

1
2 An act relating to the Motor Vehicle Warranty
3 Enforcement Act; amending s. 681.101, F.S.;
4 providing legislative intent; amending s.
5 681.102, F.S.; providing definitions; amending
6 s. 681.103, F.S.; revising language with
7 respect to the duty of the manufacturer to
8 conform a motor vehicle to the warranty;
9 amending s. 681.104, F.S.; including reference
10 to recreational vehicles with respect to
11 nonconformity of motor vehicles; providing
12 additional timeframes with respect to
13 recreational vehicles; amending s. 681.109,
14 F.S., relating to the Florida New Motor Vehicle
15 Arbitration Board and dispute eligibility;
16 revising procedures for dispute; providing for
17 rules; amending s. 681.1095, F.S.; increasing
18 membership on the board; providing for hearings
19 by panels of three board members; providing
20 timeframes for hearings; creating s. 681.1096,
21 F.S.; providing for a Pilot RV Mediation and
22 Arbitration Program; providing for creation and
23 qualifications; creating s. 681.1097, F.S.;
24 providing for dispute eligibility and program
25 functions; providing for mediation; providing
26 for arbitration; amending s. 681.113, F.S.;
27 revising language with respect to dealer
28 liability; amending s. 681.114, F.S.; revising
29 language with respect to resale of returned
30 vehicles; amending s. 319.14, F.S.; redefining
31 the term "settlement"; providing for the

1 application of the act; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 681.101, Florida Statutes, is
7 amended to read:

8 681.101 Legislative intent.--The Legislature
9 recognizes that a motor vehicle is a major consumer purchase
10 and that a defective motor vehicle undoubtedly creates a
11 hardship for the consumer. The Legislature further recognizes
12 that a duly franchised motor vehicle dealer is an authorized
13 service agent of the manufacturer. It is the intent of the
14 Legislature that a good faith motor vehicle warranty complaint
15 by a consumer be resolved by the manufacturer within a
16 specified period of time; however, it is not the intent of the
17 Legislature that a consumer establish the presumption of a
18 reasonable number of attempts as to each manufacturer that
19 provides a warranty directly to the consumer. It is further
20 the intent of the Legislature to provide the statutory
21 procedures whereby a consumer may receive a replacement motor
22 vehicle, or a full refund, for a motor vehicle which cannot be
23 brought into conformity with the warranty provided for in this
24 chapter. However, nothing in this chapter shall in any way
25 limit or expand the rights or remedies which are otherwise
26 available to a consumer under any other law.

27 Section 2. Section 681.102, Florida Statutes, is
28 amended to read:

29 681.102 Definitions.--As used in this chapter, the
30 term:

31

1 (1) "Authorized service agent" means any person,
2 including a franchised motor vehicle dealer, who is authorized
3 by the manufacturer to service motor vehicles. In the case of
4 a recreational vehicle when there are two or more
5 manufacturers, an authorized service agent for any individual
6 manufacturer is any person, including a franchised motor
7 vehicle dealer, who is authorized to service the items
8 warranted by that manufacturer.The term does not include a
9 rental car company authorized to repair rental vehicles.

10 (2) "Board" means the Florida New Motor Vehicle
11 Arbitration Board.

12 (3) "Collateral charges" means those additional
13 charges to a consumer wholly incurred as a result of the
14 acquisition of the motor vehicle. For the purposes of this
15 chapter, collateral charges include, but are not limited to,
16 manufacturer-installed or agent-installed items or service
17 charges, earned finance charges, sales taxes, and title
18 charges.

19 (4) "Consumer" means the purchaser, other than for
20 purposes of resale, or the lessee, of a motor vehicle
21 primarily used for personal, family, or household purposes;
22 any person to whom such motor vehicle is transferred for the
23 same purposes during the duration of the Lemon Law rights
24 period; and any other person entitled by the terms of the
25 warranty to enforce the obligations of the warranty.

26 (5) "Days" means calendar days.

27 (6) "Department" means the Department of Legal
28 Affairs.

29 ~~(7)~~(6) "Division" means the Division of Consumer
30 Services of the Department of Agriculture and Consumer
31 Services.

1 ~~(8)(7)~~ "Incidental charges" means those reasonable
2 costs to the consumer which are directly caused by the
3 nonconformity of the motor vehicle.

4 ~~(9)(8)~~ "Lease price" means the aggregate of:

5 (a) Lessor's actual purchase costs.

6 (b) Collateral charges, if applicable.

7 (c) Any fee paid to another to obtain the lease.

8 (d) Any insurance or other costs expended by the
9 lessor for the benefit of the lessee.

10 (e) An amount equal to state and local sales taxes,
11 not otherwise included as collateral charges, paid by the
12 lessor when the vehicle was initially purchased.

13 (f) An amount equal to 5 percent of (a).

14 ~~(10)(9)~~ "Lemon Law rights period" means the period
15 ending 24 ~~18~~ months after the date of the original delivery of
16 a motor vehicle to a consumer ~~or the first 24,000 miles of~~
17 ~~operation, whichever occurs first.~~

18 ~~(11)(10)~~ "Lessee" means any consumer who leases a
19 motor vehicle for 1 year or more pursuant to a written lease
20 agreement which provides that the lessee is responsible for
21 repairs to such motor vehicle or any consumer who leases a
22 motor vehicle pursuant to a lease-purchase agreement.

23 ~~(12)(11)~~ "Lessee cost" means the aggregate deposit and
24 rental payments previously paid to the lessor for the leased
25 vehicle but excludes debt from any other transaction.

26 ~~(13)(12)~~ "Lessor" means a person who holds title to a
27 motor vehicle that is leased to a lessee under a written lease
28 agreement or who holds the lessor's rights under such
29 agreement.

30 ~~(14)(13)~~ "Manufacturer" means any person, whether a
31 resident or nonresident of this state, who manufactures or

1 assembles motor vehicles, or who manufactures or assembles
2 chassis for recreational vehicles, or who manufactures or
3 installs on previously assembled truck or recreational vehicle
4 chassis special bodies or equipment which, when installed,
5 forms an integral part of the motor vehicle ~~a manufacturer as~~
6 ~~defined in s. 320.60(9)~~, a distributor as defined in s.
7 320.60(5), or an importer as defined in s. 320.60(7). A
8 dealer as defined in s. 320.60(11)(a) shall not be deemed to
9 be a manufacturer, distributor, or importer as provided in
10 this section.

