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SENATE BILL 5880

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State of Washington

53rd Legislature

1993 Regular Session

By Senator McCaslin

Read first time 02/22/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to motor vehicle warranties; and amending RCW  
2 19.118.021 and 19.118.041.

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

4 **Sec. 1.** RCW 19.118.021 and 1990 c 239 s 1 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) "Board" means new motor vehicle arbitration board.

9 (2) "Collateral charges" means any sales or lease related charges  
10 including but not limited to sales tax, use tax, arbitration service  
11 fees, unused license fees, unused registration fees, unused title fees,  
12 finance charges, prepayment penalties, credit disability and credit  
13 life insurance costs not otherwise refundable, any other insurance  
14 costs prorated for time out of service, transportation charges, dealer  
15 preparation charges, or any other charges for service contracts,  
16 undercoating, rustproofing, or factory or dealer installed options.

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

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

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

9 (6) "Disabled" means that a new motor vehicle will not start or  
10 cannot propel itself without causing damage or a violation of law.

11 (7) "Incidental costs" means any reasonable expenses incurred by  
12 the consumer in connection with the repair of the new motor vehicle,  
13 including any towing charges and the costs of obtaining alternative  
14 transportation.

15 ~~((+7))~~ (8) "Manufacturer" means any person engaged in the business  
16 of constructing or assembling new motor vehicles or engaged in the  
17 business of importing new motor vehicles into the United States for the  
18 purpose of selling or distributing new motor vehicles to new motor  
19 vehicle dealers. "Manufacturer" does not include any person engaged in  
20 the business of set-up of motorcycles as an agent of a new motor  
21 vehicle dealer if the person does not otherwise construct or assemble  
22 motorcycles.

23 ~~((+8))~~ (9) "Motorcycle" means any motorcycle as defined in RCW  
24 46.04.330 which has an engine displacement of at least seven hundred  
25 fifty cubic centimeters.

26 ~~((+9))~~ (10) "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,  
29 after original retail purchase or lease in this state, was initially  
30 registered in this state or for which a temporary motor vehicle license  
31 was issued pursuant to RCW 46.16.460, but does not include vehicles  
32 purchased or leased by a business as part of a fleet of ten or more  
33 vehicles. If the motor vehicle is a motor home, this chapter shall  
34 apply to the self-propelled vehicle and chassis, but does not include  
35 those portions of the vehicle designated, used, or maintained primarily  
36 as a mobile dwelling, office, or commercial space. The term "new motor  
37 vehicle" does not include trucks with nineteen thousand pounds or more  
38 gross vehicle weight rating. The term "new motor vehicle" includes a

1 demonstrator or lease-purchase vehicle as long as a manufacturer's  
2 warranty was issued as a condition of sale.

3 ~~((10))~~ (11) "New motor vehicle dealer" means a person who holds  
4 a dealer agreement with a manufacturer for the sale of new motor  
5 vehicles, who is engaged in the business of purchasing, selling,  
6 servicing, exchanging, or dealing in new motor vehicles, and who is  
7 licensed as a dealer by the state of Washington.

8 ~~((11))~~ (12) "Nonconformity" means a defect, serious safety  
9 defect, or condition that substantially impairs the use, value, or  
10 safety of a new motor vehicle, but does not include a defect or  
11 condition that is the result of abuse, neglect, or unauthorized  
12 modification or alteration of the new motor vehicle.

13 ~~((12))~~ (13) "Purchase price" means the cash price of the new  
14 motor vehicle appearing in the sales agreement or contract, including  
15 any allowance for a trade-in vehicle; "purchase price" in the instance  
16 of a lease means the purchase price or value of the vehicle declared to  
17 the department of licensing for purposes of tax collection.

18 Where the consumer is a second or subsequent purchaser, lessee, or  
19 transferee and the consumer selects repurchase of the motor vehicle,  
20 "purchase price" means the purchase price of the second or subsequent  
21 purchase or lease. Where the consumer is a second or subsequent  
22 purchaser, lessee, or transferee and the consumer selects replacement  
23 of the motor vehicle, "purchase price" means the original purchase  
24 price.

25 ~~((13))~~ (14) "Reasonable offset for use" means the definition  
26 provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a  
27 new motorcycle. The reasonable offset for use for a new motorcycle  
28 shall be computed by the number of miles that the vehicle traveled  
29 before the manufacturer's acceptance of the vehicle upon repurchase or  
30 replacement multiplied by the purchase price, and divided by twenty-  
31 five thousand.

32 ~~((14))~~ (15) "Reasonable number of attempts" means the definition  
33 provided in RCW 19.118.041.

34 ~~((15))~~ (16) "Replacement motor vehicle" means a new motor vehicle  
35 that is identical or reasonably equivalent to the motor vehicle to be  
36 replaced, as the motor vehicle to be replaced existed at the time of  
37 original purchase or lease, including any service contract,  
38 undercoating, rustproofing, and factory or dealer installed options.

