

By Senator Klein

1-1608-98

See HB 2025

1 A bill to be entitled
2 An act relating to vessels; creating s.
3 327.901, F.S.; creating the "Vessel Warranty
4 Enforcement Act," also known as the "Vessel
5 Lemon Law"; creating s. 327.902, F.S.;
6 providing legislative intent; creating s.
7 327.903, F.S.; providing definitions; creating
8 s. 327.904, F.S.; providing for the duty of the
9 manufacturer to conform the vessel to the
10 warranty; creating s. 327.905, F.S.; providing
11 for nonconformity of vessels and engines;
12 creating s. 327.906, F.S.; providing for bad
13 faith claims; creating s. 327.907, F.S.;
14 providing for dispute settlement procedures;
15 creating s. 327.908, F.S.; providing for
16 dispute eligibility with the Florida New Vessel
17 Arbitration Board; creating s. 327.909, F.S.;
18 creating the Florida New Vessel Arbitration
19 Board; providing for duties and functions;
20 creating s. 327.911, F.S.; providing for
21 compliance and disciplinary actions; creating
22 s. 327.912, F.S.; providing that certain
23 violations are unfair or deceptive trade
24 practices; creating s. 327.913, F.S.; providing
25 for consumer remedies; creating s. 327.914,
26 F.S.; providing for vessel dealer liability;
27 creating s. 327.915, F.S.; providing for the
28 resale of returned vessels; creating s.
29 327.916, F.S.; providing that certain
30 agreements are void; creating s. 327.917, F.S.;
31 providing for preemption; creating s. 327.918,

1 F.S.; providing a fee; creating s. 327.919,
2 F.S.; providing for rules; providing an
3 effective date.

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5 Be It Enacted by the Legislature of the State of Florida:

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7 Section 1. Section 327.901, Florida Statutes, is
8 created to read:

9 327.901 Short title.--Sections 327.901-327.919 shall
10 be known and may be cited as the "Vessel Warranty Enforcement
11 Act" or the "Vessel Lemon Law."

12 Section 2. Section 327.902, Florida Statutes, is
13 created to read:

14 327.902 Legislative intent.--The Legislature
15 recognizes that a vessel is a major consumer purchase and that
16 a defective vessel undoubtedly creates a hardship for the
17 consumer. The Legislature further recognizes that a vessel
18 dealer is an authorized service agent of the manufacturer. It
19 is the intent of the Legislature that a good faith vessel
20 warranty complaint by a consumer be resolved by the
21 manufacturer within a specified period of time. It is further
22 the intent of the Legislature to provide the statutory
23 procedures whereby a consumer may receive a replacement
24 vessel, or a full refund, for a vessel which cannot be brought
25 into conformity with the warranty provided for in ss.
26 327.901-327.919. However, nothing in ss. 327.901-327.919
27 shall in any way limit or expand the rights or remedies which
28 are otherwise available to a consumer under any other law. The
29 provisions of ss. 327.901-327.919 apply both to the vessel and
30 to the engine used to power the vessel, even though the
31 manufacturer of the vessel and the engine are different

1 entities. The provisions of ss. 327.901-327.919 do not apply
2 to racing equipment or high performance vessels and equipment.

3 Section 3. Section 327.903, Florida Statutes, is
4 created to read:

5 327.903 Definitions.--As used in ss. 327.901-327.919,
6 the term:

7 (1) "Authorized service agent" means any person,
8 including a vessel dealer, who is authorized by the
9 manufacturer to service vessels.

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

12 (3) "Collateral charges" means those additional
13 charges to a consumer wholly incurred as a result of the
14 acquisition of the vessel. For the purposes of ss.
15 327.901-327.919, collateral charges include, but are not
16 limited to, manufacturer-installed or agent-installed items or
17 service charges, earned finance charges, sales taxes, and
18 title charges.

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

26 (5) "Days" means calendar days.

27 (6) "Division" means the Division of Consumer Services
28 of the Department of Agriculture and Consumer Services.