11 (15)~~(14)~~ "Motor vehicle" means a new vehicle,
12 propelled by power other than muscular power, which is sold in
13 this state to transport persons or property, and includes a
14 recreational vehicle or a vehicle used as a demonstrator or
15 leased vehicle if a manufacturer's warranty was issued as a
16 condition of sale, or the lessee is responsible for repairs,
17 but does not include vehicles run only upon tracks, off-road
18 vehicles, trucks over 10,000 pounds gross vehicle weight,
19 motorcycles, mopeds, or the living facilities of recreational
20 vehicles, motorcycles, or mopeds. "Living facilities of
21 recreational vehicles" are those portions designed, used, or
22 maintained primarily as living quarters and include, but are
23 not limited to, the flooring, plumbing system and fixtures,
24 roof air conditioner, furnace, generator, electrical systems
25 other than automotive circuits, the side entrance door,
26 exterior compartments, and windows other than the windshield
27 and driver and front passenger windows.

28 (16)~~(15)~~ "Nonconformity" means a defect or condition
29 that substantially impairs the use, value, or safety of a
30 motor vehicle, but does not include a defect or condition that
31 results from an accident, abuse, neglect, modification, or

1 alteration of the motor vehicle by persons other than the
2 manufacturer or its authorized service agent.

3 (17)(16) "Procedure" means an informal
4 dispute-settlement procedure established by a manufacturer to
5 mediate and arbitrate motor vehicle warranty disputes.

6 (18) "Program" means the mediation and arbitration
7 pilot program for recreational vehicles established in this
8 chapter.

9 (19)(17) "Purchase price" means the cash price as
10 defined in s. 520.31(1), inclusive of any allowance for a
11 trade-in vehicle, but excludes debt from any other
12 transaction. "Any allowance for a trade-in vehicle" means the
13 net trade-in allowance as reflected in the purchase contract
14 or lease agreement if acceptable to the consumer and
15 manufacturer. If such amount is not acceptable to the
16 consumer and manufacturer, then the trade-in allowance shall
17 be an amount equal to 100 percent of the retail price of the
18 trade-in vehicle as reflected in the NADA Official Used Car
19 Guide (Southeastern Edition) or NADA Recreation Vehicle
20 Appraisal Guide, whichever is applicable, in effect at the
21 time of the trade-in. The manufacturer shall be responsible
22 for providing the applicable NADA book.

23 (20)(18) "Reasonable offset for use" means the number
24 of miles attributable to a consumer up to the date of a
25 settlement agreement or arbitration hearing the third repair
26 attempt of the same nonconformity or the 20th cumulative day
27 when the vehicle is out of service by reason of repair of one
28 or more nonconformities, whichever occurs first, multiplied by
29 the purchase price of the vehicle and divided by 120,000,
30 except in the case of a recreational vehicle, in which event
31 it shall be divided by 60,000.

1 (21) "Recreational vehicle" means a motor vehicle
2 primarily designed to provide temporary living quarters for
3 recreational, camping, or travel use, but does not include a
4 van conversion.

5 (22)~~(19)~~ "Replacement motor vehicle" means a motor
6 vehicle which is identical or reasonably equivalent to the
7 motor vehicle to be replaced, as the motor vehicle to be
8 replaced existed at the time of acquisition. "Reasonably
9 equivalent to the motor vehicle to be replaced" means the
10 manufacturer's suggested retail price of the replacement
11 vehicle shall not exceed 105 percent of the manufacturer's
12 suggested retail price of the motor vehicle to be replaced.
13 In the case of a recreational vehicle, "reasonably equivalent
14 to the motor vehicle to be replaced" means the retail price of
15 the replacement vehicle shall not exceed 105 percent of the
16 purchase price of the recreational vehicle to be replaced.

17 (23)~~(20)~~ "Warranty" means any written warranty issued
18 by the manufacturer, or any affirmation of fact or promise
19 made by the manufacturer, excluding statements made by the
20 dealer, in connection with the sale of a motor vehicle to a
21 consumer which relates to the nature of the material or
22 workmanship and affirms or promises that such material or
23 workmanship is free of defects or will meet a specified level
24 of performance.

25 Section 3. Subsections (1) and (3) of section 681.103,
26 Florida Statutes, are amended to read:

27 681.103 Duty of manufacturer to conform a motor
28 vehicle to the warranty.--

29 (1)~~(a)~~ If a motor vehicle does not conform to the
30 warranty and the consumer first reports the problem to the
31 manufacturer or its authorized service agent during the ~~first~~

1 ~~12 months or 12,000 miles, whichever occurs first, of the~~
2 Lemon Law rights period, the manufacturer or its authorized
3 service agent shall, ~~at no cost to the consumer,~~ make such
4 repairs as are necessary to conform the vehicle to the
5 warranty, irrespective of whether such repairs are made after
6 the expiration of the Lemon Law rights period. Such repairs
7 shall be at no cost to the consumer if made during the term of
8 the manufacturer's written express warranty. Nothing in this
9 paragraph shall be construed to grant an extension of the
10 Lemon Law rights period or to expand the time within which a
11 consumer must file a claim under this chapter.

