

1 A bill to be entitled
2 An act relating to the Motor Vehicle Warranty Enforcement
3 Act; amending s. 681.102, F.S.; revising definitions;
4 amending s. 681.104, F.S.; revising the calculation of
5 offset use for purposes of consumer refunds; revising
6 affirmative defenses to claims to limit them to certain
7 modifications or alterations; providing that absence of
8 privity of contract between a manufacturer and consumer
9 may not be raised as a breach of warranty defense against
10 the owner of the motor vehicle; amending s. 681.106, F.S.;
11 providing that bad faith or other unwarranted claims are
12 the only cause for an award of attorney's fees to a
13 manufacturer; amending s. 681.109, F.S.; providing that
14 the filing of a consumer claim arising during the Lemon
15 Law rights period with the manufacturer's certified
16 procedure is discretionary rather than mandatory;
17 authorizing the consumer to file a civil action to have
18 the dispute resolved by the courts if not satisfied with
19 the decision under the certified procedure or the
20 manufacturer's compliance therewith; authorizing the
21 consumer to apply directly to the Division of Consumer
22 Services of the Department of Agriculture and Consumer
23 Services to have a dispute submitted to the Florida New
24 Motor Vehicle Arbitration Board for arbitration; amending
25 s. 681.1095, F.S.; providing an alternative to a
26 requirement that a consumer must submit a claim to the
27 division before filing a civil action; revising the time
28 limit for appeal of certain arbitration decisions;

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29 | authorizing the award of reasonable attorney's fees to a
 30 | consumer who prevails in arbitration; amending s.
 31 | 681.1096, F.S.; deleting a cross-reference to conform to
 32 | changes made by the act; amending s. 681.1097, F.S.;
 33 | making participation in the RV Mediation and Arbitration
 34 | Program discretionary rather than mandatory; providing
 35 | that arbitration hearings shall be conducted by three
 36 | arbitrators subject to certain qualifications; repealing
 37 | s. 681.113, F.S., relating to limitations on dealer
 38 | liability; providing an effective date.

39 |

40 | Be It Enacted by the Legislature of the State of Florida:

41 |

42 | Section 1. Subsections (3), (10), (14), (15), (16), (19),
 43 | and (20) of section 681.102, Florida Statutes, are amended to
 44 | read:

45 | 681.102 Definitions.--As used in this chapter, the term:

46 | (3) "Collateral charges" means those additional charges to
 47 | a consumer wholly incurred as a result of the acquisition of the
 48 | motor vehicle. For the purposes of this chapter, collateral
 49 | charges include, but are not limited to, manufacturer-installed
 50 | or agent-installed items or service charges, earned finance
 51 | charges, sales taxes, ~~and~~ title charges, and insurance costs.

52 | (10) "Lemon Law rights period" means the period ending 34
 53 | ~~24~~ months after the date of the original delivery of a motor
 54 | vehicle to a consumer.

55 | (14) "Manufacturer" means any person, whether a resident
 56 | or nonresident of this state, who manufactures or assembles

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57 | motor vehicles or recreational vehicles, ~~or who manufactures or~~
58 | ~~assembles chassis for recreational vehicles, or who manufactures~~
59 | ~~or installs on previously assembled truck or recreational~~
60 | ~~vehicle chassis special bodies or equipment which, when~~
61 | ~~installed, forms an integral part of the motor vehicle, a~~
62 | distributor as defined in s. 320.60(5), or an importer as
63 | defined in s. 320.60(7). A dealer as defined in s. 320.60(11)(a)
64 | shall not be deemed to be a manufacturer, distributor, or
65 | importer as provided in this section.

66 | (15) "Motor vehicle" means a new vehicle, propelled by
67 | power other than muscular power, which is sold in this state to
68 | transport persons or property, and includes a recreational
69 | vehicle or a vehicle used as a demonstrator or leased vehicle if
70 | a manufacturer's warranty was issued as a condition of sale, or
71 | the lessee is responsible for repairs, but does not include
72 | vehicles run only upon tracks, off-road vehicles, trucks over
73 | 15,000 ~~10,000~~ pounds gross vehicle weight, motorcycles, or
74 | mopeds. The term "motor vehicle" also includes a used vehicle
75 | within the applicable mileage and time limits of the
76 | manufacturer's warranty, ~~or the living facilities of~~
77 | ~~recreational vehicles. "Living facilities of recreational~~
78 | ~~vehicles" are those portions designed, used, or maintained~~
79 | ~~primarily as living quarters and include, but are not limited~~
80 | ~~to, the flooring, plumbing system and fixtures, roof air~~
81 | ~~conditioner, furnace, generator, electrical systems other than~~
82 | ~~automotive circuits, the side entrance door, exterior~~
83 | ~~compartments, and windows other than the windshield and driver~~
84 | ~~and front passenger windows.~~

