

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative(s) Barreiro offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 17 and 18, insert:

5 Section 1. Chapter 681, Florida Statutes, is designated as
6 part I of that chapter, and part II, consisting of sections
7 681.201, 681.202, 681.203, 681.204, 681.205, 681.206, 681.207,
8 681.208, 681.209, 681.210, 681.211, 681.212, 681.213, 681.214,
9 681.215, 681.216, 681.217, 681.218, and 681.219, is created to
10 read:

11 681.201 Short title.--This part may be cited as the
12 "Vessel Warranty Enforcement Act."

13 681.202 Legislative intent.--The Legislature recognizes
14 that a vessel is a major consumer purchase and that a defective
15 vessel undoubtedly creates a hardship for the consumer. The
16 Legislature further recognizes that a vessel dealer is an
17 authorized service agent of the manufacturer. It is the intent

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18 of the Legislature that a good faith vessel warranty complaint
19 by a consumer be resolved by the manufacturer within a specified
20 period of time; however, it is not the intent of the Legislature
21 that a consumer establish the presumption of a reasonable number
22 of attempts as to each manufacturer that provides a warranty
23 directly to the consumer. It is further the intent of the
24 Legislature to provide the statutory procedures whereby a
25 consumer may receive a replacement vessel or a full refund for a
26 vessel that cannot be brought into conformity with the warranty
27 provided for in this part.

28 681.203 Definitions.--As used in this part, the term:

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

32 (2) "Board" means the Florida New Vessel Arbitration
33 Board.

34 (3) "Collateral charges" means those additional charges to
35 a consumer wholly incurred as a result of the acquisition of the
36 vessel. For the purposes of this part, collateral charges
37 include, but are not limited to, manufacturer-installed or
38 agent-installed items or service charges, earned finance
39 charges, sales taxes, and title charges.

40 (4) "Consumer" means the purchaser, other than for
41 purposes of resale, or the lessee of a vessel primarily used for
42 personal or family purposes; any person to whom such vessel is
43 transferred for the same purposes during the duration of the
44 Vessel Lemon Law rights period; and any other person entitled by
45 the terms of the warranty to enforce the obligations of the
46 warranty.

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47 (5) "Days" means calendar days.

48 (6) "Department" means the Department of Legal Affairs.

49 (7) "Division" means the Division of Consumer Services of
50 the Department of Agriculture and Consumer Services.

51 (8) "Incidental charges" means those reasonable costs to
52 the consumer that are directly caused by the nonconformity of
53 the vessel.

54 (9) "Lessee" means any consumer who leases a vessel for 1
55 year or more pursuant to a written lease agreement which
56 provides that the lessee is responsible for repairs to such
57 vessel or any consumer who leases a vessel pursuant to a lease-
58 purchase agreement.

59 (10) "Lessee cost" means the aggregate deposit and rental
60 payments previously paid to the lessor for the leased vessel but
61 excludes debt from any other transaction.

62 (11) "Manufacturer" means a manufacturer, a distributor,
63 or an importer. A dealer shall not be deemed to be a
64 manufacturer, a distributor, or an importer as provided in this
65 section.

66 (12) "Nonconformity" means a defect or condition that
67 substantially impairs the use, value, or safety of a vessel, but
68 does not include a defect or condition that results from an
69 accident, abuse, neglect, modification, or alteration of the
70 vessel by persons other than the manufacturer or its authorized
71 service agent.

72 (13) "Procedure" means an informal dispute-settlement
73 procedure established by a manufacturer to mediate and arbitrate
74 vessel warranty disputes.

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75 (14) "Purchase price" means the cash price, inclusive of
76 any allowance for a trade-in vessel.

77 (15) "Reasonable offset for use" means the number of hours
78 of use attributable to a consumer up to the date of the third
79 repair attempt of the same nonconformity or the 60th cumulative
80 day that the vessel is out of service by reason of repair of one
81 or more nonconformities, whichever occurs first, multiplied by
82 the purchase price of the vessel and divided by 120,000.

83 (16) "Replacement vessel" means a vessel that is identical
84 or reasonably equivalent to the vessel to be replaced, as the
85 vessel to be replaced existed at the time of acquisition.

86 (17) "Vessel" means a new vessel, propelled by power other
87 than muscular power, that is sold in this state to transport
88 persons or property, and includes a vessel used as a
89 demonstrator or leased vessel if a manufacturer's warranty was
90 issued as a condition of sale or the lessee is responsible for
91 repairs. The term "vessel" includes the engine that powers the
92 vessel.

93 (18) "Vessel Lemon Law rights period" means the period
94 ending 12 months after the date of the original delivery of a
95 vessel to a consumer.

96 (19) "Warranty" means any written warranty issued by the
97 manufacturer, or any affirmation of fact or promise made by the
98 manufacturer, excluding statements made by the dealer, in
99 connection with the sale of a vessel to a consumer that relates
100 to the nature of the material or workmanship and affirms or
101 promises that such material or workmanship is free of defects or
102 will meet a specified level of performance.

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103 681.204 Duty of manufacturer to conform a vessel to the
104 warranty.--

105 (1) If a vessel does not conform to the warranty and the
106 consumer first reports the problem to the manufacturer or its
107 authorized service agent during the Vessel Lemon Law rights
108 period, the manufacturer or its authorized service agent shall
109 make such repairs as are necessary to conform the vessel to the
110 warranty, irrespective of whether such repairs are made after
111 the expiration of the Vessel Lemon Law rights period. Such
112 repairs shall be at no cost to the consumer if made during the
113 term of the manufacturer's written express warranty. Nothing in
114 this subsection shall be construed to grant an extension of the
115 Vessel Lemon Law rights period or to expand the time within
116 which a consumer must file a claim under this part.

117 (2) Each manufacturer shall provide to its consumers
118 conspicuous notice of the address and phone number for its zone,
119 district, or regional office for this state in the written
120 warranty or owner's manual. By January 1 of each year, each
121 manufacturer shall forward to the department a copy of the
122 owner's manual and any written warranty for each make and model
123 of vessel that it sells in this state.

124 (3) At the time of acquisition, the manufacturer shall
125 inform the consumer clearly and conspicuously in writing how and
126 where to file a claim with a certified procedure if such
127 procedure has been established by the manufacturer pursuant to
128 s. 681.207 and shall provide to the consumer a written statement
129 that explains the consumer's rights under this part. The written
130 statement shall be prepared by the department and shall contain
131 a toll-free number for the division that the consumer can

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132 contact to obtain information regarding the consumer's rights
133 and obligations under this part or to commence arbitration. The
134 consumer's signed acknowledgment of receipt of materials
135 required under this subsection shall constitute prima facie
136 evidence of compliance by the manufacturer and dealer. The form
137 of the acknowledgments shall be approved by the department, and
138 the dealer shall maintain the consumer's signed acknowledgment
139 for 3 years.

140 (4) A manufacturer, through its authorized service agent,
141 shall provide to the consumer, each time the consumer's vessel
142 is returned after being examined or repaired under the warranty,
143 a fully itemized, legible statement or repair order indicating
144 any test operation performed and the approximate length of the
145 operation, any diagnosis made, and all work performed on the
146 vessel, including, but not limited to, a general description of
147 the problem reported by the consumer or an identification of the
148 defect or condition, parts and labor, and the date that the
149 vessel was submitted for examination or repair and the date that
150 the repair or examination was completed.

151 681.205 Nonconformity of vessels.--

152 (1) (a) After three attempts have been made to repair the
153 same nonconformity, the consumer shall give written
154 notification, by registered or express mail to the manufacturer,
155 of the need to repair the nonconformity to allow the
156 manufacturer a final attempt to cure the nonconformity. The
157 manufacturer shall have 10 days, commencing upon receipt of such
158 notification, to respond and give the consumer the opportunity
159 to have the vessel repaired at a reasonably accessible repair
160 facility within a reasonable time after the consumer's receipt

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161 of the response. The manufacturer shall have 10 days, commencing
162 upon the delivery of the vessel to the designated repair
163 facility by the consumer, to conform the vessel to the warranty.

164 If the manufacturer fails to respond to the consumer and give
165 the consumer the opportunity to have the vessel repaired at a
166 reasonably accessible repair facility or perform the repairs
167 within the time periods prescribed in this subsection, the
168 requirement that the manufacturer be given a final attempt to
169 cure the nonconformity does not apply.

170 (b) If the vessel is out of service by reason of repair of
171 one or more nonconformities by the manufacturer or its
172 authorized service agent for a cumulative total of 15 or more
173 days, exclusive of downtime for routine maintenance prescribed
174 by the owner's manual, the consumer shall so notify the
175 manufacturer in writing by registered or express mail to give
176 the manufacturer or its authorized service agent an opportunity
177 to inspect or repair the vessel.