12 ~~(b) If a motor vehicle does not conform to the~~
13 ~~warranty and the consumer first reports the problem to the~~
14 ~~manufacturer or its authorized service agent after the first~~
15 ~~12 months or 12,000 miles, whichever occurs first, of the~~
16 ~~Lemon Law rights period, the manufacturer or its authorized~~
17 ~~service agent shall make such repairs as are necessary to~~
18 ~~conform the vehicle to the warranty, irrespective of whether~~
19 ~~such repairs are made after the expiration of the Lemon Law~~
20 ~~rights period. The manufacturer may charge for such repairs~~
21 ~~if the warranty so provides.~~

22 (3) At the time of acquisition, the manufacturer shall
23 inform the consumer clearly and conspicuously in writing how
24 and where to file a claim with a certified procedure if such
25 procedure has been established by the manufacturer pursuant to
26 s. 681.108. The manufacturer shall provide to the dealer and,
27 at the time of acquisition, the dealer ~~and~~ shall provide to
28 the consumer a written statement that explains the consumer's
29 rights under this chapter. The written statement shall be
30 prepared by the Department of Legal Affairs and shall contain
31 a toll-free number for the division that the consumer can

1 contact to obtain information regarding the consumer's rights
2 and obligations under this chapter or to commence arbitration.
3 If the manufacturer obtains a signed receipt for timely
4 delivery of sufficient quantities of this written statement to
5 meet the dealer's vehicle sales requirements, it shall
6 constitute prima facie evidence of compliance with this
7 subsection by the manufacturer. The consumer's signed
8 acknowledgment of receipt of materials required under this
9 subsection shall constitute prima facie evidence of compliance
10 by the manufacturer and dealer. The form of the
11 acknowledgments shall be approved by the Department of Legal
12 Affairs, and the dealer shall maintain the consumer's signed
13 acknowledgment for 3 years.

14 Section 4. Paragraph (a) of subsection (1), paragraph
15 (a) of subsection (2), and subsection (3) of section 681.104,
16 Florida Statutes, are amended to read:

17 681.104 Nonconformity of motor vehicles.--

18 (1)(a) After three attempts have been made to repair
19 the same nonconformity, the consumer shall give written
20 notification, by registered or express mail to the
21 manufacturer, of the need to repair the nonconformity to allow
22 the manufacturer a final attempt to cure the nonconformity.
23 The manufacturer shall have 10 days, commencing upon receipt
24 of such notification, to respond and give the consumer the
25 opportunity to have the motor vehicle repaired at a reasonably
26 accessible repair facility within a reasonable time after the
27 consumer's receipt of the response. The manufacturer shall
28 have 10 days, except in the case of a recreational vehicle, in
29 which event the manufacturer shall have 45 days, commencing
30 upon the delivery of the motor vehicle to the designated
31 repair facility by the consumer, to conform the motor vehicle

1 to the warranty. If the manufacturer fails to respond to the
2 consumer and give the consumer the opportunity to have the
3 motor vehicle repaired at a reasonably accessible repair
4 facility or perform the repairs within the time periods
5 prescribed in this subsection, the requirement that the
6 manufacturer be given a final attempt to cure the
7 nonconformity, ~~or in complete absence of a justiciable issue~~
8 ~~of either law or fact raised by the consumer,~~ does not apply.

9 (2)(a) If the manufacturer, or its authorized service
10 agent, cannot conform the motor vehicle to the warranty by
11 repairing or correcting any nonconformity after a reasonable
12 number of attempts, the manufacturer, within 40 days, shall
13 repurchase the motor vehicle and refund the full purchase
14 price to the consumer, less a reasonable offset for use, or,
15 in consideration of its receipt of payment from the consumer
16 of a reasonable offset for use, replace the motor vehicle with
17 a replacement motor vehicle acceptable to the consumer. The
18 refund or replacement must include all reasonably incurred
19 collateral and incidental charges. However, the consumer has
20 an unconditional right to choose a refund rather than a
21 replacement motor vehicle. Upon receipt of such refund or
22 replacement, the consumer, lienholder, or lessor shall furnish
23 to the manufacturer clear title to and possession of the motor
24 vehicle.

25 (3)~~(a)~~ It is presumed that a reasonable number of
26 attempts have been undertaken to conform a motor vehicle to
27 the warranty if, during the Lemon Law rights period, either:

28 (a)1. The same nonconformity has been subject to
29 repair at least three times by the manufacturer or its
30 authorized service agent, plus a final attempt by the
31 manufacturer to repair the motor vehicle if undertaken as

1 provided for in paragraph (1)(a), and such nonconformity
2 continues to exist; or
3 (b)2. The motor vehicle has been out of service by
4 reason of repair of one or more nonconformities by the
5 manufacturer, or its authorized service agent, for a
6 cumulative total of 30 or more days, 60 or more days in the
7 case of a recreational vehicle, exclusive of downtime for
8 routine maintenance prescribed by the owner's manual. The
9 manufacturer or its authorized service agent must have had at
10 least one opportunity to inspect or repair the vehicle
11 following receipt of the notification as provided in paragraph
12 (1)(b). The 30-day period, or 60-day period in the case of a
13 recreational vehicle, may be extended by any period of time
14 during which repair services are not available to the consumer
15 because of war, invasion, strike, fire, flood, or natural
16 disaster.

17 ~~(b) The terms of paragraph (a) may be extended for a~~
18 ~~period of 6 months after the expiration of the Lemon Law~~
19 ~~rights period if a nonconformity has been reported but has not~~
20 ~~been cured by the manufacturer, or its authorized service~~
21 ~~agent, by the expiration of the Lemon Law rights period.~~

22 Section 5. Section 681.109, Florida Statutes, is
23 amended to read:

24 681.109 Florida New Motor Vehicle Arbitration Board;
25 dispute eligibility.--

26 (1) If a manufacturer has a certified procedure, a
27 consumer claim arising during the Lemon Law rights period must
28 be filed with the certified procedure no later than 60 days if
29 ~~a consumer files a claim with a certified procedure within 6~~
30 ~~months after the expiration of the Lemon Law rights period.~~
31 If and a decision is not rendered by the certified procedure

1 within 40 days of filing, the consumer may apply to the
2 division to have the dispute removed to the board for
3 arbitration.

4 (2) If a manufacturer has a certified procedure, a
5 consumer claim arising during the Lemon Law rights period must
6 be filed with the certified procedure no later than 60 days
7 after the expiration of the Lemon Law rights period. If a
8 consumer ~~A consumer who files a claim with a certified~~
9 ~~procedure within 6 months after the expiration of the Lemon~~
10 ~~Law rights period and is not satisfied with the decision or~~
11 ~~the manufacturer's compliance therewith,~~ the consumer may
12 apply to the division to have the dispute submitted to the
13 board for arbitration. A manufacturer may not seek review of
14 a decision made under its procedure.

15 (3) If a manufacturer has no certified procedure or if
16 a certified procedure does not have jurisdiction to resolve
17 the dispute, a consumer may apply directly to the division to
18 have the dispute submitted to the board for arbitration.