29 (7) "Incidental charges" means those reasonable costs
30 to the consumer which are directly caused by the nonconformity
31 of the vessel.

1 (8) "Lessee" means any consumer who leases a vessel
2 for 1 year or more pursuant to a written lease agreement
3 which provides that the lessee is responsible for repairs to
4 such vessel or any consumer who leases a vessel pursuant to a
5 lease-purchase agreement.

6 (9) "Manufacturer" means a manufacturer, a
7 distributor, or an importer. A dealer shall not be deemed to
8 be a manufacturer, distributor, or importer as provided in
9 this section.

10 (10) "Nonconformity" means a defect or condition that
11 substantially impairs the use, value, or safety of a vessel,
12 but does not include a defect or condition that results from
13 an accident, abuse, neglect, modification, or alteration of
14 the vessel by persons other than the manufacturer or its
15 authorized service agent.

16 (11) "Procedure" means an informal dispute-settlement
17 procedure established by a manufacturer to mediate and
18 arbitrate vessel warranty disputes.

19 (12) "Purchase price" means the cash price, inclusive
20 of any allowance for a trade-in vessel.

21 (13) "Reasonable offset for use" means the number of
22 hours attributable to a consumer up to the date of the third
23 repair attempt of the same nonconformity or the 60th
24 cumulative day when the vessel is out of service by reason of
25 repair of one or more nonconformities, whichever occurs first,
26 multiplied by the purchase price of the vessel and divided by
27 120,000.

28 (14) "Replacement vessel" means a vessel which is
29 identical or reasonably equivalent to the vessel to be
30 replaced, as the vessel to be replaced existed at the time of
31 acquisition.

1 (15) "Vessel" means a new vessel, propelled by power
2 other than muscular power, which is sold in this state to
3 transport persons or property, and includes a vessel used as a
4 demonstrator or leased vessel if a manufacturer's warranty was
5 issued as a condition of sale, or the lessee is responsible
6 for repairs. The term "vessel" includes the engine which
7 powers the vessel.

8 (16) "Vessel Lemon Law rights period" means the period
9 ending 12 months after the date of the original delivery of a
10 vessel to a consumer.

11 (17) "Warranty" means any written warranty issued by
12 the manufacturer, or any affirmation of fact or promise made
13 by the manufacturer, excluding statements made by the dealer,
14 in connection with the sale of a vessel to a consumer which
15 relates to the nature of the material or workmanship and
16 affirms or promises that such material or workmanship is free
17 of defects or will meet a specified level of performance.

18 Section 4. Section 327.904, Florida Statutes, is
19 created to read:

20 327.904 Duty of manufacturer to conform a vessel to
21 the warranty.--

22 (1)(a) If a vessel does not conform to the warranty
23 and the consumer first reports the problem to the manufacturer
24 or its authorized service agent during the first 12 months of
25 the Vessel Lemon Law rights period, the manufacturer or its
26 authorized service agent shall, at no cost to the consumer,
27 make such repairs as are necessary to conform the vessel to
28 the warranty, irrespective of whether such repairs are made
29 after the expiration of the Vessel Lemon Law rights period.

30 (b) If a vessel does not conform to the warranty and
31 the consumer first reports the problem to the manufacturer or

1 its authorized service agent after the first 12 months of the
2 Vessel Lemon Law rights period, the manufacturer or its
3 authorized service agent shall make such repairs as are
4 necessary to conform the vehicle to the warranty, irrespective
5 of whether such repairs are made after the expiration of the
6 Vessel Lemon Law rights period. The manufacturer may charge
7 for such repairs if the warranty so provides.

8 (2) Each manufacturer shall provide to its consumers
9 conspicuous notice of the address and phone number for its
10 zone, district, or regional office for this state in the
11 written warranty or owner's manual. By January 1 of each
12 year, each manufacturer shall forward to the Department of
13 Legal Affairs a copy of the owner's manual and any written
14 warranty for each make and model of vessel that it sells in
15 this state.