178 (2) (a) If the manufacturer or its authorized service agent
179 cannot conform the vessel to the warranty by repairing or
180 correcting any nonconformity after a reasonable number of
181 attempts, the manufacturer, within 40 days, shall repurchase the
182 vessel and refund the full purchase price to the consumer, less
183 a reasonable offset for use, or, in consideration of its receipt
184 of payment from the consumer of a reasonable offset for use,
185 replace the vessel with a replacement vessel acceptable to the
186 consumer. The refund or replacement must include all reasonably
187 incurred collateral and incidental charges. However, the
188 consumer has an unconditional right to choose a refund rather
189 than a replacement. Upon receipt of such refund or replacement,

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190 the consumer, lienholder, or lessor shall furnish to the
191 manufacturer clear title to and possession of the vessel.

192 (b) Refunds shall be made to the consumer and lienholder
193 of record, if any, as their interests may appear. If the refund
194 is for a leased vessel, the lessee shall receive the lessee cost
195 and the lessor shall receive the lease price less the lessee
196 cost. A penalty for early lease termination may not be assessed
197 against a lessee who receives a replacement vessel or refund
198 under this part. The Department of Revenue shall refund to the
199 manufacturer any sales tax that the manufacturer refunded to the
200 consumer, lienholder, or lessor under this section, if the
201 manufacturer provides to the department a written request for a
202 refund and evidence that the sales tax was paid when the vessel
203 was purchased and that the manufacturer refunded the sales tax
204 to the consumer, lienholder, or lessor.

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

208 (a) The same nonconformity has been subject to repair at
209 least three times by the manufacturer or its authorized service
210 agent, plus a final attempt by the manufacturer to repair the
211 vessel if undertaken as provided for in paragraph (1)(a), and
212 such nonconformity continues to exist; or

213 (b) The vessel has been out of service by reason of repair
214 of one or more nonconformities by the manufacturer or its
215 authorized service agent for a cumulative total of 30 or more
216 days, exclusive of downtime for routine maintenance prescribed
217 by the owner's manual. The manufacturer or its authorized
218 service agent must have had at least one opportunity to inspect

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219 or repair the vessel following receipt of the notification as
220 provided in paragraph (1) (b). The 30-day period may be extended
221 by any period of time during which repair services are not
222 available to the consumer because of war, invasion, strike,
223 fire, flood, or natural disaster.

224 (4) It is an affirmative defense to any claim under this
225 part that:

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

228 (b) The nonconformity is the result of an accident, abuse,
229 neglect, or unauthorized modifications or alterations of the
230 vessel by persons other than the manufacturer or its authorized
231 service agent; or

232 (c) The claim by the consumer was not filed in good faith.
233

234 Any other affirmative defense allowed by law may be raised
235 against the claim.

236 681.206 Bad faith claims.--Any claim by a consumer that is
237 found by the court to have been filed in bad faith or solely for
238 the purpose of harassment, or in complete absence of a
239 justiciable issue of either law or fact raised by the consumer,
240 shall result in the consumer being liable for all costs and
241 reasonable attorney's fees incurred by the manufacturer or its
242 authorized service agent as a direct result of the bad faith
243 claim.

244 681.207 Dispute-settlement procedures.--

245 (1) If a manufacturer has established a procedure
246 substantially in compliance with the provisions of this part and
247 the rules adopted under this part and has informed the consumer

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248 how and where to file a claim under such procedure pursuant to
249 s. 681.204(3), the provisions of s. 681.205(2) apply to the
250 consumer only if the consumer has first resorted to that
251 procedure. The decisionmakers for a certified procedure shall,
252 in rendering decisions, take into account all legal and
253 equitable factors germane to a fair and just decision,
254 including, but not limited to, the warranty, the provisions of
255 this part, and any other equitable considerations appropriate
256 under the circumstances. Decisionmakers and staff of a procedure
257 shall be trained in the provisions of this part. In an action
258 brought by a consumer concerning an alleged nonconformity, the
259 decision that results from a certified procedure is admissible
260 in evidence.

261 (2) A manufacturer may apply to the division for
262 certification of its procedure. After receipt and evaluation of
263 the application, the division shall certify the procedure or
264 notify the manufacturer of any deficiencies in the application
265 or the procedure.

266 (3) A manufacturer establishing a certified procedure or
267 an applicant seeking certification of a procedure shall submit
268 to the division a copy of each settlement approved by the
269 procedure or decision made by a decisionmaker within 30 days
270 after the settlement is reached or the decision is rendered. The
271 decision or settlement must contain, at a minimum:

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

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

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

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277 (d) The relief requested by the consumer.

278 (e) The name of each decisionmaker rendering the decision
279 or person approving the settlement.

280 (f) The statement of the terms of the settlement or
281 decision.

282 (g) The date of the settlement or decision.

283 (h) The statement of whether the decision was accepted or
284 rejected by the consumer.

285 (4) Any manufacturer establishing or applying to establish
286 a certified procedure must file with the division a copy of any
287 information required for purposes of certification, including
288 the number of refunds and replacements made in this state by the
289 manufacturer pursuant to the provisions of this part during the
290 period audited.

291 (5) The division shall review each certified procedure at
292 least annually, shall prepare an annual report evaluating the
293 operation of certified procedures established by vessel
294 manufacturers and procedures of applicants seeking
295 certification, and, for a period not to exceed 1 year, shall
296 grant certification to, or renew certification for, those
297 manufacturers whose procedures substantially comply with the
298 provisions of this part and rules adopted under this part. If
299 certification is revoked or denied, the division shall state the
300 reasons for such action. The reports and records of actions
301 taken with respect to certification shall be public records.

302 (6) The division shall adopt rules to implement this
303 section.

304 681.208 Florida New Vessel Arbitration Board; dispute
305 eligibility.--

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306 (1) If a manufacturer has a certified procedure, a
307 consumer claim arising during the Vessel Lemon Law rights period
308 must be filed with the certified procedure no later than 60 days
309 after the expiration of the Vessel Lemon Law rights period.

310 (2) (a) If a decision is not rendered by the certified
311 procedure within 40 days after filing, the consumer may apply to
312 the division to have the dispute removed to the board for
313 arbitration.

314 (b) If a decision is rendered by the certified procedure
315 within 40 days after filing and the consumer is not satisfied
316 with the decision or the manufacturer's compliance therewith,
317 the consumer may apply to the division to have the dispute
318 submitted to the board for arbitration. A manufacturer may not
319 seek review of a decision made under its procedure.

320 (3) If a manufacturer has no certified procedure or if a
321 certified procedure does not have jurisdiction to resolve the
322 dispute, a consumer may apply directly to the division to have
323 the dispute submitted to the board for arbitration.

324 (4) A consumer must request arbitration before the board
325 with respect to a claim arising during the Vessel Lemon Law
326 rights period no later than 60 days after the expiration of the
327 Vessel Lemon Law rights period, or within 30 days after the
328 final action of a certified procedure, whichever date occurs
329 later.

330 (5) The division shall screen all requests for arbitration
331 before the board to determine eligibility. The consumer's
332 request for arbitration before the board shall be made on a form
333 prescribed by the department. The division shall forward to the

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334 board all disputes that the division determines are potentially
335 entitled to relief under this part.

336 (6) The division may reject a dispute that it determines
337 to be fraudulent or outside the scope of the board's authority.
338 Any dispute deemed by the division to be ineligible for
339 arbitration by the board due to insufficient evidence may be
340 reconsidered upon the submission of new information regarding
341 the dispute. Following a second review, the division may reject
342 a dispute if the evidence is clearly insufficient to qualify for
343 relief. Any dispute rejected by the division shall be forwarded
344 to the department and a copy shall be sent by registered mail to
345 the consumer and the manufacturer containing a brief explanation
346 as to the reason for rejection.

347 (7) If the division rejects a dispute, the consumer may
348 file a lawsuit to enforce the remedies provided under this part.
349 In any civil action arising under this part and relating to a
350 matter considered by the division, any determination made to
351 reject a dispute is admissible in evidence.

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

354 681.209 Florida New Vessel Arbitration Board; creation and
355 function.--

356 (1) There is established within the department the Florida
357 New Vessel Arbitration Board, consisting of members appointed by
358 the Attorney General for an initial term of 1 year. Board
359 members may be reappointed for additional terms of 2 years. Each
360 board member is accountable to the Attorney General for the
361 performance of the member's duties and is exempt from civil
362 liability for any act or omission that occurs while acting in

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363 the member's official capacity. The department shall defend a
364 member in any action against the member or the board that arises
365 from any such act or omission. The Attorney General may
366 establish as many boards as necessary to carry out the
367 provisions of this part.

368 (2) The boards shall hear cases in various locations
369 throughout the state so any consumer whose dispute is approved
370 for arbitration by the division may attend an arbitration
371 hearing at a reasonably convenient location and present a
372 dispute orally. Hearings shall be conducted by panels of three
373 board members assigned by the department. A majority vote of the
374 three-member board panel shall be required to render a decision.
375 Arbitration proceedings under this section shall be open to the
376 public on reasonable and nondiscriminatory terms.