19 (4) A consumer must request arbitration before the
20 board with respect to a claim arising during the Lemon Law
21 rights period no later than within 60 days ~~6 months~~ after the
22 expiration of the Lemon Law rights period, or within 30 days
23 after the final action of a certified procedure, whichever
24 date occurs later.

25 (5) The division shall screen all requests for
26 arbitration before the board to determine eligibility. The
27 consumer's request for arbitration before the board shall be
28 made on a form prescribed by the department ~~of Legal Affairs~~.
29 The division shall forward to the board all disputes that the
30 division determines are potentially entitled to relief under
31 this chapter.

1 (6) The division may reject a dispute that it
2 determines to be fraudulent or outside the scope of the
3 board's authority. Any dispute deemed by the division to be
4 ineligible for arbitration by the board due to insufficient
5 evidence may be reconsidered upon the submission of new
6 information regarding the dispute. Following a second review,
7 the division may reject a dispute if the evidence is clearly
8 insufficient to qualify for relief. Any dispute rejected by
9 the division shall be forwarded to the department ~~of Legal~~
10 ~~Affairs~~ and a copy shall be sent by registered mail to the
11 consumer and the manufacturer, containing a brief explanation
12 as to the reason for rejection.

13 (7) If the division rejects a dispute, the consumer
14 may file a lawsuit to enforce the remedies provided under this
15 chapter. In any civil action arising under this chapter and
16 relating to a matter considered by the division, any
17 determination made to reject a dispute is admissible in
18 evidence.

19 (8) The department shall have the authority to adopt
20 reasonable rules to carry out the provisions of this section.

21 Section 6. Section 681.1095, Florida Statutes, is
22 amended to read:

23 681.1095 Florida New Motor Vehicle Arbitration Board;
24 creation and function.--

25 (1) There is established within the Department of
26 Legal Affairs, the Florida New Motor Vehicle Arbitration
27 Board, consisting of members appointed by the Attorney General
28 for an initial term of 1 year. Board members may be
29 reappointed for additional terms of 2 years. Each board member
30 is accountable to the Attorney General for the performance of
31 the member's duties and is exempt from civil liability for any

1 act or omission which occurs while acting in the member's
2 official capacity. The Department of Legal Affairs shall
3 defend a member in any action against the member or the board
4 which arises from any such act or omission. The Attorney
5 General may establish as many regions of the board ~~boards~~ as
6 necessary to carry out the provisions of this chapter.

7 (2) The boards shall hear cases in various locations
8 throughout the state so any consumer whose dispute is approved
9 for arbitration by the division may attend an arbitration
10 hearing at a reasonably convenient location and present a
11 dispute orally. Hearings shall be conducted by panels of three
12 board members assigned by the department. A majority vote of
13 the three-member board panel shall be required to render a
14 decision. Arbitration proceedings under this section shall be
15 open to the public on reasonable and nondiscriminatory terms.

16 (3) Each region of the board shall consist of up to
17 eight ~~six~~ members. ~~The Attorney General may appoint two~~
18 ~~additional members to each board if necessary.~~ The members of
19 the board shall construe and apply the provisions of this
20 chapter, and rules adopted thereunder, in making their
21 decisions. An administrator and a secretary shall be assigned
22 to each board by the Department of Legal Affairs. At least
23 one member of each board must be a person with expertise in
24 motor vehicle mechanics. A member must not be employed by a
25 manufacturer or a franchised motor vehicle dealer or be a
26 staff member, a decisionmaker, or a consultant for a
27 procedure. Board members shall be trained in the application
28 of this chapter and any rules adopted under this chapter,
29 shall be reimbursed for travel expenses pursuant to s.
30 112.061, and shall be compensated at a rate or wage prescribed
31 by the Attorney General.

1 (4) Before filing a civil action on a matter subject
2 to s. 681.104, the consumer must first submit the dispute to
3 the division, and to the board if such dispute is deemed
4 eligible for arbitration.

5 (5) Manufacturers shall submit to arbitration
6 conducted by the board if such arbitration is requested by a
7 consumer and the dispute is deemed eligible for arbitration by
8 the division pursuant to s. 681.109.

9 (6) The board shall hear the dispute within 40 days
10 and render a decision within 60 days after the date the
11 request for arbitration is approved. The board may continue
12 the hearing on its own motion or upon the request of a party
13 for good cause shown. A request for continuance by the
14 consumer constitutes waiver of the time periods set forth in
15 this subsection.The Department of Legal Affairs, at the
16 board's request, may investigate disputes, and may issue
17 subpoenas for the attendance of witnesses and for the
18 production of ~~subpoena~~ records, documents, and other
19 evidence; and ~~compel the attendance of witnesses~~ before the
20 board. The failure of the board to hear a dispute or render a
21 decision within the prescribed periods does not invalidate the
22 decision.

23 (7) At all arbitration proceedings, the parties may
24 present oral and written testimony, present witnesses and
25 evidence relevant to the dispute, cross-examine witnesses, and
26 be represented by counsel. The board may administer oaths or
27 affirmations to witnesses and inspect the vehicle if requested
28 by a party or if the board deems such inspection appropriate.

29 (8) The board shall grant relief, if a reasonable
30 number of attempts have been undertaken to correct a
31 nonconformity or nonconformities.