16 (3) At the time of acquisition, the manufacturer shall
17 inform the consumer clearly and conspicuously in writing how
18 and where to file a claim with a certified procedure if such
19 procedure has been established by the manufacturer pursuant to
20 s. 327.907 and shall provide to the consumer a written
21 statement that explains the consumer's rights under ss.
22 327.901-327.919. The written statement shall be prepared by
23 the Department of Legal Affairs and shall contain a toll-free
24 number for the division that the consumer can contact to
25 obtain information regarding the consumer's rights and
26 obligations under this act or to commence arbitration.

27 (4) A manufacturer, through its authorized service
28 agent, shall provide to the consumer, each time the consumer's
29 vessel is returned after being examined or repaired under the
30 warranty, a fully itemized, legible statement or repair order
31 indicating any test operation performed and the approximate

1 length of the operation, any diagnosis made, and all work
2 performed on the vessel including, but not limited to, a
3 general description of the problem reported by the consumer or
4 an identification of the defect or condition, parts and labor,
5 and the date when the vessel was submitted for examination or
6 repair and the date when the repair or examination was
7 completed.

8 Section 5. Section 327.905, Florida Statutes, is
9 created to read:

10 327.905 Nonconformity of vessels.--

11 (1)(a) After three attempts have been made to repair
12 the same nonconformity, the consumer shall give written
13 notification, by registered or express mail to the
14 manufacturer, of the need to repair the nonconformity to allow
15 the manufacturer a final attempt to cure the nonconformity.
16 The manufacturer shall have 10 days, commencing upon receipt
17 of such notification, to respond and give the consumer the
18 opportunity to have the vessel repaired at a reasonably
19 accessible repair facility within a reasonable time after the
20 consumer's receipt of the response. The manufacturer shall
21 have 10 days, commencing upon the delivery of the vessel to
22 the designated repair facility by the consumer, to conform the
23 vessel to the warranty. If the manufacturer fails to respond
24 to the consumer and give the consumer the opportunity to have
25 the vessel repaired at a reasonably accessible repair facility
26 or perform the repairs within the time periods prescribed in
27 this subsection, the requirement that the manufacturer be
28 given a final attempt to cure the nonconformity, or in
29 complete absence of a justiciable issue of either law or fact
30 raised by the consumer, does not apply.

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1 (b) If the vessel is out of service by reason of
2 repair of one or more nonconformities by the manufacturer or
3 its authorized service agent for a cumulative total of 45 or
4 more days, exclusive of downtime for routine maintenance
5 prescribed by the owner's manual, the consumer shall so notify
6 the manufacturer in writing by registered or express mail to
7 give the manufacturer or its authorized service agent an
8 opportunity to inspect or repair the vessel.

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

24 (b) Refunds shall be made to the consumer and
25 lienholder of record, if any, as their interests may appear.
26 If applicable, refunds shall be made to the lessor and lessee
27 as follows: The lessee shall receive the lessee cost and the
28 lessor shall receive the lease price less the lessee cost. A
29 penalty for early lease termination may not be assessed
30 against a lessee who receives a replacement vessel or refund
31 under ss. 327.901-327.919. The Department of Revenue shall

1 refund to the manufacturer any sales tax which the
2 manufacturer refunded to the consumer, lienholder, or lessor
3 under this section, if the manufacturer provides to the
4 department a written request for a refund and evidence that
5 the sales tax was paid when the vessel was purchased and that
6 the manufacturer refunded the sales tax to the consumer,
7 lienholder, or lessor.

8 (3)(a) It is presumed that a reasonable number of
9 attempts have been undertaken to conform a vessel to the
10 warranty if, during the Vessel Lemon Law rights period,
11 either:

12 1. The same nonconformity has been subject to repair
13 at least three times by the manufacturer or its authorized
14 service agent, plus a final attempt by the manufacturer to
15 repair the vessel if undertaken as provided for in paragraph
16 (1)(a), and such nonconformity continues to exist; or

17 2. The vessel has been out of service by reason of
18 repair of one or more nonconformities by the manufacturer, or
19 its authorized service agent, for a cumulative total of 45 or
20 more days, exclusive of downtime for routine maintenance
21 prescribed by the owner's manual. The manufacturer or its
22 authorized service agent must have had at least one
23 opportunity to inspect or repair the vessel following receipt
24 of the notification as provided in paragraph (1)(b). The
25 45-day period may be extended by any period of time during
26 which repair services are not available to the consumer
27 because of war, invasion, strike, fire, flood, or natural
28 disaster.