377 (3) Each region of the board shall consist of up to eight
378 members. The members of the board shall construe and apply the
379 provisions of this part and rules adopted thereunder in making
380 their decisions. An administrator and a secretary shall be
381 assigned to each board by the department. At least one member of
382 each board must be a person with expertise in vessel mechanics.
383 A member must not be employed by a vessel manufacturer or dealer
384 or be a staff member, a decisionmaker, or a consultant for a
385 procedure. Board members shall be trained in the application of
386 this part and any rules adopted under this part, shall be
387 reimbursed for travel expenses pursuant to s. 112.061, and shall
388 be compensated at a rate or wage prescribed by the Attorney
389 General.

390 (4) Before filing a civil action on a matter subject to s.
391 681.205, the consumer must first submit the dispute to the

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392 division and to the board if such dispute is deemed eligible for
393 arbitration.

394 (5) Manufacturers shall submit to arbitration conducted by
395 the board if such arbitration is requested by a consumer and the
396 dispute is deemed eligible for arbitration by the division
397 pursuant to s. 681.208.

398 (6) The board shall hear the dispute within 40 days and
399 render a decision within 60 days after the date the request for
400 arbitration is approved. The board may continue the hearing on
401 its own motion or upon the request of a party for good cause
402 shown. A request for continuance by the consumer constitutes
403 waiver of the time periods set forth in this subsection. The
404 department, at the board's request, may investigate disputes and
405 may issue subpoenas for the attendance of witnesses and for the
406 production of records, documents, and other evidence before the
407 board. The failure of the board to hear a dispute or render a
408 decision within the prescribed periods does not invalidate the
409 decision.

410 (7) At all arbitration proceedings, the parties may
411 present oral and written testimony, present witnesses and
412 evidence relevant to the dispute, cross-examine witnesses, and
413 be represented by counsel. The board may administer oaths or
414 affirmations to witnesses and inspect the vessel if requested by
415 a party or if the board deems such inspection appropriate.

416 (8) The board shall grant relief if a reasonable number of
417 attempts have been undertaken to correct a nonconformity or
418 nonconformities.

419 (9) The decision of the board shall be sent by registered
420 mail to the consumer and the manufacturer and shall contain

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421 written findings of fact and rationale for the decision. If the
422 decision is in favor of the consumer, the manufacturer must,
423 within 40 days after receipt of the decision, comply with the
424 terms of the decision. Compliance occurs on the date the
425 consumer receives delivery of an acceptable replacement vessel
426 or the refund specified in the arbitration award. In any civil
427 action arising under this part and relating to a dispute
428 arbitrated before the board, any decision by the board is
429 admissible in evidence.

430 (10) A decision is final unless appealed by either party.
431 A petition to the circuit court to appeal a decision must be
432 made within 30 days after receipt of the decision. The petition
433 shall be filed in the county in which the consumer resides, in
434 which the vessel was acquired, or in which the arbitration
435 hearing was conducted. Within 7 days after the petition has been
436 filed, the appealing party must send a copy of the petition to
437 the department. If the department does not receive notice of
438 such petition within 40 days after the manufacturer's receipt of
439 a decision in favor of the consumer and the manufacturer has
440 neither complied with nor has petitioned to appeal such
441 decision, the department may apply to the circuit court to seek
442 imposition of a fine up to \$1,000 per day against the
443 manufacturer until the amount stands at twice the purchase price
444 of the vessel, unless the manufacturer provides clear and
445 convincing evidence that the delay or failure was beyond its
446 control or was acceptable to the consumer as evidenced by a
447 written statement signed by the consumer. If the manufacturer
448 fails to provide such evidence or fails to pay the fine, the
449 department shall initiate proceedings against the manufacturer

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450 for failure to pay such fine. The proceeds from the fine herein
451 imposed shall be placed in the General Revenue Fund for
452 implementation and enforcement of this part. If the manufacturer
453 fails to comply with the provisions of this subsection, the
454 court shall affirm the award upon application by the consumer.

455 (11) All provisions in this section and s. 681.208
456 pertaining to compulsory arbitration before the board, the
457 dispute eligibility screening by the division, the proceedings
458 and decisions of the board, and any appeals thereof are exempt
459 from the provisions of chapter 120.

460 (12) An appeal of a decision by the board to the circuit
461 court by a consumer or a manufacturer shall be by trial de novo.
462 In a written petition to appeal a decision by the board, the
463 appealing party must state the action requested and the grounds
464 relied upon for appeal. Within 30 days after final disposition
465 of the appeal, the appealing party shall furnish the department
466 with notice of such disposition and, upon request, shall furnish
467 the department with a copy of the order or judgment of the
468 court.

469 (13) If a decision of the board in favor of the consumer
470 is upheld by the court, recovery by the consumer shall include
471 the pecuniary value of the award, attorney's fees incurred in
472 obtaining confirmation of the award, and all costs and
473 continuing damages in the amount of \$25 per day for each day
474 beyond the 40-day period following the manufacturer's receipt of
475 the board's decision. If a court determines that the
476 manufacturer acted in bad faith in bringing the appeal or
477 brought the appeal solely for the purpose of harassment or in
478 complete absence of a justiciable issue of law or fact, the

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479 court shall double, and may triple, the amount of the total
480 award.

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

486 (15) The department shall maintain records of each dispute
487 submitted to the board, including an index of vessels by year,
488 make, and model, and shall compile aggregate annual statistics
489 for all disputes submitted to, and decided by, the board, as
490 well as annual statistics for each manufacturer that include,
491 but are not limited to, the value, if applicable, and the number
492 and percent of:

493 (a) Replacement vessel requests.

494 (b) Purchase price refund requests.

495 (c) Replacement vessels obtained in prehearing
496 settlements.

497 (d) Purchase price refunds obtained in prehearing
498 settlements.

499 (e) Replacement vessels awarded in arbitration.

500 (f) Purchase price refunds awarded in arbitration.

501 (g) Board decisions neither complied with in 40 days nor
502 petitioned for appeal within 30 days.

503 (h) Board decisions appealed.

504 (i) Appeals affirmed by the court.

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

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508 The statistics compiled under this subsection are public
509 information.

510 (16) When requested by the department, a manufacturer must
511 verify the settlement terms for disputes that are approved for
512 arbitration but are not decided by the board.

513 681.210 Compliance and disciplinary actions.--The
514 department may enforce and ensure compliance with the provisions
515 of this part and rules adopted thereunder, may issue subpoenas
516 requiring the attendance of witnesses and production of
517 evidence, and may seek relief in the circuit court to compel
518 compliance with such subpoenas. The department may impose a
519 civil penalty against a manufacturer not to exceed \$1,000 for
520 each count or separate offense. The proceeds from the fine
521 imposed herein shall be placed in the General Revenue Fund for
522 implementation and enforcement of this part.

523 681.211 Unfair or deceptive trade practice.--A violation
524 of this part by a manufacturer is an unfair or deceptive trade
525 practice as provided in part II of chapter 501.

526 681.212 Consumer remedies.--

527 (1) A consumer may file an action to recover damages
528 caused by a violation of this part. The court shall award a
529 consumer who prevails in such action the amount of any pecuniary
530 loss, litigation costs, reasonable attorney's fees, and
531 appropriate equitable relief.

532 (2) An action brought under this part must be commenced
533 within 1 year after the expiration of the Vessel Lemon Law
534 rights period or, if a consumer resorts to an informal dispute-
535 settlement procedure or submits a dispute to the division or

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536 board, within 1 year after the final action of the procedure,
537 division, or board.

538 (3) This part does not prohibit a consumer from pursuing
539 other rights or remedies under any other law.

540 681.213 Vessel dealer liability.--Nothing in this part
541 imposes any liability on a dealer or creates a cause of action
542 by a consumer against a dealer, except for written express
543 warranties made by the dealer apart from the manufacturer's
544 warranties. A dealer may not be made a party defendant in any
545 action involving or relating to this part, except as provided in
546 this section. The manufacturer may not charge back or require
547 reimbursement by the dealer for any costs, including, but not
548 limited to, any refunds or vessel replacements, incurred by the
549 manufacturer arising out of this part in the absence of evidence
550 that the related repairs had been carried out by the dealer in a
551 manner substantially inconsistent with the manufacturer's
552 published instructions.

553 681.214 Resale of returned vessels.--

554 (1) A manufacturer that accepts the return of a vessel by
555 reason of a settlement, determination, or decision pursuant to
556 this part shall notify the department and report the vessel
557 identification number of that vessel within 10 days after such
558 acceptance.

559 (2) A person may not knowingly lease, sell at wholesale or
560 retail, or transfer a title to a vessel returned by reason of a
561 settlement, determination, or decision pursuant to this part or
562 similar statute of another state unless the nature of the
563 nonconformity is clearly and conspicuously disclosed to the
564 prospective transferee, lessee, or buyer, and the manufacturer

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565 warrants to correct such nonconformity for a term of 1 year. The
566 department shall prescribe by rule the form, content, and
567 procedure pertaining to such disclosure statement.

568 (3) As used in this section, the term "settlement" means
569 an agreement entered into between a manufacturer and consumer
570 that occurs after a dispute is submitted to a procedure or is
571 approved for arbitration before the board.