1 (9) ~~The board shall hear the dispute within 40 days~~
2 ~~and render a decision within 60 days after the date the~~
3 ~~request for arbitration is approved. If the board determines~~
4 ~~that additional information is necessary, it may continue the~~
5 ~~arbitration proceeding on a subsequent date.~~ The decision of
6 the board shall be sent by registered mail to the consumer and
7 the manufacturer, and shall contain written findings of fact
8 and rationale for the decision. If the decision is in favor
9 of the consumer, the manufacturer must, within 40 days after
10 receipt of the decision, comply with the terms of the
11 decision. Compliance occurs on the date the consumer receives
12 delivery of an acceptable replacement motor vehicle or the
13 refund specified in the arbitration award. In any civil
14 action arising under this chapter and relating to a dispute
15 arbitrated before the board, any decision by the board is
16 admissible in evidence. ~~The failure of the board to hear a~~
17 ~~dispute or render a decision within the prescribed periods~~
18 ~~does not invalidate the decision.~~

19 (10) A decision is final unless appealed by either
20 party. A petition to the circuit court to appeal a decision
21 must be made within 30 days after receipt of the decision. The
22 petition shall be filed in the county where the consumer
23 resides, or where the motor vehicle was acquired, or where the
24 arbitration hearing was conducted. Within 7 days after the
25 petition has been filed, the appealing party must send a copy
26 of the petition to the department ~~of Legal Affairs~~. If the
27 department does not receive notice of such petition within 40
28 days after the manufacturer's receipt of a decision in favor
29 of the consumer, and the manufacturer has neither complied
30 with, nor has petitioned to appeal such decision, the
31 department ~~of Legal Affairs~~ may apply to the circuit court to

1 seek imposition of a fine up to \$1,000 per day against the
2 manufacturer until the amount stands at twice the purchase
3 price of the motor vehicle, unless the manufacturer provides
4 clear and convincing evidence that the delay or failure was
5 beyond its control or was acceptable to the consumer as
6 evidenced by a written statement signed by the consumer. If
7 the manufacturer fails to provide such evidence or fails to
8 pay the fine, the department ~~of Legal Affairs~~ shall initiate
9 proceedings against the manufacturer for failure to pay such
10 fine. The proceeds from the fine herein imposed shall be
11 placed in the Motor Vehicle Warranty Trust Fund in the
12 department ~~of Legal Affairs~~ for implementation and enforcement
13 of this chapter. If the manufacturer fails to comply with the
14 provisions of this subsection, the court shall affirm the
15 award upon application by the consumer.

16 (11) All provisions in this section and s. 681.109
17 pertaining to compulsory arbitration before the board, the
18 dispute eligibility screening by the division, the proceedings
19 and decisions of the board, and any appeals thereof, are
20 exempt from the provisions of chapter 120.

21 (12) An appeal of a decision by the board to the
22 circuit court by a consumer or a manufacturer shall be by
23 trial de novo. In a written petition to appeal a decision by
24 the board, the appealing party must state the action requested
25 and the grounds relied upon for appeal. Within 30 days of
26 final disposition of the appeal, the appealing party shall
27 furnish the department with notice of such disposition and,
28 upon request, shall furnish the department with a copy of the
29 order or judgment of the court.

30 (13) If a decision of the board in favor of the
31 consumer is upheld by the court, recovery by the consumer

1 shall include the pecuniary value of the award, attorney's
2 fees incurred in obtaining confirmation of the award, and all
3 costs and continuing damages in the amount of \$25 per day for
4 each day beyond the 40-day period following the manufacturer's
5 receipt of the board's decision. If a court determines that
6 the manufacturer acted in bad faith in bringing the appeal or
7 brought the appeal solely for the purpose of harassment or in
8 complete absence of a justiciable issue of law or fact, the
9 court shall double, and may triple, the amount of the total
10 award.

11 (14) When a judgment affirms a decision by the board
12 in favor of a consumer, appellate review may be conditioned
13 upon payment by the manufacturer of the consumer's attorney's
14 fees and giving security for costs and expenses resulting from
15 the review period.

16 (15) The department ~~of Legal Affairs~~ shall maintain
17 records of each dispute submitted to the board, and the
18 program, including an index of motor vehicles by year, make,
19 and model, and shall compile aggregate annual statistics for
20 all disputes submitted to, and decided by, the board, as well
21 as annual statistics for each manufacturer that include, but
22 are not limited to, the value, if applicable, and the number
23 and percent of:

24 (a) Replacement motor vehicle requests;

25 (b) Purchase price refund requests;

26 (c) Replacement motor vehicles obtained in prehearing
27 settlements;

28 (d) Purchase price refunds obtained in prehearing
29 settlements;

30 (e) Replacement motor vehicles awarded in arbitration;

31 (f) Purchase price refunds awarded in arbitration;

1 (g) Board decisions neither complied with in 40 days
2 nor petitioned for appeal within 30 days;

3 (h) Board decisions appealed;

4 (i) Appeals affirmed by the court; and

5 (j) Appeals found by the court to be brought in bad
6 faith or solely for the purpose of harassment.

7
8 The statistics compiled under this subsection are public
9 information.

10 (16) When requested by the department ~~of Legal~~
11 ~~Affairs~~, a manufacturer must verify the settlement terms for
12 disputes that are approved for arbitration but are not decided
13 by the board.

14 Section 7. Section 681.1096, Florida Statutes, is
15 created to read:

16 681.1096 Pilot RV Mediation and Arbitration Program;
17 creation and qualifications.--

18 (1) This section and s. 681.1097 shall apply to
19 disputes determined eligible under this chapter involving
20 recreational vehicles acquired on or after October 1, 1997,
21 and shall remain in effect until September 30, 2001, at which
22 time recreational vehicle disputes shall be subject to the
23 provisions of ss. 681.109 and 681.1095. The Attorney General
24 shall report annually to the President of the Senate, the
25 Speaker of the House of Representatives, the Minority Leader
26 of each house of the Legislature, and appropriate legislative
27 committees regarding the efficiency and cost effectiveness of
28 the pilot program.

29 (2) Each manufacturer of a recreational vehicle
30 involved in a dispute that is determined eligible under this
31 chapter, including chassis and component manufacturers which

1 separately warrant the chassis and components and which
2 otherwise meet the definition of manufacturer set forth in s.
3 681.102(14), shall participate in a mediation and arbitration
4 program that is deemed qualified by the department.

5 (3) In order to be deemed qualified by the department,
6 the mediation and arbitration program must, at a minimum, meet
7 the following requirements:

8 (a) The program must be administered by an
9 administrator and staff that is sufficiently insulated from
10 the manufacturer to ensure impartial mediation and arbitration
11 services.

12 (b) Program administration fees must be paid by the
13 manufacturer and no such fees shall be charged to a consumer.

14 (c) The program must be adequately staffed at a level
15 sufficient to ensure the provision of fair and expeditious
16 dispute resolution services.

17 (d) Program mediators and arbitrators must be
18 sufficiently insulated from a manufacturer to ensure the
19 provision of impartial mediation and arbitration of disputes.