29 (b) The terms of paragraph (a) may be extended for a
30 period of 6 months after the expiration of the Vessel Lemon
31 Law rights period if a nonconformity has been reported but has

1 not been cured by the manufacturer, or its authorized service
2 agent, by the expiration of the Vessel Lemon Law rights
3 period.

4 (4) It is an affirmative defense to any claim under
5 ss. 327.901-327.919 that:

6 (a) The alleged nonconformity does not substantially
7 impair the use, value, or safety of the vessel;

8 (b) The nonconformity is the result of an accident,
9 abuse, neglect, or unauthorized modifications or alterations
10 of the vessel by persons other than the manufacturer or its
11 authorized service agent; or

12 (c) The claim by the consumer was not filed in good
13 faith.

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15 Any other affirmative defense allowed by law may be raised
16 against the claim.

17 Section 6. Section 327.906, Florida Statutes, is
18 created to read:

19 327.906 Bad-faith claims.--Any claim by a consumer
20 which is found by the court to have been filed in bad faith or
21 solely for the purpose of harassment, or in complete absence
22 of a justiciable issue of either law or fact raised by the
23 consumer, shall result in the consumer being liable for all
24 costs and reasonable attorney's fees incurred by the
25 manufacturer, or its agent, as a direct result of the
26 bad-faith claim.

27 Section 7. Section 327.907, Florida Statutes, is
28 created to read:

29 327.907 Dispute-settlement procedures.--

30 (1) If a manufacturer has established a procedure
31 substantially in compliance with the provisions of ss.

1 327.901-327.919 and the rules adopted under this act, and has
2 informed the consumer how and where to file a claim with such
3 procedure pursuant to s. 327.904(3), the provisions of s.
4 327.905(2) apply to the consumer only if the consumer has
5 first resorted to such procedure. The decisionmakers for a
6 certified procedure shall, in rendering decisions, take into
7 account all legal and equitable factors germane to a fair and
8 just decision, including, but not limited to, the warranty,
9 the provisions of ss. 327.901-327.919, and any other equitable
10 considerations appropriate under the circumstances.

11 Decisionmakers and staff of a procedure shall be trained in
12 the provisions of ss. 327.901-327.919. In an action brought
13 by a consumer concerning an alleged nonconformity, the
14 decision that results from a certified procedure is admissible
15 in evidence.

16 (2) A manufacturer may apply to the division for
17 certification of its procedure. After receipt and evaluation
18 of the application, the division shall certify the procedure
19 or notify the manufacturer of any deficiencies in the
20 application or the procedure.

21 (3) A certified procedure or a procedure of an
22 applicant seeking certification shall submit to the division a
23 copy of each settlement approved by the procedure or decision
24 made by a decisionmaker within 30 days after the settlement is
25 reached or the decision is rendered. The decision or
26 settlement must contain at a minimum:

27 (a) The name and address of the consumer.

28 (b) The name of the manufacturer and address of the
29 dealership from which the vessel was purchased.

30 (c) The date the claim was received and the location
31 of the procedure office that handled the claim.