572 681.215 Certain agreements void.--Any agreement entered
573 into by a consumer that waives, limits, or disclaims the rights
574 set forth in this part, or that requires a consumer not to
575 disclose the terms of such agreement as a condition thereof, is
576 void as contrary to public policy. The rights set forth in this
577 part shall extend to a subsequent transferee of such vessel.

578 681.216 Fee.--

579 (1) A \$2 fee shall be collected by a vessel dealer, or by
580 a person engaged in the business of leasing vessels, from the
581 consumer at the consummation of the sale of a vessel or at the
582 time of entry into a lease agreement for a vessel. Such fees
583 shall be remitted to the county tax collector or private agency
584 acting as agent for the Department of Revenue. All fees, less
585 the cost of administration, shall be transferred monthly to the
586 Department of Legal Affairs for deposit into the General Revenue
587 Fund. The Department of Legal Affairs shall distribute monthly
588 an amount not exceeding one-fourth of the fees received to the
589 Division of Consumer Services of the Department of Agriculture
590 and Consumer Services to carry out the provisions of ss. 681.207
591 and 681.208. The Department of Legal Affairs shall contract with
592 the Division of Consumer Services for payment of services
593 performed by the division pursuant to ss. 681.207 and 681.208.

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594 (2) The Department of Revenue shall administer, collect,
595 and enforce the fee authorized under this section pursuant to
596 the provisions of chapter 212. The fee shall not be included in
597 the computation of estimated taxes pursuant to s. 212.11(1)(a),
598 nor shall the dealer's credit provided under s. 212.12 apply to
599 the fee. The provisions of chapter 212 regarding the authority
600 to audit and make assessments, the keeping of books and records,
601 and interest and penalties on delinquent fees apply to the fee
602 imposed by this section.

603 681.217 Effect and application.--Nothing in this part
604 shall in any way limit or expand the rights or remedies that are
605 otherwise available to a consumer under any other law. The
606 provisions of this part apply both to the vessel and to the
607 engine used to power the vessel even though the manufacturer of
608 the vessel and the engine are different entities. The provisions
609 of this part do not apply to racing equipment or high
610 performance vessels and equipment.

611 681.218 Preemption.--This part preempts any similar county
612 or municipal ordinance regarding consumer warranty rights
613 resulting from the acquisition of a vessel in this state.

614 681.219 Rulemaking authority.--The department shall adopt
615 rules pursuant to ss. 120.536(1) and 120.54 to implement this
616 part.

617 Section 2. Paragraphs (a) and (c) of subsection (1) of
618 section 319.14, Florida Statutes, are amended to read:

619 319.14 Sale of motor vehicles registered or used as
620 taxicabs, police vehicles, lease vehicles, or rebuilt vehicles
621 and nonconforming vehicles.--

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622 (1) (a) No person shall knowingly offer for sale, sell, or
623 exchange any vehicle that has been licensed, registered, or used
624 as a taxicab, police vehicle, or short-term-lease vehicle, or a
625 vehicle that has been repurchased by a manufacturer pursuant to
626 a settlement, determination, or decision under part I of chapter
627 681, until the department has stamped in a conspicuous place on
628 the certificate of title of the vehicle, or its duplicate, words
629 stating the nature of the previous use of the vehicle or the
630 title has been stamped "Manufacturer's Buy Back" to reflect that
631 the vehicle is a nonconforming vehicle. If the certificate of
632 title or duplicate was not so stamped upon initial issuance
633 thereof or if, subsequent to initial issuance of the title, the
634 use of the vehicle is changed to a use requiring the notation
635 provided for in this section, the owner or lienholder of the
636 vehicle shall surrender the certificate of title or duplicate to
637 the department prior to offering the vehicle for sale, and the
638 department shall stamp the certificate or duplicate as required
639 herein. When a vehicle has been repurchased by a manufacturer
640 pursuant to a settlement, determination, or decision under part
641 I of chapter 681, the title shall be stamped "Manufacturer's Buy
642 Back" to reflect that the vehicle is a nonconforming vehicle.

643 (c) As used in this section:

644 1. "Police vehicle" means a motor vehicle owned or leased
645 by the state or a county or municipality and used in law
646 enforcement.

647 2.a. "Short-term-lease vehicle" means a motor vehicle
648 leased without a driver and under a written agreement to one or
649 more persons from time to time for a period of less than 12
650 months.

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651 b. "Long-term-lease vehicle" means a motor vehicle leased
652 without a driver and under a written agreement to one person for
653 a period of 12 months or longer.

654 c. "Lease vehicle" includes both short-term-lease vehicles
655 and long-term-lease vehicles.

656 3. "Rebuilt vehicle" means a motor vehicle or mobile home
657 built from salvage or junk, as defined in s. 319.30(1).

658 4. "Assembled from parts" means a motor vehicle or mobile
659 home assembled from parts or combined from parts of motor
660 vehicles or mobile homes, new or used. "Assembled from parts"
661 does not mean a motor vehicle defined as a "rebuilt vehicle" in
662 subparagraph 3., which has been declared a total loss pursuant
663 to s. 319.30.

664 5. "Kit car" means a motor vehicle assembled with a kit
665 supplied by a manufacturer to rebuild a wrecked or outdated
666 motor vehicle with a new body kit.

667 6. "Glider kit" means a vehicle assembled with a kit
668 supplied by a manufacturer to rebuild a wrecked or outdated
669 truck or truck tractor.

670 7. "Replica" means a complete new motor vehicle
671 manufactured to look like an old vehicle.

672 8. "Flood vehicle" means a motor vehicle or mobile home
673 that has been declared to be a total loss pursuant to s.
674 319.30(3)(a) resulting from damage caused by water.

675 9. "Nonconforming vehicle" means a motor vehicle which has
676 been purchased by a manufacturer pursuant to a settlement,
677 determination, or decision under part I of chapter 681.

678 10. "Settlement" means an agreement entered into between a
679 manufacturer and a consumer that occurs after a dispute is
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680 submitted to a program, or an informal dispute settlement
681 procedure established by a manufacturer or is approved for
682 arbitration before the New Motor Vehicle Arbitration Board as
683 defined in s. 681.102.

684 Section 3. Subsection (27) of section 320.64, Florida
685 Statutes, is amended to read:

686 320.64 Denial, suspension, or revocation of license;
687 grounds.--A license of a licensee under s. 320.61 may be denied,
688 suspended, or revoked within the entire state or at any specific
689 location or locations within the state at which the applicant or
690 licensee engages or proposes to engage in business, upon proof
691 that the section was violated with sufficient frequency to
692 establish a pattern of wrongdoing, and a licensee or applicant
693 shall be liable for claims and remedies provided in ss. 320.695
694 and 320.697 for any violation of any of the following
695 provisions. A licensee is prohibited from committing the
696 following acts:

697 (27) Notwithstanding the terms of any franchise agreement,
698 the applicant or licensee has failed or refused to indemnify and
699 hold harmless any motor vehicle dealer against any judgment for
700 damages, or settlements agreed to by the applicant or licensee,
701 including, without limitation, court costs and reasonable
702 attorneys fees, arising out of complaints, claims, or lawsuits,
703 including, without limitation, strict liability, negligence,
704 misrepresentation, express or implied warranty, or revocation or
705 rescission of acceptance of the sale of a motor vehicle, to the
706 extent the judgment or settlement relates to the alleged
707 negligent manufacture, design, or assembly of motor vehicles,

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708 parts, or accessories. Nothing herein shall obviate the
709 licensee's obligations pursuant to part I of chapter 681.

710
711 A motor vehicle dealer who can demonstrate that a violation of,
712 or failure to comply with, any of the preceding provisions by an
713 applicant or licensee will or can adversely and pecuniarily
714 affect the complaining dealer, shall be entitled to pursue all
715 of the remedies, procedures, and rights of recovery available
716 under ss. 320.695 and 320.697.

717 Section 4. Subsection (10) of section 520.07, Florida
718 Statutes, is amended to read:

719 520.07 Requirements and prohibitions as to retail
720 installment contracts.--

721 (10) A retail installment contract may provide that if a
722 buyer rejects or revokes acceptance of the motor vehicle and
723 asserts a security interest in the motor vehicle based on the
724 ground of rightful rejection or justifiable revocation, the
725 buyer must take one of the following actions:

- 726 (a) Post a bond in the amount of the disputed balance; or
727 (b) Deposit all accrued, and thereafter accruing,
728 installment payments into the registry of a court of competent
729 jurisdiction.

730
731 The cost of a bond posted under this subsection is awardable to
732 the buyer in the proceedings. When the provisions of part I of
733 chapter 681 apply, this subsection shall not apply.

734 Section 5. Section 681.10, Florida Statutes, is amended to
735 read:

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736 681.10 Short title.--This part ~~chapter~~ shall be known and
737 may be cited as the "Motor Vehicle Warranty Enforcement Act."