20 (e) Program mediators and arbitrators shall not be
21 employed by a manufacturer or a motor vehicle dealer.

22 (f) Program mediators must complete a Florida Supreme
23 Court certified circuit or county mediation training program,
24 or other mediation training program approved by the
25 department, in addition to a minimum of one-half day of
26 training on this chapter conducted by the department.

27 (g) Program mediators must comply with the Model
28 Standards of Conduct for Mediators issued by the American
29 Arbitration Association, the Dispute Resolution Section of the
30 American Bar Association, and the Society of Professionals in
31 Dispute Resolution.

1 (h) Program arbitrators must complete a Florida
2 Supreme Court certified circuit or county arbitration program,
3 or other arbitration training program approved by the
4 department, in addition to a minimum of 1 day of training in
5 the application of this chapter and any rules adopted
6 thereunder conducted by the department.

7 (i) Program arbitrators must comply with the Code of
8 Ethics for Arbitrators in Commercial Disputes published by the
9 American Arbitration Association and the American Bar
10 Association in 1977 and as amended.

11 (j) Program arbitrators must construe and apply the
12 provisions of this chapter and rules adopted thereunder in
13 making decisions.

14 (k) The program must complete all mediation and
15 arbitration of an eligible consumer claim within 70 days of
16 the program administrator's receipt of the claim from the
17 department. Failure of the program to complete all proceedings
18 within the prescribed period will not invalidate any
19 settlement agreement or arbitration decision.

20 (l) Mediation conferences and arbitration proceedings
21 must be held at reasonably convenient locations within the
22 state so as to enable a consumer to attend and present a
23 dispute orally.

24 (4) The department shall monitor the program for
25 compliance with this chapter. If the program is determined not
26 qualified or if qualification is revoked, then the involved
27 manufacturer shall be required to submit to arbitration
28 conducted by the board if such arbitration is requested by a
29 consumer and the dispute is deemed eligible for arbitration by
30 the division pursuant to s. 681.109.

31

1 (5) If a program is determined not qualified or if
2 qualification is revoked, the involved manufacturer shall be
3 notified by the department of any deficiencies in the program
4 and informed that it is entitled to a hearing pursuant to
5 chapter 120.

6 (6) The program administrator, mediators, and
7 arbitrators are exempt from civil liability arising from any
8 act or omission in connection with any mediation or
9 arbitration conducted under this chapter.

10 (7) The program administrator shall maintain records
11 of each dispute submitted to the program, including the
12 recordings of arbitration hearings. All records maintained by
13 the program under this chapter shall be public records and
14 shall be available for inspection by the department upon
15 reasonable notice. The records for disputes closed as of
16 September 30 of each year shall be turned over to the
17 department by the program administrator by no later than
18 October 30 of the same year, unless a later date is specified
19 by the department.

20 (8) The department shall have the authority to adopt
21 reasonable rules to carry out the provisions of this section.

22 Section 8. Section 681.1097, Florida Statutes, is
23 created to read:

24 681.1097 RV Pilot Mediation and Arbitration Program;
25 dispute eligibility and program function.--

26 (1) Before filing a civil action on a matter subject
27 to s. 681.104, a consumer who acquires a recreational vehicle
28 must first submit the dispute to the department, and to the
29 program if the dispute is deemed eligible. Such consumer is
30 not required to resort to a procedure certified pursuant to s.
31 681.108, notwithstanding that one of the manufacturers of the

1 recreational vehicle has such a procedure. Such consumer is
2 not required to resort to arbitration conducted by the board,
3 except as provided in s. 681.1096(4) and in this section.

4 (2) A consumer acquiring a recreational vehicle must
5 apply to participate in this program with respect to a claim
6 arising during the Lemon Law rights period by filing the
7 application in subsection (3) with the department no later
8 than 60 days after the expiration of the Lemon Law rights
9 period.

10 (3) The consumer's application for participation in
11 the program must be on a form prescribed or approved by the
12 department. The department shall screen all applications to
13 participate in the program to determine eligibility. The
14 department shall forward to the program administrator all
15 applications the department determines are potentially
16 entitled to relief under this chapter.

17 (a) If the department determines the application lacks
18 sufficient information from which a determination of
19 eligibility can be made, the department shall request
20 additional information from the consumer and, upon review of
21 such additional information, shall determine whether the
22 application is eligible or reject the application as
23 incomplete.

24 (b) The department shall reject any application it
25 determines to be fraudulent or outside the scope of this
26 chapter.

27 (c) The consumer and the manufacturer shall be
28 notified in writing by the department if an application is
29 rejected. Such notification of rejection shall include a
30 brief explanation as to the reason for the rejection.

31

1 (d) If the department rejects a dispute, the consumer
2 may file a lawsuit to enforce the remedies provided under this
3 chapter. In any civil action arising under this chapter and
4 relating to the matter considered by the department, any
5 determination made to reject a dispute is admissible in
6 evidence.

7 (4) Mediation shall be mandatory for both the consumer
8 and manufacturer, unless the dispute is settled prior to the
9 scheduled mediation conference. The mediation conference
10 shall be confidential and inadmissible in any subsequent
11 adversarial proceedings. Participation shall be limited to
12 the parties directly involved in the dispute and their
13 attorneys, if any. All manufacturers shall be represented by
14 persons with settlement authority.

15 (a) Upon receipt of an eligible application from the
16 department, the program administrator shall notify the
17 consumer and all involved manufacturers in writing that an
18 eligible application has been received. Such notification
19 shall include a statement that a mediation conference will be
20 scheduled, shall identify the assigned mediator, and provide
21 information regarding the program's procedures. The program
22 administrator shall provide all involved manufacturers with a
23 copy of the completed application.

24 (b) The mediator shall be selected and assigned by the
25 program administrator. The parties may factually object to a
26 mediator based upon the mediator's past or present
27 relationship with a party or a party's attorney, direct or
28 indirect, whether financial, professional, social, or of any
29 other kind. The program administrator shall consider any such
30 objection, determine its validity, and notify the parties of
31 any determination. If the objection is determined valid, the

1 program administrator shall assign another mediator to the
2 case.