- 1 (d) The relief requested by the consumer.
2 (e) The name of each decisionmaker rendering the
3 decision or person approving the settlement.
4 (f) The statement of the terms of the settlement or
5 decision.
6 (g) The date of the settlement or decision.
7 (h) The statement of whether the decision was accepted
8 or rejected by the consumer.
9 (4) Any manufacturer establishing or applying to
10 establish a certified procedure must file with the division a
11 copy of any information required for purposes of
12 certification, including the number of refunds and
13 replacements made in this state pursuant to the provisions of
14 ss. 327.901-327.919 by the manufacturer during the period
15 audited.
16 (5) The division shall review each certified procedure
17 at least annually, prepare an annual report evaluating the
18 operation of certified procedures established by vessel
19 manufacturers and procedures of applicants seeking
20 certification, and, for a period not to exceed 1 year, shall
21 grant certification to, or renew certification for, those
22 manufacturers whose procedures substantially comply with the
23 provisions of ss. 327.901-327.919 and rules adopted under this
24 act. If certification is revoked or denied, the division
25 shall state the reasons for such action. The reports and
26 records of actions taken with respect to certification shall
27 be public records.
28 (6) A manufacturer whose certification is denied or
29 revoked is entitled to a hearing pursuant to chapter 120.
30 (7) The division shall adopt rules to implement this
31 section.

1 Section 8. Section 327.908, Florida Statutes, is
2 created to read:

3 327.908 Florida New Vessel Arbitration Board; dispute
4 eligibility.--

5 (1) If a consumer files a claim with a certified
6 procedure within 6 months after the expiration of the Vessel
7 Lemon Law rights period and a decision is not rendered within
8 40 days, the consumer may apply to the division to have the
9 dispute removed to the board for arbitration.

10 (2) A consumer who files a claim with a certified
11 procedure within 6 months after the expiration of the Vessel
12 Lemon Law rights period and is not satisfied with the decision
13 or the manufacturer's compliance therewith may apply to the
14 division to have the dispute submitted to the board for
15 arbitration. A manufacturer may not seek review of a decision
16 made under its procedure.

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

21 (4) A consumer must request arbitration before the
22 board within 6 months after the expiration of the Vessel Lemon
23 Law rights period, or within 30 days after the final action of
24 a certified procedure, whichever 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 ss. 327.901-327.919.

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 ss.
15 327.901-327.919. In any civil action arising under this act
16 and relating to a matter considered by the division, any
17 determination made to reject a dispute is admissible in
18 evidence.

19 Section 9. Section 327.909, Florida Statutes, is
20 created to read:

21 327.909 Florida New Vessel Arbitration Board; creation
22 and function.--

23 (1) There is established within the Department of
24 Legal Affairs, the Florida New Vessel Arbitration Board,
25 consisting of members appointed by the Attorney General for an
26 initial term of 1 year. Board members may be reappointed for
27 additional terms of 2 years. Each board member is accountable
28 to the Attorney General for the performance of the member's
29 duties and is exempt from civil liability for any act or
30 omission which occurs while acting in the member's official
31 capacity. The Department of Legal Affairs shall defend a

1 member in any action against the member or the board which
2 arises from any such act or omission. The Attorney General
3 may establish as many boards as necessary to carry out the
4 provisions of ss. 327.901-327.919.

5 (2) The boards shall hear cases in various locations
6 throughout the state so any consumer whose dispute is approved
7 for arbitration by the division may attend an arbitration
8 hearing at a reasonably convenient location and present a
9 dispute orally. Arbitration proceedings under this section
10 shall be open to the public on reasonable and
11 nondiscriminatory terms.

12 (3) Each board shall consist of six members. The
13 Attorney General may appoint two additional members to each
14 board if necessary. The members of the board shall construe
15 and apply the provisions of ss. 327.901-327.919, and rules
16 adopted thereunder, in making their decisions. An
17 administrator and a secretary shall be assigned to each board
18 by the Department of Legal Affairs. At least one member of
19 each board must be a person with expertise in vessel
20 mechanics. A member must not be employed by a vessel
21 manufacturer or dealer or be a staff member, a decisionmaker,
22 or a consultant for a procedure. Board members shall be
23 trained in the application of ss. 327.901-327.919 and any
24 rules adopted under this act, shall be reimbursed for travel
25 expenses pursuant to s. 112.061, and shall be compensated at a
26 rate or wage prescribed by the Attorney General.