738 Section 6. Section 681.101, Florida Statutes, is amended
739 to read:

740 681.101 Legislative intent.--The Legislature recognizes
741 that a motor vehicle is a major consumer purchase and that a
742 defective motor vehicle undoubtedly creates a hardship for the
743 consumer. The Legislature further recognizes that a duly
744 franchised motor vehicle dealer is an authorized service agent
745 of the manufacturer. It is the intent of the Legislature that a
746 good faith motor vehicle warranty complaint by a consumer be
747 resolved by the manufacturer within a specified period of time;
748 however, it is not the intent of the Legislature that a consumer
749 establish the presumption of a reasonable number of attempts as
750 to each manufacturer that provides a warranty directly to the
751 consumer. It is further the intent of the Legislature to provide
752 the statutory procedures whereby a consumer may receive a
753 replacement motor vehicle, or a full refund, for a motor vehicle
754 which cannot be brought into conformity with the warranty
755 provided for in this part ~~chapter~~. However, nothing in this part
756 ~~chapter~~ shall in any way limit or expand the rights or remedies
757 which are otherwise available to a consumer under any other law.

758 Section 7. Section 681.102, Florida Statutes, is amended
759 to read:

760 681.102 Definitions.--As used in this part ~~chapter~~, the
761 term:

762 (1) "Authorized service agent" means any person, including
763 a franchised motor vehicle dealer, who is authorized by the
764 manufacturer to service motor vehicles. In the case of a

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765 recreational vehicle when there are two or more manufacturers,
766 an authorized service agent for any individual manufacturer is
767 any person, including a franchised motor vehicle dealer, who is
768 authorized to service the items warranted by that manufacturer.
769 The term does not include a rental car company authorized to
770 repair rental vehicles.

771 (2) "Board" means the Florida New Motor Vehicle
772 Arbitration Board.

773 (3) "Collateral charges" means those additional charges to
774 a consumer wholly incurred as a result of the acquisition of the
775 motor vehicle. For the purposes of this part ~~chapter~~, collateral
776 charges include, but are not limited to, manufacturer-installed
777 or agent-installed items or service charges, earned finance
778 charges, sales taxes, and title charges.

779 (4) "Consumer" means the purchaser, other than for
780 purposes of resale, or the lessee, of a motor vehicle primarily
781 used for personal, family, or household purposes; any person to
782 whom such motor vehicle is transferred for the same purposes
783 during the duration of the Lemon Law rights period; and any
784 other person entitled by the terms of the warranty to enforce
785 the obligations of the warranty.

786 (5) "Days" means calendar days.

787 (6) "Department" means the Department of Legal Affairs.

788 (7) "Division" means the Division of Consumer Services of
789 the Department of Agriculture and Consumer Services.

790 (8) "Incidental charges" means those reasonable costs to
791 the consumer which are directly caused by the nonconformity of
792 the motor vehicle.

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793 (9) "Lease price" means the aggregate of the capitalized
794 cost, as defined in s. 521.003(2), and each of the following
795 items to the extent not included in the capitalized cost:

796 (a) Lessor's earned rent charges through the date of
797 repurchase.

798 (b) Collateral charges, if applicable.

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

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

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

805 (10) "Lemon Law rights period" means the period ending 24
806 months after the date of the original delivery of a motor
807 vehicle to a consumer.

808 (11) "Lessee" means any consumer who leases a motor
809 vehicle for 1 year or more pursuant to a written lease agreement
810 which provides that the lessee is responsible for repairs to
811 such motor vehicle or any consumer who leases a motor vehicle
812 pursuant to a lease-purchase agreement.

813 (12) "Lessee cost" means the aggregate deposit and rental
814 payments previously paid to the lessor for the leased vehicle
815 but excludes debt from any other transaction.

816 (13) "Lessor" means a person who holds title to a motor
817 vehicle that is leased to a lessee under a written lease
818 agreement or who holds the lessor's rights under such agreement.

819 (14) "Manufacturer" means any person, whether a resident
820 or nonresident of this state, who manufactures or assembles
821 motor vehicles, or who manufactures or assembles chassis for
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822 recreational vehicles, or who manufactures or installs on
823 previously assembled truck or recreational vehicle chassis
824 special bodies or equipment which, when installed, forms an
825 integral part of the motor vehicle, a distributor as defined in
826 s. 320.60(5), or an importer as defined in s. 320.60(7). A
827 dealer as defined in s. 320.60(11)(a) shall not be deemed to be
828 a manufacturer, distributor, or importer as provided in this
829 section.

830 (15) "Motor vehicle" means a new vehicle, propelled by
831 power other than muscular power, which is sold in this state to
832 transport persons or property, and includes a recreational
833 vehicle or a vehicle used as a demonstrator or leased vehicle if
834 a manufacturer's warranty was issued as a condition of sale, or
835 the lessee is responsible for repairs, but does not include
836 vehicles run only upon tracks, off-road vehicles, trucks over
837 10,000 pounds gross vehicle weight, motorcycles, mopeds, or the
838 living facilities of recreational vehicles. "Living facilities
839 of recreational vehicles" are those portions designed, used, or
840 maintained primarily as living quarters and include, but are not
841 limited to, the flooring, plumbing system and fixtures, roof air
842 conditioner, furnace, generator, electrical systems other than
843 automotive circuits, the side entrance door, exterior
844 compartments, and windows other than the windshield and driver
845 and front passenger windows.

846 (16) "Nonconformity" means a defect or condition that
847 substantially impairs the use, value, or safety of a motor
848 vehicle, but does not include a defect or condition that results
849 from an accident, abuse, neglect, modification, or alteration of

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850 the motor vehicle by persons other than the manufacturer or its
851 authorized service agent.

852 (17) "Procedure" means an informal dispute-settlement
853 procedure established by a manufacturer to mediate and arbitrate
854 motor vehicle warranty disputes.

855 (18) "Program" means the mediation and arbitration pilot
856 program for recreational vehicles established in this part
857 ~~chapter~~.

858 (19) "Purchase price" means the cash price as defined in
859 s. 520.31(2), inclusive of any allowance for a trade-in vehicle,
860 but excludes debt from any other transaction. "Any allowance for
861 a trade-in vehicle" means the net trade-in allowance as
862 reflected in the purchase contract or lease agreement if
863 acceptable to the consumer and manufacturer. If such amount is
864 not acceptable to the consumer and manufacturer, then the trade-
865 in allowance shall be an amount equal to 100 percent of the
866 retail price of the trade-in vehicle as reflected in the NADA
867 Official Used Car Guide (Southeastern Edition) or NADA
868 Recreation Vehicle Appraisal Guide, whichever is applicable, in
869 effect at the time of the trade-in. The manufacturer shall be
870 responsible for providing the applicable NADA book.

871 (20) "Reasonable offset for use" means the number of miles
872 attributable to a consumer up to the date of a settlement
873 agreement or arbitration hearing, whichever occurs first,
874 multiplied by the purchase price of the vehicle and divided by
875 120,000, except in the case of a recreational vehicle, in which
876 event it shall be divided by 60,000.

877 (21) "Recreational vehicle" means a motor vehicle
878 primarily designed to provide temporary living quarters for
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879 recreational, camping, or travel use, but does not include a van
880 conversion.

881 (22) "Replacement motor vehicle" means a motor vehicle
882 which is identical or reasonably equivalent to the motor vehicle
883 to be replaced, as the motor vehicle to be replaced existed at
884 the time of acquisition. "Reasonably equivalent to the motor
885 vehicle to be replaced" means the manufacturer's suggested
886 retail price of the replacement vehicle shall not exceed 105
887 percent of the manufacturer's suggested retail price of the
888 motor vehicle to be replaced. In the case of a recreational
889 vehicle, "reasonably equivalent to the motor vehicle to be
890 replaced" means the retail price of the replacement vehicle
891 shall not exceed 105 percent of the purchase price of the
892 recreational vehicle to be replaced.

893 (23) "Warranty" means any written warranty issued by the
894 manufacturer, or any affirmation of fact or promise made by the
895 manufacturer, excluding statements made by the dealer, in
896 connection with the sale of a motor vehicle to a consumer which
897 relates to the nature of the material or workmanship and affirms
898 or promises that such material or workmanship is free of defects
899 or will meet a specified level of performance.

900 Section 8. Subsections (1) and (3) of section 681.103,
901 Florida Statutes, are amended to read:

902 681.103 Duty of manufacturer to conform a motor vehicle to
903 the warranty.--

904 (1) If a motor vehicle does not conform to the warranty
905 and the consumer first reports the problem to the manufacturer
906 or its authorized service agent during the Lemon Law rights
907 period, the manufacturer or its authorized service agent shall
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908 make such repairs as are necessary to conform the vehicle to the
909 warranty, irrespective of whether such repairs are made after
910 the expiration of the Lemon Law rights period. Such repairs
911 shall be at no cost to the consumer if made during the term of
912 the manufacturer's written express warranty. Nothing in this
913 paragraph shall be construed to grant an extension of the Lemon
914 Law rights period or to expand the time within which a consumer
915 must file a claim under this part ~~chapter~~.