3 (c) At the mediation conference, the mediator shall
4 assist the parties' efforts to reach a mutually acceptable
5 settlement of their dispute; however, the mediator shall not
6 impose any settlement upon the parties.

7 (d) Upon conclusion of the mediation conference, the
8 mediator shall notify the program administrator that the case
9 has settled or remains at an impasse. The program
10 administrator shall notify the department in writing of the
11 outcome of the mediation.

12 (e) If the mediation conference ends in an impasse, it
13 shall proceed to arbitration pursuant to subsection (5). The
14 program administrator shall immediately notify the parties in
15 writing that the dispute will proceed to arbitration and shall
16 identify the assigned arbitrator.

17 (f) If the parties enter into a settlement at any time
18 after the dispute has been submitted to the program, such
19 settlement must be reduced to writing, signed by the consumer
20 and all involved manufacturers, and filed with the program
21 administrator. The program administrator shall send a copy to
22 the department. All settlements must contain, at a minimum,
23 the following information:

24 1. Name and address of the consumer.

25 2. Name and address of each involved manufacturer.

26 3. Year, make, model, and vehicle identification
27 number of the subject recreational vehicle.

28 4. Name and address of the dealership from which the
29 recreational vehicle was acquired.

30 5. Date the claim was received by the program
31 administrator.

1 6. Name of the mediator and/or arbitrator, if any.

2 7. Statement of the terms of the agreement, including,
3 but not limited to: whether the vehicle is to be reacquired
4 by a manufacturer and the identity of the manufacturer that
5 will reacquire the vehicle; the amount of any moneys to be
6 paid by the consumer and/or a manufacturer; the year, make,
7 and model of any replacement motor vehicle or motor vehicle
8 accepted by the consumer as a trade-assist; and a time certain
9 for performance not to exceed 40 days from the date the
10 settlement agreement is signed by the parties.

11 (g) If a manufacturer fails to perform within the time
12 required in any settlement agreement, the consumer must notify
13 the program administrator of such failure in writing within 10
14 days of the required performance date. Within 10 days of
15 receipt of such notice, the program administrator shall notify
16 the department of the manufacturer's failure in compliance and
17 shall schedule the matter for an arbitration hearing pursuant
18 to subsection (5).

19 (5) If the mediation ends in an impasse, or if a
20 manufacturer fails to comply with the settlement entered into
21 between the parties, the program administrator shall schedule
22 the dispute for an arbitration hearing. Arbitration
23 proceedings shall be open to the public on reasonable and
24 nondiscriminatory terms.

25 (a) The arbitration hearing shall be conducted by a
26 single arbitrator assigned by the program administrator. The
27 arbitrator shall not be the same person as the mediator who
28 conducted the prior mediation conference in the dispute. The
29 parties may factually object to an arbitrator based on the
30 arbitrator's past or present relationship with a party or a
31 party's attorney, direct or indirect, whether financial,

1 professional, social, or of any other kind. The program
2 administrator shall consider any such objection, determine its
3 validity, and notify the parties of any determination. If the
4 objection is determined valid, the program administrator shall
5 assign another arbitrator to the case.

6 (b) The arbitrator may issue subpoenas for the
7 attendance of witnesses and for the production of records,
8 documents, and other evidence. Subpoenas so issued shall be
9 served and, upon application to the court by a party to the
10 arbitration, enforced in the manner provided by law for the
11 service and enforcement of subpoenas in civil actions. Fees
12 for attendance as a witness shall be the same as for a witness
13 in the circuit court.

14 (c) At all program arbitration proceedings, the
15 parties may present oral and written testimony, present
16 witnesses and evidence relevant to the dispute, cross-examine
17 witnesses, and be represented by counsel. The arbitrator
18 shall record the arbitration hearing and shall have the power
19 to administer oaths. The arbitrator may inspect the vehicle
20 if requested by a party or if the arbitrator considers such
21 inspection appropriate.

22 (d) The program arbitrator may continue a hearing on
23 his or her own motion or upon the request of a party for good
24 cause shown. A request for continuance by the consumer
25 constitutes a waiver of the time period set forth in s.
26 681.1096(3)(k) for completion of all proceedings under the
27 program.

28 (e) Where the arbitration is the result of a
29 manufacturers failure to perform in accordance with a
30 mediation agreement, any relief to the consumer granted by the
31

1 arbitration will be no less than the relief agreed to by the
2 manufacturer in the settlement agreement.

3 (f) The arbitrator shall grant relief if a reasonable
4 number of attempts have been undertaken to correct a
5 nonconformity or nonconformities.

6 (g) The program arbitrator shall render a decision
7 within 10 days of the closing of the hearing. The decision
8 shall be in writing on a form prescribed or approved by the
9 department. The program administrator shall send a copy of the
10 decision to the consumer and each involved manufacturer by
11 registered mail. The program administrator shall also send a
12 copy of the decision to the department within 5 days of
13 mailing to the parties.

14 (h) A manufacturer shall comply with an arbitration
15 decision within 40 days of the date the manufacturer receives
16 the written decision. Compliance occurs on the date the
17 consumer receives delivery of an acceptable replacement motor
18 vehicle or the refund specified in the arbitration award. If a
19 manufacturer fails to comply within the time required, the
20 consumer must notify the program administrator in writing
21 within 10 days. The program administrator shall notify the
22 department of a manufacturer's failure to comply. The
23 department shall have the authority to enforce compliance with
24 arbitration decisions under this section in the same manner as
25 is provided for enforcement of compliance with board decisions
26 under s. 681.1095(10). In any civil action arising under this
27 chapter and relating to a dispute arbitrated pursuant to this
28 section, the decision of the arbitrator is admissible in
29 evidence.

30 (6) Except as otherwise provided, all provisions in
31 this section pertaining to mandatory mediation and

1 arbitration, eligibility screening, mediation proceedings,
2 arbitration hearings and decisions, and any appeals thereof
3 are exempt from the provisions of chapter 120.