27 (4) Before filing a civil action on a matter subject
28 to s. 327.905, the consumer must first submit the dispute to
29 the division, and to the board if such dispute is deemed
30 eligible for arbitration.

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1 (5) Manufacturers shall submit to arbitration
2 conducted by the board if such arbitration is requested by a
3 consumer and the dispute is deemed eligible for arbitration by
4 the division pursuant to s. 327.908.

5 (6) The Department of Legal Affairs, at the board's
6 request, may investigate disputes; subpoena records,
7 documents, and other evidence; and compel the attendance of
8 witnesses before the board.

9 (7) At all arbitration proceedings, the parties may
10 present oral and written testimony, present witnesses and
11 evidence relevant to the dispute, cross-examine witnesses, and
12 be represented by counsel. The board may administer oaths or
13 affirmations to witnesses and inspect the vehicle if requested
14 by a party or if the board deems such inspection appropriate.

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

18 (9) The board shall hear the dispute within 40 days
19 and render a decision within 60 days after the date the
20 request for arbitration is approved. If the board determines
21 that additional information is necessary, it may continue the
22 arbitration proceeding on a subsequent date. The decision of
23 the board shall be sent by registered mail to the consumer and
24 the manufacturer, and shall contain written findings of fact
25 and rationale for the decision. If the decision is in favor
26 of the consumer, the manufacturer must, within 40 days after
27 receipt of the decision, comply with the terms of the
28 decision. Compliance occurs on the date the consumer receives
29 delivery of an acceptable replacement vessel or the refund
30 specified in the arbitration award. In any civil action
31 arising under ss. 327.901-327.919 and relating to a dispute

1 arbitrated before the board, any decision by the board is
2 admissible in evidence. The failure of the board to hear a
3 dispute or render a decision within the prescribed periods
4 does not invalidate the decision.

5 (10) A decision is final unless appealed by either
6 party. A petition to the circuit court to appeal a decision
7 must be made within 30 days after receipt of the decision.
8 Within 7 days after the petition has been filed, the appealing
9 party must send a copy of the petition to the Department of
10 Legal Affairs. If the department does not receive notice of
11 such petition within 40 days after the manufacturer's receipt
12 of a decision in favor of the consumer, and the manufacturer
13 has neither complied with, nor has petitioned to appeal such
14 decision, the Department of Legal Affairs may apply to the
15 circuit court to seek imposition of a fine up to \$1,000 per
16 day against the manufacturer until the amount stands at twice
17 the purchase price of the vessel, unless the manufacturer
18 provides clear and convincing evidence that the delay or
19 failure was beyond its control or was acceptable to the
20 consumer as evidenced by a written statement signed by the
21 consumer. If the manufacturer fails to provide such evidence
22 or fails to pay the fine, the Department of Legal Affairs
23 shall initiate proceedings against the manufacturer for
24 failure to pay such fine. The proceeds from the fine herein
25 imposed shall be placed in the General Revenue Fund for
26 implementation and enforcement of ss. 327.901-327.919. If the
27 manufacturer fails to comply with the provisions of this
28 subsection, the court shall affirm the award upon application
29 by the consumer.

30 (11) All provisions in this section pertaining to
31 compulsory arbitration before the board, the proceedings and

1 decisions of the board, and any appeals thereof, are exempt
2 from the provisions of chapter 120.

3 (12) An appeal of a decision by the board to the
4 circuit court by a consumer or a manufacturer shall be by
5 trial de novo. In a written petition to appeal a decision by
6 the board, the appealing party must state the action requested
7 and the grounds relied upon for appeal.

8 (13) If a decision of the board in favor of the
9 consumer is upheld by the court, recovery by the consumer
10 shall include the pecuniary value of the award, attorney's
11 fees incurred in obtaining confirmation of the award, and all
12 costs and continuing damages in the amount of \$25 per day for
13 each day beyond the 40-day period following the manufacturer's
14 receipt of the board's decision. If a court determines that
15 the manufacturer brought the appeal solely for the purpose of
16 harassment or in complete absence of a justiciable issue of
17 law or fact, the court may double the amount of the total
18 award.

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

24 (15) The Department of Legal Affairs shall maintain
25 records of each dispute submitted to the board, including an
26 index of vessels by year, make, and model, and shall compile
27 aggregate annual statistics for all disputes submitted to, and
28 decided by, the board, as well as annual statistics for each
29 manufacturer that include, but are not limited to, the value,
30 if applicable, and the number and percent of:

31 (a) Replacement vessel requests;

- 1 (b) Purchase price refund requests;
2 (c) Replacement vessels obtained in prehearing
3 settlements;
4 (d) Purchase price refunds obtained in prehearing
5 settlements;
6 (e) Replacement vessels awarded in arbitration;
7 (f) Purchase price refunds awarded in arbitration;
8 (g) Board decisions neither complied with in 40 days
9 nor petitioned for appeal within 30 days;
10 (h) Board decisions appealed;
11 (i) Appeals affirmed by the court; and
12 (j) Appeals found by the court to be brought in bad
13 faith or solely for the purpose of harassment.

14
15 The statistics compiled under this subsection are public
16 information.

17 (16) When requested by the Department of Legal
18 Affairs, a manufacturer must verify the settlement terms for
19 disputes that are approved for arbitration but are not decided
20 by the board.

21 Section 10. Section 327.911, Florida Statutes, is
22 created to read:

23 327.911 Compliance and disciplinary actions.--The
24 Department of Legal Affairs may enforce and ensure compliance
25 with the provisions of ss. 327.901-327.919 and rules adopted
26 thereunder, may issue subpoenas requiring the attendance of
27 witnesses and production of evidence, and may seek relief in
28 the circuit court to compel compliance with such subpoenas.
29 The Department of Legal Affairs may impose a civil penalty
30 against a manufacturer not to exceed \$1,000 for each count or
31 separate offense. The proceeds from the fine imposed herein

1 shall be placed in the General Revenue Fund, for
2 implementation and enforcement of ss. 327.901-327.919.

3 Section 11. Section 327.912, Florida Statutes, is
4 created to read:

5 327.912 Unfair or deceptive trade practice.--A
6 violation of ss. 327.901-327.919 by a manufacturer is an
7 unfair or deceptive trade practice as defined in part II of
8 chapter 501.

9 Section 12. Section 327.913, Florida Statutes, is
10 created to read:

11 327.913 Consumer remedies.--

12 (1) A consumer may file an action to recover damages
13 caused by a violation of ss. 327.901-327.919. The court shall
14 award a consumer who prevails in such action the amount of any
15 pecuniary loss, litigation costs, reasonable attorney's fees,
16 and appropriate equitable relief.

17 (2) An action brought under ss. 327.901-327.919 must
18 be commenced within 1 year after the expiration of the Vessel
19 Lemon Law rights period, or, if a consumer resorts to an
20 informal dispute-settlement procedure or submits a dispute to
21 the division or board, within 1 year after the final action of
22 the procedure, division, or board.

23 (3) Sections 327.901-327.919 do not prohibit a
24 consumer from pursuing other rights or remedies under any
25 other law.

26 Section 13. Section 327.914, Florida Statutes, is
27 created to read:

28 327.914 Vessel dealer liability.--Nothing in ss.
29 327.901-327.919 imposes any liability on a dealer or creates a
30 cause of action by a consumer against a dealer, except for
31 written express warranties made by the dealer apart from the

1 manufacturer's warranties. A dealer may not be made a party
2 defendant in any action involving or relating to ss.
3 327.901-327.919, except as provided in this section. The
4 manufacturer shall not charge back or require reimbursement by
5 the dealer for any costs, including, but not limited to, any
6 refunds or vessel replacements, incurred by the manufacturer
7 arising out of ss. 327.901-327.919, in the absence of evidence
8 that the related repairs had been carried out by the dealer in
9 a manner substantially inconsistent with the manufacturer's
10 published instructions.