916 (3) At the time of acquisition, the manufacturer shall
917 inform the consumer clearly and conspicuously in writing how and
918 where to file a claim with a certified procedure if such
919 procedure has been established by the manufacturer pursuant to
920 s. 681.108. The nameplate manufacturer of a recreational vehicle
921 shall, at the time of vehicle acquisition, inform the consumer
922 clearly and conspicuously in writing how and where to file a
923 claim with a program pursuant to s. 681.1096. The manufacturer
924 shall provide to the dealer and, at the time of acquisition, the
925 dealer shall provide to the consumer a written statement that
926 explains the consumer's rights under this part ~~chapter~~. The
927 written statement shall be prepared by the Department of Legal
928 Affairs and shall contain a toll-free number for the division
929 that the consumer can contact to obtain information regarding
930 the consumer's rights and obligations under this part ~~chapter~~ or
931 to commence arbitration. If the manufacturer obtains a signed
932 receipt for timely delivery of sufficient quantities of this
933 written statement to meet the dealer's vehicle sales
934 requirements, it shall constitute prima facie evidence of
935 compliance with this subsection by the manufacturer. The
936 consumer's signed acknowledgment of receipt of materials

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937 required under this subsection shall constitute prima facie
938 evidence of compliance by the manufacturer and dealer. The form
939 of the acknowledgments shall be approved by the Department of
940 Legal Affairs, and the dealer shall maintain the consumer's
941 signed acknowledgment for 3 years.

942 Section 9. Paragraph (b) of subsection (2) and subsection
943 (4) of section 681.104, Florida Statutes, are amended to read:

944 681.104 Nonconformity of motor vehicles.--

945 (2)

946 (b) Refunds shall be made to the consumer and lienholder
947 of record, if any, as their interests may appear. If applicable,
948 refunds shall be made to the lessor and lessee as follows: The
949 lessee shall receive the lessee cost and the lessor shall
950 receive the lease price less the lessee cost. A penalty for
951 early lease termination may not be assessed against a lessee who
952 receives a replacement motor vehicle or refund under this part
953 ~~chapter~~. The Department of Revenue shall refund to the
954 manufacturer any sales tax which the manufacturer refunded to
955 the consumer, lienholder, or lessor under this section, if the
956 manufacturer provides to the department a written request for a
957 refund and evidence that the sales tax was paid when the vehicle
958 was purchased and that the manufacturer refunded the sales tax
959 to the consumer, lienholder, or lessor.

960 (4) It is an affirmative defense to any claim under this
961 part ~~chapter~~ that:

962 (a) The alleged nonconformity does not substantially
963 impair the use, value, or safety of the motor vehicle;

964 (b) The nonconformity is the result of an accident, abuse,
965 neglect, or unauthorized modifications or alterations of the

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966 motor vehicle by persons other than the manufacturer or its
967 authorized service agent; or

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

969

970 Any other affirmative defense allowed by law may be raised
971 against the claim.

972 Section 10. Subsections (1), (4), and (5) of section
973 681.108, Florida Statutes, are amended to read:

974 681.108 Dispute-settlement procedures.--

975 (1) If a manufacturer has established a procedure, which
976 the division has certified as substantially complying with the
977 provisions of 16 C.F.R. part 703, in effect October 1, 1983, and
978 with the provisions of this part ~~chapter~~ and the rules adopted
979 under this part ~~chapter~~, and has informed the consumer how and
980 where to file a claim with such procedure pursuant to s.
981 681.103(3), the provisions of s. 681.104(2) apply to the
982 consumer only if the consumer has first resorted to such
983 procedure. The decisionmakers for a certified procedure shall,
984 in rendering decisions, take into account all legal and
985 equitable factors germane to a fair and just decision,
986 including, but not limited to, the warranty; the rights and
987 remedies conferred under 16 C.F.R. part 703, in effect October
988 1, 1983; the provisions of this part ~~chapter~~; and any other
989 equitable considerations appropriate under the circumstances.
990 Decisionmakers and staff of a procedure shall be trained in the
991 provisions of this part ~~chapter~~ and in 16 C.F.R. part 703, in
992 effect October 1, 1983. In an action brought by a consumer
993 concerning an alleged nonconformity, the decision that results
994 from a certified procedure is admissible in evidence.

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995 (4) Any manufacturer establishing or applying to establish
996 a certified procedure must file with the division a copy of the
997 annual audit required under the provisions of 16 C.F.R. part
998 703, in effect October 1, 1983, together with any additional
999 information required for purposes of certification, including
1000 the number of refunds and replacements made in this state
1001 pursuant to the provisions of this part ~~chapter~~ by the
1002 manufacturer during the period audited.

1003 (5) The division shall review each certified procedure at
1004 least annually, prepare an annual report evaluating the
1005 operation of certified procedures established by motor vehicle
1006 manufacturers and procedures of applicants seeking
1007 certification, and, for a period not to exceed 1 year, shall
1008 grant certification to, or renew certification for, those
1009 manufacturers whose procedures substantially comply with the
1010 provisions of 16 C.F.R. part 703, in effect October 1, 1983, and
1011 with the provisions of this part ~~chapter~~ and rules adopted under
1012 this part ~~chapter~~. If certification is revoked or denied, the
1013 division shall state the reasons for such action. The reports
1014 and records of actions taken with respect to certification shall
1015 be public records.

1016 Section 11. Subsections (5) and (7) of section 681.109,
1017 Florida Statutes, are amended to read:

1018 681.109 Florida New Motor Vehicle Arbitration Board;
1019 dispute eligibility.--

1020 (5) The division shall screen all requests for arbitration
1021 before the board to determine eligibility. The consumer's
1022 request for arbitration before the board shall be made on a form
1023 prescribed by the department. The division shall forward to the
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1024 board all disputes that the division determines are potentially
1025 entitled to relief under this part ~~chapter~~.

1026 (7) If the division rejects a dispute, the consumer may
1027 file a lawsuit to enforce the remedies provided under this part
1028 ~~chapter~~. In any civil action arising under this part ~~chapter~~ and
1029 relating to a matter considered by the division, any
1030 determination made to reject a dispute is admissible in
1031 evidence.

1032 Section 12. Subsections (1), (3), (9), and (10) of section
1033 681.1095, Florida Statutes, are amended to read:

1034 681.1095 Florida New Motor Vehicle Arbitration Board;
1035 creation and function.--

1036 (1) There is established within the Department of Legal
1037 Affairs, the Florida New Motor Vehicle Arbitration Board,
1038 consisting of members appointed by the Attorney General for an
1039 initial term of 1 year. Board members may be reappointed for
1040 additional terms of 2 years. Each board member is accountable to
1041 the Attorney General for the performance of the member's duties
1042 and is exempt from civil liability for any act or omission which
1043 occurs while acting in the member's official capacity. The
1044 Department of Legal Affairs shall defend a member in any action
1045 against the member or the board which arises from any such act
1046 or omission. The Attorney General may establish as many regions
1047 of the board as necessary to carry out the provisions of this
1048 part ~~chapter~~.

1049 (3) Each region of the board shall consist of up to eight
1050 members. The members of the board shall construe and apply the
1051 provisions of this part ~~chapter~~, and rules adopted thereunder,
1052 in making their decisions. An administrator and a secretary

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1053 shall be assigned to each board by the Department of Legal
1054 Affairs. At least one member of each board must be a person with
1055 expertise in motor vehicle mechanics. A member must not be
1056 employed by a manufacturer or a franchised motor vehicle dealer
1057 or be a staff member, a decisionmaker, or a consultant for a
1058 procedure. Board members shall be trained in the application of
1059 this part ~~chapter~~ and any rules adopted under this part ~~chapter~~,
1060 shall be reimbursed for travel expenses pursuant to s. 112.061,
1061 and shall be compensated at a rate or wage prescribed by the
1062 Attorney General.

1063 (9) The decision of the board shall be sent by registered
1064 mail to the consumer and the manufacturer, and shall contain
1065 written findings of fact and rationale for the decision. If the
1066 decision is in favor of the consumer, the manufacturer must,
1067 within 40 days after receipt of the decision, comply with the
1068 terms of the decision. Compliance occurs on the date the
1069 consumer receives delivery of an acceptable replacement motor
1070 vehicle or the refund specified in the arbitration award. In any
1071 civil action arising under this part ~~chapter~~ and relating to a
1072 dispute arbitrated before the board, any decision by the board
1073 is admissible in evidence.

1074 (10) A decision is final unless appealed by either party.
1075 A petition to the circuit court to appeal a decision must be
1076 made within 30 days after receipt of the decision. The petition
1077 shall be filed in the county where the consumer resides, or
1078 where the motor vehicle was acquired, or where the arbitration
1079 hearing was conducted. Within 7 days after the petition has been
1080 filed, the appealing party must send a copy of the petition to
1081 the department. If the department does not receive notice of
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1082 such petition within 40 days after the manufacturer's receipt of
1083 a decision in favor of the consumer, and the manufacturer has
1084 neither complied with, nor has petitioned to appeal such
1085 decision, the department may apply to the circuit court to seek
1086 imposition of a fine up to \$1,000 per day against the
1087 manufacturer until the amount stands at twice the purchase price
1088 of the motor vehicle, unless the manufacturer provides clear and
1089 convincing evidence that the delay or failure was beyond its
1090 control or was acceptable to the consumer as evidenced by a
1091 written statement signed by the consumer. If the manufacturer
1092 fails to provide such evidence or fails to pay the fine, the
1093 department shall initiate proceedings against the manufacturer
1094 for failure to pay such fine. The proceeds from the fine herein
1095 imposed shall be placed in the Motor Vehicle Warranty Trust Fund
1096 in the department for implementation and enforcement of this
1097 part ~~chapter~~. If the manufacturer fails to comply with the
1098 provisions of this subsection, the court shall affirm the award
1099 upon application by the consumer.

1100 Section 13. Subsections (1) and (2), paragraph (j) of
1101 subsection (3), and subsections (4), (6), (7), and (8) of
1102 section 681.1096, Florida Statutes, are amended to read:

1103 681.1096 RV Mediation and Arbitration Program; creation
1104 and qualifications.--

1105 (1) This section and s. 681.1097 shall apply to disputes
1106 determined eligible under this part ~~chapter~~ involving
1107 recreational vehicles acquired on or after October 1, 1997.

1108 (2) Each manufacturer of a recreational vehicle involved
1109 in a dispute that is determined eligible under this part
1110 ~~chapter~~, including chassis and component manufacturers which
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1111 separately warrant the chassis and components and which
1112 otherwise meet the definition of manufacturer set forth in s.
1113 681.102(14), shall participate in a mediation and arbitration
1114 program that is deemed qualified by the department.

1115 (3) In order to be deemed qualified by the department, the
1116 mediation and arbitration program must, at a minimum, meet the
1117 following requirements:

1118 (j) The program must ensure that the mediators and
1119 arbitrators are sufficiently trained in the program rules and
1120 procedures and in the provisions of this part ~~chapter~~ at least
1121 every other year and as a precondition to serving in the
1122 program. The program shall monitor the performance of the
1123 mediators and arbitrators to ensure that they are performing
1124 competently and impartially and are complying with all program
1125 rules and procedures and the provisions of this part ~~chapter~~.

1126 (4) The department shall monitor the program for
1127 compliance with this part ~~chapter~~. If the program is determined
1128 not qualified or if qualification is revoked, then disputes
1129 shall be subject to the provisions of ss. 681.109 and 681.1095.
1130 If the program is determined not qualified or if qualification
1131 is revoked as to a manufacturer, all those manufacturers
1132 potentially involved in the eligible consumer dispute shall be
1133 required to submit to arbitration conducted by the board if such
1134 arbitration is requested by a consumer and the dispute is deemed
1135 eligible for arbitration by the division pursuant to s. 681.109.
1136 A consumer having a dispute involving one or more manufacturers
1137 for which the program has been determined not qualified, or for
1138 which qualification has been revoked, is not required to submit
1139 the dispute to the program irrespective of whether the program

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1140 may be qualified as to some of the manufacturers potentially
1141 involved in the dispute.

1142 (6) If a program is determined not qualified or if
1143 qualification is revoked, or if program qualification is revoked
1144 as to a particular manufacturer, the program administrator and
1145 the involved manufacturer, if any, shall be notified by the
1146 department of any deficiencies in the program or, in the case of
1147 a manufacturer, notified of the manufacturer's conduct in
1148 violation of this part ~~chapter~~ or the rules adopted thereunder
1149 by the department, shall be given an opportunity to correct such
1150 deficiencies, except as set forth by the department by rule, and
1151 shall be informed that it is entitled to a hearing pursuant to
1152 chapter 120.

1153 (7) The program administrator, mediators, and arbitrators
1154 are exempt from civil liability arising from any act or omission
1155 in connection with any mediation or arbitration conducted under
1156 this part ~~chapter~~.

1157 (8) The program administrator shall maintain records of
1158 each dispute submitted to the program, including the recordings
1159 of arbitration hearings. Such records shall be maintained in a
1160 manner separate from other unrelated records of the program. All
1161 records maintained by the program under this part ~~chapter~~ shall
1162 be public records and shall be available for inspection by the
1163 department upon reasonable notice. The program shall retain all
1164 records for each dispute for at least 5 years after the final
1165 disposition of the dispute. The program shall furnish the
1166 department with copies of all settlement agreements and
1167 decisions within 30 days after the date of such settlements and
1168 decisions.

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1169 Section 14. Paragraph (b) of subsection (3), subsection
1170 (4), paragraphs (c) and (e) of subsection (5), and subsection
1171 (8) of section 681.1097, Florida Statutes, are amended to read:

1172 681.1097 RV Mediation and Arbitration Program; dispute
1173 eligibility and program function.--

1174 (3) The consumer's application for participation in the
1175 program must be on a form prescribed by the program. The program
1176 administrator shall screen all applications to participate in
1177 the program to determine eligibility.

1178 (b) If the program administrator rejects a dispute, the
1179 consumer may file a lawsuit to enforce the remedies provided
1180 under this part ~~chapter~~. In any civil action arising under this
1181 part ~~chapter~~ and relating to the matter considered by the
1182 program, any determination made to reject a dispute is
1183 admissible in evidence.

1184 (4) Mediation shall be mandatory for both the consumer and
1185 manufacturer, unless the dispute is settled prior to the
1186 scheduled mediation conference. The mediation conference shall
1187 be confidential and inadmissible in any subsequent adversarial
1188 proceedings. Participation shall be limited to the parties
1189 directly involved in the dispute and their attorneys, if any.
1190 All manufacturers shall be represented by persons with
1191 settlement authority. The parties may, by agreement, consent to
1192 expand the scope of a mediation conference to attempt to resolve
1193 warranty claims by the consumer which may not be covered under
1194 this part ~~chapter~~, if such claims were reported by the consumer
1195 to the manufacturer or its authorized service agent during the
1196 term of the manufacturer's express warranty.

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1197 (a) Upon determination that an application is eligible,
1198 the program administrator shall notify the consumer and all
1199 involved manufacturers in writing that an eligible application
1200 has been received. Such notification shall include a statement
1201 that a mediation conference will be scheduled, shall identify
1202 the assigned mediator, and provide information regarding the
1203 program's procedures. The program administrator shall provide
1204 all involved manufacturers with a copy of the completed
1205 application and obtain from each manufacturer a written response
1206 to the allegations contained in the application along with
1207 copies of any documents in support of such response. The written
1208 response shall be on a form and submitted in the manner
1209 prescribed by the program.

1210 (b) The mediator shall be selected and assigned by the
1211 program administrator. The parties may factually object to a
1212 mediator based upon the mediator's past or present relationship
1213 with a party or a party's attorney, direct or indirect, whether
1214 financial, professional, social, or of any other kind. The
1215 program administrator shall consider any such objection,
1216 determine its validity, and notify the parties of any
1217 determination. If the objection is determined valid, the program
1218 administrator shall assign another mediator to the case.

1219 (c) At the mediation conference, the mediator shall assist
1220 the parties' efforts to reach a mutually acceptable settlement
1221 of their dispute; however, the mediator shall not impose any
1222 settlement upon the parties.

1223 (d) Upon conclusion of the mediation conference, the
1224 mediator shall notify the program administrator that the case
1225 has settled or remains at an impasse.

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1226 (e) If the mediation conference ends in an impasse, it
1227 shall proceed to arbitration pursuant to subsection (5). The
1228 program administrator shall immediately notify the parties in
1229 writing that the dispute will proceed to arbitration and shall
1230 identify the assigned arbitrator.

1231 (f) If the parties enter into a settlement at any time
1232 after the dispute has been submitted to the program, such
1233 settlement must be reduced to legible writing, signed by the
1234 consumer and all involved manufacturers, and filed with the
1235 program administrator. All settlements must contain, at a
1236 minimum, the following information:

- 1237 1. Name and address of the consumer.
- 1238 2. Name and address of each involved manufacturer.
- 1239 3. Year, make, model, and vehicle identification number of
1240 the subject recreational vehicle.
- 1241 4. Name and address of the dealership from which the
1242 recreational vehicle was acquired.
- 1243 5. Date the claim was received by the program
1244 administrator.
- 1245 6. Name of the mediator or arbitrator, if any.
- 1246 7. A complete statement of the terms of the agreement,
1247 including, but not limited to: whether the vehicle is to be
1248 reacquired by a manufacturer and the identity of the
1249 manufacturer that will reacquire the vehicle; the amount of any
1250 moneys to be paid by the consumer or a manufacturer; the year,
1251 make, and model of any replacement motor vehicle or motor
1252 vehicle accepted by the consumer as a trade-assist; the date,
1253 time, location, and nature of any agreed-upon repair or
1254 replacement of a component part or accessory and an estimate as
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1255 to the anticipated length of time for such repair or
1256 replacement; and a time certain for performance not to exceed 40
1257 days from the date the settlement agreement is signed by the
1258 parties.

