

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1988, the Florida Legislature substantially revised a law that makes car manufacturers responsible - under certain conditions - for replacing defective vehicles or refunding consumers' money. Commonly known as Florida's automobile "Lemon Law," the Motor Vehicle Warranty Enforcement Act (the "Act") established arbitration boards throughout the state to hear and settle complaints between car manufacturers and owners.¹ The Act is codified in Chapter 681, F.S.

The Act applies to any "motor vehicle," which is defined as "a new vehicle, propelled by power other than muscular power... and includes a recreational vehicle or a vehicle used as a demonstrator or leased vehicle... but does not include... off-road vehicles, trucks over 10,000 pounds..., motorcycles, mopeds, or the living facilities of recreational vehicles..." The Act is meant to protect consumers purchasing or leasing motor vehicles in Florida for personal use that have a manufacturing defect or non-conformity which substantially impairs the vehicle's value, use, or safety.

The Act operates as follows: If an authorized service agent is unable to repair a manufacturing defect after three attempts, or if the car is out of service for a total of 15 or more days while repairs are being made, a consumer has the right to file a motor vehicle defect notification by certified mail.

- If the complaint is based on three failed repair attempts, the manufacturer has 10 days after receipt of the letter to give the consumer the opportunity to take the vehicle in for final repairs within a reasonable time, and then has up to 10 days to remedy the problem once the car is in the shop. If the manufacturer does not comply with this procedure or the vehicle still has the same problems after the final repair attempts, the consumer is entitled to move to the next phase.
- If the complaint is based on the vehicle being out of service for 15 or more days, the manufacturer or its authorized agent has the opportunity to inspect or repair the vehicle. If the vehicle still does not conform to the warranty for a total of 30 or more days and the manufacturer has had the opportunity to repair, the consumer is entitled to move to the next phase.

Many manufacturers have informal dispute settlement programs certified by the state. If the processes above have not resolved the issue, the consumer must request a settlement through the manufacturer's program before requesting state arbitration. If the manufacturer has no such program or if the consumer is not satisfied after attempting the program, the consumer may notify the Florida Department of Agriculture and Consumer Services that he or she wishes to request a ruling by the New Motor Vehicle Arbitration Board. This request must be made within two years and 60 days from the

¹ This material adapted from *About the Florida Lemon Law Program*, Florida Department of Agriculture and Consumer Services, Division of Consumer Affairs, available online at the division's website, here: http://www.800helpfla.com/lemonlaw/lemon_text.html.

original date of delivery or within 30 days after final action by certified procedure, whichever date occurs later.

Under the informal dispute settlement program, a decision must be made within 40 days of filing a claim; otherwise the consumer may withdraw from the program and file with the state. If the New Motor Vehicle Arbitration Board accepts a consumer's request, it will hear the dispute within 40 days and render its decision within 60 calendar days of the date the request was approved.

If the board's decision is in the consumer's favor, the manufacturer has 40 calendar days to refund the purchase price of the vehicle plus collateral and incidental expenses or replace the vehicle with a new one. In either case, there will be a reasonable charge for usage.

Once the Arbitration Board rules on a case, either side may appeal the decision in a court of law. To protect the consumer, a judge may double or triple damages if the manufacturer appeals a case in bad faith.

According to the Florida Department of Agriculture and Consumer Affairs, "[t]he Lemon Law program has proven to be an effective means of recourse for Florida residents. Since the program's inception in 1988, Floridians have received over \$198 million in refunds and replacement vehicles through the state Lemon Law arbitration program."

Proposed Changes

HB 1439 modifies the current definition of "motor vehicle" found in section 681.102, F.S., by including "a motorcycle" in the types of motor vehicles covered by the act, and removing "motorcycles" from the types of motor vehicles excluded from the act. This modification gives consumers who purchase new motorcycles additional remedies, under the Lemon Law, against a manufacturer for defects or conditions that impair the use, value or safety of the motorcycle.

The bill also provides a definition of "motorcycle" as "any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped."

C. SECTION DIRECTORY:

Section 1. Amends s. 681.102, F.S., clarifying that "motorcycle" is included in the definition of "motor vehicle;" removing "motorcycle" from the exclusions of the that definition; defining "motorcycle."

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have an indeterminate fiscal impact, based on the number of claims submitted to, and accepted for hearing by, the New Motor Vehicle Arbitration Board within the Department of Agriculture and Consumer Affairs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on consumers whose motor vehicles would now receive the protections of the Motor Vehicle Warranty Enforcement Act. Conversely, the bill may have a negative economic impact on manufacturers of motor vehicles that require coverage under the Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's definition of "motorcycle" is identical to the definition of "motorcycle" contained in s. 320.01, F.S., relating to motor vehicles generally. In the event that the more general definition in Chapter 320, F.S., is modified by future legislation,² it may be advisable to replace the definition in this bill with a cross-reference to the s. 320.01, F.S. definition.

² See, e.g., current HB 1111.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES