

By Senator Webster

12-1545-99

See HB

1                                   A bill to be entitled  
 2           An act relating to motor vehicle sales  
 3           warranties; amending ss. 681.103, 681.108,  
 4           681.109, 681.1095, 681.1096, 681.112, and  
 5           681.117, F.S.; transferring the duties and  
 6           responsibilities of the Division of Consumer  
 7           Services of the Department of Agriculture and  
 8           Consumer Services under chapter 681, F.S., to  
 9           the Department of Legal Affairs; repealing s.  
 10          681.102(7), F.S., relating to the Division of  
 11          Consumer Services of the Department of  
 12          Agriculture and Consumer Services; providing an  
 13          effective date.

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

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 17           Section 1. Subsection (3) of section 681.103, Florida  
 18 Statutes, is amended to read:

19           681.103 Duty of manufacturer to conform a motor  
 20 vehicle to the warranty.--

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

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

13 Section 2. Section 681.108, Florida Statutes, is  
14 amended to read:

15 681.108 Dispute-settlement procedures.--

16 (1) If a manufacturer has established a procedure,  
17 which the department ~~division~~ has certified as substantially  
18 complying with the provisions of 16 C.F.R. part 703, in effect  
19 October 1, 1983, and with the provisions of this chapter and  
20 the rules adopted under this chapter, and has informed the  
21 consumer how and where to file a claim with such procedure  
22 pursuant to s. 681.103(3), the provisions of s. 681.104(2)  
23 apply to the consumer only if the consumer has first resorted  
24 to such procedure. The decisionmakers for a certified  
25 procedure shall, in rendering decisions, take into account all  
26 legal and equitable factors germane to a fair and just  
27 decision, including, but not limited to, the warranty; the  
28 rights and remedies conferred under 16 C.F.R. part 703, in  
29 effect October 1, 1983; the provisions of this chapter; and  
30 any other equitable considerations appropriate under the  
31 circumstances. Decisionmakers and staff of a procedure shall

1 be trained in the provisions of this chapter and in 16 C.F.R.  
2 part 703, in effect October 1, 1983. In an action brought by  
3 a consumer concerning an alleged nonconformity, the decision  
4 that results from a certified procedure is admissible in  
5 evidence.

6 (2) A manufacturer may apply to the department  
7 ~~division~~ for certification of its procedure. After receipt and  
8 evaluation of the application, the department ~~division~~ shall  
9 certify the procedure or notify the manufacturer of any  
10 deficiencies in the application or the procedure.

11 (3) A certified procedure or a procedure of an  
12 applicant seeking certification shall submit to the department  
13 ~~division~~ a copy of each settlement approved by the procedure  
14 or decision made by a decisionmaker within 30 days after the  
15 settlement is reached or the decision is rendered. The  
16 decision or settlement must contain at a minimum the:

17 (a) Name and address of the consumer;

18 (b) Name of the manufacturer and address of the  
19 dealership from which the motor vehicle was purchased;

20 (c) Date the claim was received and the location of  
21 the procedure office that handled the claim;

22 (d) Relief requested by the consumer;

23 (e) Name of each decisionmaker rendering the decision  
24 or person approving the settlement;

25 (f) Statement of the terms of the settlement or  
26 decision;

27 (g) Date of the settlement or decision; and

28 (h) Statement of whether the decision was accepted or  
29 rejected by the consumer.

30 (4) Any manufacturer establishing or applying to  
31 establish a certified procedure must file with the department

1 ~~division~~ a copy of the annual audit required under the  
2 provisions of 16 C.F.R. part 703, in effect October 1, 1983,  
3 together with any additional information required for purposes  
4 of certification, including the number of refunds and  
5 replacements made in this state pursuant to the provisions of  
6 this chapter by the manufacturer during the period audited.

7 (5) The department ~~division~~ shall review each  
8 certified procedure at least annually, prepare an annual  
9 report evaluating the operation of certified procedures  
10 established by motor vehicle manufacturers and procedures of  
11 applicants seeking certification, and, for a period not to  
12 exceed 1 year, shall grant certification to, or renew  
13 certification for, those manufacturers whose procedures  
14 substantially comply with the provisions of 16 C.F.R. part  
15 703, in effect October 1, 1983, and with the provisions of  
16 this chapter and rules adopted under this chapter. If  
17 certification is revoked or denied, the department ~~division~~  
18 shall state the reasons for such action. The reports and  
19 records of actions taken with respect to certification shall  
20 be public records.

21 (6) A manufacturer whose certification is denied or  
22 revoked is entitled to a hearing pursuant to chapter 120.

23 (7) If federal preemption of state authority to  
24 regulate procedures occurs, the provisions of subsection (1)  
25 concerning prior resort do not apply.

26 (8) The department ~~division~~ shall adopt rules to  
27 implement this section.

28 Section 3. Section 681.109, Florida Statutes, is  
29 amended to read:

30 681.109 Florida New Motor Vehicle Arbitration Board;  
31 dispute eligibility.--

1           (1) If a manufacturer has a certified procedure, a  
2 consumer claim arising during the Lemon Law rights period must  
3 be filed with the certified procedure no later than 60 days  
4 after the expiration of the Lemon Law rights period. If a  
5 decision is not rendered by the certified procedure within 40  
6 days of filing, the consumer may apply to the department  
7 ~~division~~ to have the dispute removed to the board for  
8 arbitration.

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

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

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

28           (5) The department ~~division~~ shall screen all requests  
29 for arbitration before the board to determine eligibility.  
30 The consumer's request for arbitration before the board shall  
31 be made on a form prescribed by the department. The

1 department ~~division~~ shall forward to the board all disputes  
2 that the department ~~division~~ determines are potentially  
3 entitled to relief under this chapter.

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

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

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

24 Section 4. Subsections (2), (4), (5), and (11) of  
25 section 681.1095, Florida Statutes, are amended to read:

26 681.1095 Florida New Motor Vehicle Arbitration Board;  
27 creation and function.--

28 (2) The boards shall hear cases in various locations  
29 throughout the state so any consumer whose dispute is approved  
30 for arbitration by the department ~~division~~ may attend an  
31 arbitration hearing at a reasonably convenient location and

1 present a dispute orally. Hearings shall be conducted by  
2 panels of three board members assigned by the department. A  
3 majority vote of the three-member board panel shall be  
4 required to render a decision. Arbitration proceedings under  
5 this section shall be open to the public on reasonable and  
6 nondiscriminatory terms.

7 (4) Before filing a civil action on a matter subject  
8 to s. 681.104, the consumer must first submit the dispute to  
9 the department ~~division~~, and to the board if such dispute is  
10 deemed eligible for arbitration.

11 (5) Manufacturers shall submit to arbitration  
12 conducted by the board if such arbitration is requested by a  
13 consumer and the dispute is deemed eligible for arbitration by  
14 the department ~~division~~ pursuant to s. 681.109.

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

20 Section 5. Subsections (2) and (4) of section  
21 681.1096, Florida Statutes, are amended to read:

22 681.1096 Pilot RV Mediation and Arbitration Program;  
23 creation and qualifications.--

24 (2) Each manufacturer of a recreational vehicle  
25 involved in a dispute that is determined eligible under this  
26 chapter, including chassis and component manufacturers which  
27 separately warrant the chassis and components and which  
28 otherwise meet the definition of manufacturer set forth in s.  
29 681.102(13)(14), shall participate in a mediation and  
30 arbitration program that is deemed qualified by the  
31 department.

1           (4) The department shall monitor the program for  
2 compliance with this chapter. If the program is determined not  
3 qualified or if qualification is revoked, then the involved  
4 manufacturer shall be required to submit to arbitration  
5 conducted by the board if such arbitration is requested by a  
6 consumer and the dispute is deemed eligible for arbitration by  
7 the department ~~division~~ pursuant to s. 681.109.

8           Section 6. Subsection (2) of section 681.112, Florida  
9 Statutes, is amended to read:

10           681.112 Consumer remedies.--

11           (2) An action brought under this chapter must be  
12 commenced within 1 year after the expiration of the Lemon Law  
13 rights period, or, if a consumer resorts to an informal  
14 dispute-settlement procedure or submits a dispute to the  
15 department ~~division~~ or board, within 1 year after the final  
16 action of the procedure, department ~~division~~, or board.

17           Section 7. Subsection (1) of section 681.117, Florida  
18 Statutes, is amended to read:

19           681.117 Fee.--

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



1 ~~Department of Agriculture and Consumer Services to carry out~~  
2 ~~the provisions of ss. 681.108 and 681.109. The Department of~~  
3 ~~Legal Affairs shall contract with the Division of Consumer~~  
4 ~~Services for payment of services performed by the division~~  
5 ~~pursuant to ss. 681.108 and 681.109.~~

6 Section 8. Subsection (7) of section 681.102, Florida  
7 Statutes, 1998 Supplement, is repealed.

8 Section 9. This act shall take effect upon becoming a  
9 law.

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HOUSE SUMMARY

Transfers the duties and responsibilities of the Division of Consumer Services of the Department of Agriculture and Consumer Services under the motor vehicle sales warranties law to the Department of Legal Affairs.