1259 (g) If a manufacturer fails to perform within the time
1260 required in any settlement agreement, the consumer must notify
1261 the program administrator of such failure in writing within 30
1262 days of the required performance date. Within 10 days of receipt
1263 of such notice, the program administrator shall determine
1264 whether the dispute is eligible to proceed to arbitration and
1265 shall schedule the matter for an arbitration hearing pursuant to
1266 subsection (5). If the program administrator determines the
1267 dispute is not eligible for arbitration, the dispute shall be
1268 rejected pursuant to subsection (3).

1269 (5) Arbitration proceedings shall be open to the public on
1270 reasonable and nondiscriminatory terms.

1271 (c) At all program arbitration proceedings, the parties
1272 may present oral and written testimony, present witnesses and
1273 evidence relevant to the dispute, cross-examine witnesses, and
1274 be represented by counsel. The technical rules of evidence as
1275 are applicable to civil court proceedings do not apply to
1276 arbitrations conducted by the program. The arbitrator shall
1277 record the arbitration hearing and shall have the power to
1278 administer oaths. The arbitrator may inspect the vehicle if
1279 requested by a party or if the arbitrator considers such
1280 inspection appropriate. The parties may, by mutual written
1281 agreement, consent to expand the scope of the arbitration
1282 hearing to permit consideration by the arbitrator of warranty
1283 claims by the consumer that may not be covered under this part
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1284 ~~chapter~~, provided such claims were first reported by the
1285 consumer to the manufacturer or its authorized service agent
1286 during the term of the manufacturer's express warranty.

1287 (e) The arbitrator shall, in rendering decisions, take
1288 into account all legal and equitable factors germane to a fair
1289 and just decision, including, but not limited to, the warranty
1290 and the provisions of this part ~~chapter~~.

1291 (8) In any civil action arising under this part ~~chapter~~
1292 relating to a dispute arbitrated pursuant to this section, the
1293 decision of the arbitrator is admissible in evidence.

1294 Section 15. Section 681.110, Florida Statutes, is amended
1295 to read:

1296 681.110 Compliance and disciplinary actions.--The
1297 Department of Legal Affairs may enforce and ensure compliance
1298 with the provisions of this part ~~chapter~~ and rules adopted
1299 thereunder, may issue subpoenas requiring the attendance of
1300 witnesses and production of evidence, and may seek relief in the
1301 circuit court to compel compliance with such subpoenas. The
1302 Department of Legal Affairs may impose a civil penalty against a
1303 manufacturer not to exceed \$1,000 for each count or separate
1304 offense. The proceeds from the fine imposed herein shall be
1305 placed in the Motor Vehicle Warranty Trust Fund in the
1306 Department of Legal Affairs for implementation and enforcement
1307 of this part ~~chapter~~.

1308 Section 16. Section 681.111, Florida Statutes, is amended
1309 to read:

1310 681.111 Unfair or deceptive trade practice.--A violation
1311 by a manufacturer of this part ~~chapter~~ is an unfair or deceptive
1312 trade practice as defined in part II of chapter 501.

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1313 Section 17. Section 681.112, Florida Statutes, is amended
1314 to read:

1315 681.112 Consumer remedies.--

1316 (1) A consumer may file an action to recover damages
1317 caused by a violation of this part ~~chapter~~. The court shall
1318 award a consumer who prevails in such action the amount of any
1319 pecuniary loss, litigation costs, reasonable attorney's fees,
1320 and appropriate equitable relief.

1321 (2) An action brought under this part ~~chapter~~ must be
1322 commenced within 1 year after the expiration of the Lemon Law
1323 rights period, or, if a consumer resorts to an informal dispute-
1324 settlement procedure or submits a dispute to the division or
1325 board, within 1 year after the final action of the procedure,
1326 division, or board.

1327 (3) This part ~~chapter~~ does not prohibit a consumer from
1328 pursuing other rights or remedies under any other law.

1329 Section 18. Section 681.113, Florida Statutes, is amended
1330 to read:

1331 681.113 Dealer liability.--Except as provided in ss.
1332 681.103(3) and 681.114(2), nothing in this part ~~chapter~~ imposes
1333 any liability on a dealer as defined in s. 320.60(11)(a) or
1334 creates a cause of action by a consumer against a dealer, except
1335 for written express warranties made by the dealer apart from the
1336 manufacturer's warranties. A dealer may not be made a party
1337 defendant in any action involving or relating to this part
1338 ~~chapter~~, except as provided in this section. The manufacturer
1339 shall not charge back or require reimbursement by the dealer for
1340 any costs, including, but not limited to, any refunds or vehicle
1341 replacements, incurred by the manufacturer arising out of this
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1342 ~~part chapter~~, in the absence of evidence that the related
1343 repairs had been carried out by the dealer in a manner
1344 substantially inconsistent with the manufacturer's published
1345 instructions.

1346 Section 19. Subsections (1) and (2) of section 681.114,
1347 Florida Statutes, are amended to read:

1348 681.114 Resale of returned vehicles.--

1349 (1) A manufacturer who accepts the return of a motor
1350 vehicle by reason of a settlement, determination, or decision
1351 pursuant to this ~~part chapter~~ shall notify the department and
1352 report the vehicle identification number of that motor vehicle
1353 within 10 days after such acceptance, transfer, or disposal of
1354 the vehicle, whichever occurs later.

1355 (2) A person shall not knowingly lease, sell at wholesale
1356 or retail, or transfer a title to a motor vehicle returned by
1357 reason of a settlement, determination, or decision pursuant to
1358 this ~~part chapter~~ or similar statute of another state unless the
1359 nature of the nonconformity is clearly and conspicuously
1360 disclosed to the prospective transferee, lessee, or buyer, and
1361 the manufacturer warrants to correct such nonconformity for a
1362 term of 1 year or 12,000 miles, whichever occurs first. The
1363 Department of Legal Affairs shall prescribe by rule the form,
1364 content, and procedure pertaining to such disclosure statement.

1365 Section 20. Section 681.115, Florida Statutes, is amended
1366 to read:

1367 681.115 Certain agreements void.--Any agreement entered
1368 into by a consumer that waives, limits, or disclaims the rights
1369 set forth in this ~~part chapter~~, or that requires a consumer not
1370 to disclose the terms of such agreement as a condition thereof,
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1371 is void as contrary to public policy. The rights set forth in
1372 this part ~~chapter~~ shall extend to a subsequent transferee of
1373 such motor vehicle.

1374 Section 21. Section 681.116, Florida Statutes, is amended
1375 to read:

1376 681.116 Preemption.--This part ~~chapter~~ preempts any
1377 similar county or municipal ordinance regarding consumer
1378 warranty rights resulting from the acquisition of a motor
1379 vehicle in this state.

1380 Section 22. Section 681.118, Florida Statutes, is amended
1381 to read:

1382 681.118 Rulemaking authority.--The Department of Legal
1383 Affairs shall adopt rules pursuant to ss. 120.536(1) and 120.54
1384 to implement the provisions of this part ~~chapter~~.

1385

1386

1387 ===== T I T L E A M E N D M E N T =====

1388 Remove lines 6 and 7, and insert:

1389 An act relating to transportation administration; creating s.
1390 681.201, F.S.; creating the "Vessel Warranty Enforcement Act";
1391 creating s. 681.202, F.S.; providing legislative intent;
1392 creating s. 681.203, F.S.; providing definitions; creating s.
1393 681.204, F.S.; providing for the duty of the manufacturer to
1394 conform the vessel to the warranty; creating s. 681.205, F.S.;
1395 providing for nonconformity of vessels; creating s. 681.206,
1396 F.S.; providing for bad faith claims; creating s. 681.207, F.S.;
1397 providing for dispute-settlement procedures; creating s.
1398 681.208, F.S.; providing for dispute eligibility with the
1399 Florida New Vessel Arbitration Board; creating s. 681.209, F.S.;

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1400 creating the Florida New Vessel Arbitration Board; providing for
1401 duties and functions; creating s. 681.210, F.S.; providing for
1402 compliance and disciplinary actions; creating s. 681.211, F.S.;
1403 providing that certain violations are unfair or deceptive trade
1404 practices; creating s. 681.212, F.S.; providing for consumer
1405 remedies; creating s. 681.213, F.S.; providing for vessel dealer
1406 liability; creating s. 681.214, F.S.; providing for the resale
1407 of returned vessels; creating s. 681.215, F.S.; providing that
1408 certain agreements are void; creating s. 681.216, F.S.;
1409 providing a fee; creating s. 681.217, F.S.; providing effect and
1410 application; creating s. 681.218, F.S.; providing for
1411 preemption; creating s. 681.219, F.S.; providing for rules;
1412 amending ss. 319.14, 320.64, 520.07, 681.10, 681.101, 681.102,
1413 681.103, 681.104, 681.108, 681.109, 681.1095, 681.1096,
1414 681.1097, 681.110, 681.111, 681.112, 681.113, 681.114, 681.115,
1415 681.116, and 681.118, F.S.; correcting references to conform to
1416 changes made by the act; amending s. 627.744, F.S.;

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