1       (~~(16)~~) (17) "Serious safety defect" means a life-threatening  
2 malfunction or nonconformity that impedes the consumer's ability to  
3 control or operate the new motor vehicle for ordinary use or reasonable  
4 intended purposes or creates a risk of fire or explosion.

5       (~~(17)~~) (18) "Substantially impair" means to render the new motor  
6 vehicle unreliable, or unsafe for ordinary use, or to diminish the  
7 resale value of the new motor vehicle below the average resale value  
8 for comparable motor vehicles.

9       (~~(18)~~) (19) "Warranty" means any implied warranty, any written  
10 warranty of the manufacturer, or any affirmation of fact or promise  
11 made by the manufacturer in connection with the sale of a new motor  
12 vehicle that becomes part of the basis of the bargain. The term  
13 "warranty" pertains to the obligations of the manufacturer in relation  
14 to materials, workmanship, and fitness of a new motor vehicle for  
15 ordinary use or reasonably intended purposes throughout the duration of  
16 the warranty period as defined under this section.

17       (~~(19)~~) (20) "Warranty period" means the period ending two years  
18 after the date of the original delivery to the consumer of a new motor  
19 vehicle, or the first twenty-four thousand miles of operation,  
20 whichever occurs first.

21       **Sec. 2.** RCW 19.118.041 and 1989 c 347 s 2 are each amended to read  
22 as follows:

23       (1) If the manufacturer, its agent, or the new motor vehicle dealer  
24 is unable to conform the new motor vehicle to the warranty by repairing  
25 or correcting any nonconformity after a reasonable number of attempts,  
26 the manufacturer, within forty calendar days of a consumer's written  
27 request to the manufacturer's corporate, dispute resolution, zone, or  
28 regional office address shall, at the option of the consumer, replace  
29 or repurchase the new motor vehicle.

30       (a) The replacement motor vehicle shall be identical or reasonably  
31 equivalent to the motor vehicle to be replaced as the motor vehicle to  
32 be replaced existed at the time of original purchase or lease,  
33 including any service contract, undercoating, rustproofing, and factory  
34 or dealer installed options. Where the manufacturer supplies a  
35 replacement motor vehicle, the manufacturer shall be responsible for  
36 sales tax, license, and registration fees. Compensation for a  
37 reasonable offset for use shall be paid by the consumer to the

1 manufacturer in the event that the consumer accepts a replacement motor  
2 vehicle.

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

16 (c) The reasonable offset for use shall be computed by multiplying  
17 the number of miles that the vehicle traveled directly attributable to  
18 use by the consumer times the purchase price, and dividing the product  
19 by one hundred twenty-five thousand. Where the consumer is a second or  
20 subsequent purchaser, lessee, or transferee of the motor vehicle and  
21 the consumer selects repurchase of the motor vehicle, "the number of  
22 miles that the vehicle traveled" shall be calculated from the date of  
23 purchase or lease by the consumer. Where the consumer is a second or  
24 subsequent purchaser, lessee, or transferee of the motor vehicle and  
25 the consumer selects replacement of the motor vehicle, "the number of  
26 miles that the vehicle traveled" shall be calculated from the original  
27 purchase, lease, or in-service date.

28 (2) Reasonable number of attempts shall be deemed to have been  
29 undertaken by the manufacturer, its agent, or the new motor vehicle  
30 dealer to conform the new motor vehicle to the warranty within the  
31 warranty period, if: (a) The same serious safety defect has been  
32 subject to diagnosis or repair two or more times, at least one of which  
33 is during the period of coverage of the applicable manufacturer's  
34 written warranty, and the serious safety defect continues to exist; (b)  
35 the same nonconformity has been subject to diagnosis or repair four or  
36 more times, at least one of which is during the period of coverage of  
37 the applicable manufacturer's written warranty, and the nonconformity  
38 continues to exist; (c) the new motor vehicle has been disabled three  
39 times within an eighteen-month period for any reason; or ((+e)) (d)

1 the vehicle is out-of-service by reason of diagnosis or repair of one  
2 or more nonconformities for a cumulative total of thirty calendar days,  
3 at least fifteen of them during the period of the applicable  
4 manufacturer's written warranty. For purposes of this subsection, the  
5 manufacturer's written warranty shall be at least one year after the  
6 date of the original delivery to the consumer of the vehicle or the  
7 first twelve thousand miles of operation, whichever occurs first.

8 (3) No new motor vehicle dealer may be held liable by the  
9 manufacturer for any collateral charges, incidental costs, purchase  
10 price refunds, or vehicle replacements. Manufacturers shall not have  
11 a cause of action against dealers under this chapter. Consumers shall  
12 not have a cause of action against dealers under this chapter, but a  
13 violation of any responsibilities imposed upon dealers under this  
14 chapter is a per se violation of chapter 19.86 RCW. Consumers may  
15 pursue rights and remedies against dealers under any other law,  
16 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers  
17 may not make dealers parties to arbitration board proceedings under  
18 this chapter.

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