resolve disputes regarding compliance with the
6 arbitration board decision including but not limited to time and place
7 for compliance, condition of the vehicle to be returned, clarification
8 or recalculation of refund amounts under the award, or a determination
9 if an offered vehicle is reasonably equivalent to the vehicle being
10 replaced. The attorney general may resolve the dispute or refer
11 compliance-related disputes to the board pursuant to RCW 19.118.160 for
12 a compliance dispute hearing and decision. In resolving compliance
13 disputes the attorney general or board may not review, alter, or
14 otherwise change the findings of a decision or extend the time for
15 compliance beyond the time necessary ((for the board)) to resolve the
16 dispute.

17 (d) Failure of the consumer to make the vehicle available within
18 sixty calendar days in response to a manufacturer's unconditional
19 tender of compliance is considered a rejection of the arbitration
20 decision by the consumer, except as provided in (c) of this subsection
21 or subsection (2) of this section.

22 (2) If, at the end of the forty calendar day period, neither
23 compliance with nor a petition to appeal the board's decision has
24 occurred, the attorney general may impose a fine of up to one thousand
25 dollars per day until compliance occurs or a maximum penalty of one
26 hundred thousand dollars accrues unless the manufacturer can provide
27 clear and convincing evidence that any delay or failure was beyond its
28 control or was acceptable to the consumer as evidenced by a written
29 statement signed by the consumer. If the manufacturer fails to provide
30 the evidence or fails to pay the fine, the attorney general may
31 initiate proceedings against the manufacturer for failure to pay any
32 fine that accrues until compliance with the board's decision occurs or
33 the maximum penalty of one hundred thousand dollars results. If the
34 attorney general prevails in an enforcement action regarding any fine
35 imposed under this subsection, the attorney general is entitled to
36 reasonable costs and attorneys' fees. Fines and recovered costs and
37 fees shall be returned to the new motor vehicle arbitration account.

1 **Sec. 8.** RCW 19.118.100 and 1989 c 347 s 6 are each amended to read
2 as follows:

3 (1) The consumer or the manufacturer may request a trial de novo of
4 the arbitration decision, including a rejection, in superior court.

5 (2) If the manufacturer appeals, the court may require the
6 manufacturer to post security for the consumer's financial loss due to
7 the passage of time for review.

8 (3) If the consumer prevails, recovery shall include the monetary
9 value of the award, attorneys' fees and costs incurred in the superior
10 court action, and, if the board awarded the consumer replacement or
11 repurchase of the vehicle and the manufacturer did not comply,
12 continuing damages in the amount of (~~twenty-five~~) seventy-five
13 dollars per day for all days beyond the forty calendar day period
14 following the manufacturer's receipt of the consumer's acceptance of
15 the board's decision in which the manufacturer did not provide the
16 consumer with the free use of a comparable loaner replacement motor
17 vehicle. If it is determined by the court that the party that appealed
18 acted without good cause in bringing the appeal or brought the appeal
19 solely for the purpose of harassment, the court may triple, but at
20 least shall double, the amount of the total award.

21 **Sec. 9.** RCW 19.118.120 and 1987 c 344 s 10 are each amended to
22 read as follows:

23 The legislature finds that the practices covered by this chapter
24 are matters vitally affecting the public interest for the purpose of
25 applying the consumer protection act, chapter 19.86 RCW. A violation
26 of this chapter (~~shall constitute~~) is not reasonable in relation to
27 the development and preservation of business and is an unfair or
28 deceptive (~~trade practice affecting the public interest under~~) act in
29 trade or commerce and an unfair method of competition for the purpose
30 of applying the consumer protection act, chapter 19.86 RCW. (~~All~~
31 public and private remedies provided under that chapter shall be
32 available to enforce this chapter.)

33 **Sec. 10.** RCW 19.118.160 and 1989 c 347 s 9 are each amended to
34 read as follows:

35 If the attorney general is unable (~~at any time~~) to contract with
36 (~~private~~) one or more entities to conduct arbitrations (~~under the~~

1 ~~procedures and standards in this chapter)), the attorney general shall~~
2 ~~establish ((one or more new motor vehicle)) an arbitration ((boards-~~
3 ~~Each such board shall consist of three members appointed by the~~
4 ~~attorney general, only one of whom may be directly involved in the~~
5 ~~manufacture, distribution, sale, or service of any motor vehicle.~~
6 ~~Board members shall be reimbursed for travel expenses in accordance~~
7 ~~with RCW 43.03.050 and 43.03.060 and shall be compensated pursuant to~~
8 ~~RCW 43.03.240)) program and conduct arbitrations under the procedures~~
9 ~~and standards established in this chapter.~~

10 NEW SECTION. Sec. 11. This act is remedial in nature and applies
11 retroactively to the effective date of this act.

12 NEW SECTION. Sec. 12. If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

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