4 (7) Either party may make application to the circuit
5 court for the county in which one of the parties resides or
6 has a place of business or, if neither party resides or has a
7 place of business in this state, the county where the
8 arbitration hearing was held, for an order confirming,
9 vacating, modifying, or correcting any award, in accordance
10 with the provisions of this section and ss. 682.12, 682.13,
11 682.14, 682.15, and 682.17. Such application must be filed
12 within 30 days of the moving party's receipt of the written
13 decision or the decision becomes final. Upon filing such
14 application, the moving party shall mail a copy to the
15 department and, upon entry of any judgment or decree, shall
16 mail a copy of such judgment or decree to the department. A
17 review of such application by the circuit court shall be
18 confined to the record of the proceedings before the program
19 arbitrator. The court shall conduct a de novo review of the
20 questions of law raised in the application. In addition to the
21 grounds set forth in ss. 682.13 and 682.14, the court shall
22 consider questions of fact raised in the application. In
23 reviewing questions of fact, the court shall uphold the award
24 unless it determines that the factual findings of the
25 arbitrator are not supported by substantial evidence in the
26 record and that the substantial rights of the moving party
27 have been prejudiced. If the arbitrator fails to state
28 findings or reasons for the stated award, or the findings or
29 reasons are inadequate, the court shall search the record to
30 determine whether a basis exists to uphold the award. The

31

1 court shall expedite consideration of any application filed
2 under this section on the calendar.

3 (a) If a decision of a program arbitrator in favor of
4 a consumer is confirmed by the court, recovery by the consumer
5 shall include the pecuniary value of the award, attorney's
6 fees incurred in obtaining confirmation of the award, and all
7 costs and continuing damages in the amount of \$25 per day for
8 each day beyond the 40-day period following a manufacturer's
9 receipt of the arbitrator's decision. If a court determines
10 the manufacturer acted in bad faith in bringing the appeal or
11 brought the appeal solely for the purpose of harassment, or in
12 complete absence of a justiciable issue of law or fact, the
13 court shall double, and may triple, the amount of the total
14 award.

15 (b) An appeal of a judgment or order by the court
16 confirming, denying confirmation, modifying or correcting, or
17 vacating the award may be taken in the manner and to the same
18 extent as from orders or judgments in a civil action.

19 (8) The department shall have the authority to adopt
20 reasonable rules to carry out the provisions of this section.

21 Section 9. Section 681.113, Florida Statutes, is
22 amended to read:

23 681.113 Dealer liability.--~~Except as provided in ss.~~
24 681.103(3) and 681.114(2), nothing in this chapter imposes any
25 liability on a dealer as defined in s. 320.60(11)(a) or
26 creates a cause of action by a consumer against a dealer,
27 except for written express warranties made by the dealer apart
28 from the manufacturer's warranties. A dealer may not be made
29 a party defendant in any action involving or relating to this
30 chapter, except as provided in this section. The manufacturer
31 shall not charge back or require reimbursement by the dealer

1 for any costs, including, but not limited to, any refunds or
2 vehicle replacements, incurred by the manufacturer arising out
3 of this chapter, in the absence of evidence that the related
4 repairs had been carried out by the dealer in a manner
5 substantially inconsistent with the manufacturer's published
6 instructions.

7 Section 10. Subsections (1) and (3) of section
8 681.114, Florida Statutes, are amended to read:

9 681.114 Resale of returned vehicles.--

10 (1) A manufacturer who accepts the return of a motor
11 vehicle by reason of a settlement, determination, or decision
12 pursuant to this chapter shall notify the department ~~of Legal~~
13 ~~Affairs~~ and report the vehicle identification number of that
14 motor vehicle within 10 days after such acceptance, transfer,
15 or disposal of the vehicle, whichever occurs later.

16 (3) As used in this section, the term "settlement"
17 means an agreement entered into between a manufacturer and
18 consumer that occurs after a dispute is submitted to a
19 procedure or program or is approved for arbitration before the
20 board.

21 Section 11. Paragraph (c) of subsection (1) of section
22 319.14, Florida Statutes, 1996 Supplement, is amended to read:

23 319.14 Sale of motor vehicles registered or used as
24 taxicabs, police vehicles, lease vehicles, or rebuilt vehicles
25 and nonconforming vehicles.--

26 (1)

27 (c) As used in this section:

28 1. "Police vehicle" means a motor vehicle owned or
29 leased by the state or a county or municipality and used in
30 law enforcement.

31

- 1 2. "Lease vehicle" means a motor vehicle leased
2 without a driver and under a written agreement to one person
3 for a period of 12 months or longer or to one or more persons
4 from time to time for a period of less than 12 months.
- 5 3. "Rebuilt vehicle" means a motor vehicle or mobile
6 home built from salvage or junk, as defined in s. 319.30(1).
- 7 4. "Assembled from parts" means a motor vehicle or
8 mobile home assembled from parts of motor vehicles or mobile
9 homes, new or used. "Assembled from parts" does not mean a
10 motor vehicle defined as a "rebuilt vehicle" in subparagraph
11 3., which has been declared a total loss pursuant to s.
12 319.30.
- 13 5. "Combined" means assembled by combining two motor
14 vehicles neither of which has been titled and branded as
15 "Salvage Unrebuildable."
- 16 6. "Kit car" means a motor vehicle assembled with a
17 kit supplied by a manufacturer to rebuild a wrecked or
18 outdated motor vehicle with a new body kit.
- 19 7. "Glider kit" means a vehicle assembled with a kit
20 supplied by a manufacturer to rebuild a wrecked or outdated
21 truck or truck tractor.
- 22 8. "Replica" means a complete new motor vehicle
23 manufactured to look like an old vehicle.
- 24 9. "Flood vehicle" means a motor vehicle or mobile
25 home that has been declared to be a total loss pursuant to s.
26 319.30(3)(a) resulting from damage caused by water.
- 27 10. "Nonconforming vehicle" means a motor vehicle
28 which has been purchased by a manufacturer pursuant to a
29 settlement, determination, or decision under chapter 681.
- 30 11. "Settlement" means an agreement entered into
31 between a manufacturer and a consumer that occurs after a

1 | dispute is submitted to a program, or an informal dispute
2 | settlement procedure established by a manufacturer or is
3 | approved for arbitration before the New Motor Vehicle
4 | Arbitration Board as defined in s. 681.102.

5 | Section 12. This act shall take effect upon becoming a
6 | law, and shall apply to all motor vehicles acquired on or
7 | after October 1, 1997.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31