11 Section 14. Section 327.915, Florida Statutes, is
12 created to read:

13 327.915 Resale of returned vessels.--

14 (1) A manufacturer who accepts the return of a vessel
15 by reason of a settlement, determination, or decision pursuant
16 to this chapter shall notify the Department of Legal Affairs
17 and report the vessel identification number of that vessel
18 within 10 days after such acceptance.

19 (2) A person shall not knowingly lease, sell at
20 wholesale or retail, or transfer a title to a vessel returned
21 by reason of a settlement, determination, or decision pursuant
22 to ss. 327.901-327.919 or similar statute of another state
23 unless the nature of the nonconformity is clearly and
24 conspicuously disclosed to the prospective transferee, lessee,
25 or buyer, and the manufacturer warrants to correct such
26 nonconformity for a term of 1 year. The Department of Legal
27 Affairs shall prescribe by rule the form, content, and
28 procedure pertaining to such disclosure statement.

29 (3) As used in this section, the term "settlement"
30 means an agreement entered into between a manufacturer and
31

1 consumer that occurs after a dispute is submitted to a
2 procedure or is approved for arbitration before the board.

3 Section 15. Section 327.916, Florida Statutes, is
4 created to read:

5 327.916 Certain agreements void.--Any agreement
6 entered into by a consumer that waives, limits, or disclaims
7 the rights set forth in ss. 327.901-327.919 is void as
8 contrary to public policy. The rights set forth in ss.
9 327.901-327.919 shall extend to a subsequent transferee of
10 such vessel.

11 Section 16. Section 327.917, Florida Statutes, is
12 created to read:

13 327.917 Preemption.--Sections 327.901-327.919 preempt
14 any similar county or municipal ordinance regarding consumer
15 warranty rights resulting from the acquisition of a vessel in
16 this state.

17 Section 17. Section 327.918, Florida Statutes, is
18 created to read:

19 327.918 Fee.--

20 (1) A \$2 fee shall be collected by a vessel dealer, or
21 by a person engaged in the business of leasing vessels, from
22 the consumer at the consummation of the sale of a vessel or at
23 the time of entry into a lease agreement for a vessel. Such
24 fees shall be remitted to the county tax collector or private
25 agency acting as agent for the Department of Revenue. All
26 fees, less the cost of administration, shall be transferred
27 monthly to the Department of Legal Affairs for deposit into
28 the General Revenue Fund. The Department of Legal Affairs
29 shall distribute monthly an amount not exceeding one-fourth of
30 the fees received to the Division of Consumer Services of the
31 Department of Agriculture and Consumer Services to carry out

1 the provisions of ss. 327.907 and 327.908. The Department of
2 Legal Affairs shall contract with the Division of Consumer
3 Services for payment of services performed by the division
4 pursuant to ss. 327.907 and 327.908.

5 (2) The Department of Revenue shall administer,
6 collect, and enforce the fee authorized under this section
7 pursuant to the provisions of part I of chapter 212. The fee
8 shall not be included in the computation of estimated taxes
9 pursuant to s. 212.11(1)(a), nor shall the dealer's credit
10 provided under s. 212.12 apply to the fee. The provisions of
11 part I of chapter 212 regarding the authority to audit and
12 make assessments, the keeping of books and records, and
13 interest and penalties on delinquent fees apply to the fee
14 imposed by this section.

15 Section 18. Section 327.919, Florida Statutes, is
16 created to read:

17 327.919 Rulemaking authority.--The Department of Legal
18 Affairs shall adopt rules to implement ss. 327.901-327.919.

19 Section 19. This act shall take effect October 1,
20 1998.

21
22 *****

23 LEGISLATIVE SUMMARY

24 Creates the "Vessel Warranty Enforcement Act" which is
25 also known as the "Vessel Lemon Law" to provide for the
26 protection of the purchasers of new vessels in the same
27 manner as is currently provided for motor vehicles.
Includes protection with respect to the vessel and the
engine used to power the vessel. (See bill for details.)