85 (16) "Nonconformity" means a defect or condition that
 86 substantially impairs the use, value, or safety of a motor
 87 vehicle, but does not include a defect or condition that results
 88 from an accident, abuse, neglect, modification causing the
 89 defect or condition, or alteration causing the defect or
 90 condition of the motor vehicle by persons other than the
 91 manufacturer or its authorized service agent.

92 (19) "Purchase price" means the cash price as defined in
 93 s. 520.31(2), inclusive of any allowance for a trade-in vehicle,
 94 but excludes debt from any other transaction. "Any allowance for
 95 a trade-in vehicle" means the net trade-in allowance as
 96 reflected in the purchase contract or lease agreement if
 97 acceptable to the consumer and manufacturer. ~~If such amount is~~
 98 ~~not acceptable to the consumer and manufacturer, then the trade-~~
 99 ~~in allowance shall be an amount equal to 100 percent of the~~
 100 ~~retail price of the trade-in vehicle as reflected in the NADA~~
 101 ~~Official Used Car Guide (Southeastern Edition) or NADA~~
 102 ~~Recreation Vehicle Appraisal Guide, whichever is applicable, in~~
 103 ~~effect at the time of the trade-in. The manufacturer shall be~~
 104 ~~responsible for providing the applicable NADA book.~~

105 (20) "Reasonable offset for use" means the number of miles
 106 attributable to a consumer up to the date of a settlement
 107 agreement or arbitration hearing, whichever occurs first,
 108 multiplied by the purchase price of the motor vehicle and
 109 divided by 120,000, ~~except in the case of a recreational~~
 110 ~~vehicle, in which event it shall be divided by 60,000.~~

111 Section 2. Paragraph (a) of subsection (2) and subsection
 112 (4) of section 681.104, Florida Statutes, are amended to read:

113 681.104 Nonconformity of motor vehicles.--

114 (2) (a) If the manufacturer, or its authorized service

115 agent, cannot conform the motor vehicle to the warranty by

116 repairing or correcting any nonconformity after a reasonable

117 number of attempts, the manufacturer, within 40 days, shall

118 repurchase the motor vehicle and refund the full purchase price

119 to the consumer, less a reasonable offset for use, or, in

120 consideration of its receipt of payment from the consumer of a

121 reasonable offset for use calculated using the offset mileage as

122 of the date of the final attempt to repair, replace the motor

123 vehicle with a replacement motor vehicle acceptable to the

124 consumer. The refund or replacement must include all reasonably

125 incurred collateral and incidental charges. However, the

126 consumer has an unconditional right to choose a refund rather

127 than a replacement motor vehicle. Upon receipt of such refund or

128 replacement, the consumer, lienholder, or lessor shall furnish

129 to the manufacturer clear title to and possession of the motor

130 vehicle.

131 (4) It is an affirmative defense to any claim under this

132 chapter that:

133 (a) The alleged nonconformity does not substantially

134 impair the use, value, or safety of the motor vehicle;

135 (b) The nonconformity is the result of an accident, abuse,

136 neglect, ~~or~~ unauthorized modification causing the defect or

137 condition, ~~modifications~~ or unauthorized alteration causing the

138 defect or condition ~~alterations~~ of the motor vehicle by a person

139 ~~persons~~ other than the manufacturer or its authorized service

140 agent; or

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

142
 143 Any other affirmative defense allowed by law may be raised
 144 against the claim. However, absence of privity of contract
 145 between a manufacturer and consumer may not be raised as a
 146 breach of warranty defense against the owner of the motor
 147 vehicle.

148 Section 3. Section 681.106, Florida Statutes, is amended
 149 to read:

150 681.106 Bad faith claims.--Any claim by a consumer which
 151 is found by the court to have been filed in bad faith or solely
 152 for the purpose of harassment, or in complete absence of a
 153 justiciable issue of either law or fact raised by the consumer,
 154 shall result in the consumer being liable for all costs and
 155 reasonable attorney's fees incurred by the manufacturer, or its
 156 agent, as a direct result of the bad faith claim. Such claims
 157 shall be the only cause for an award of reasonable attorney's
 158 fees to a manufacturer.

159 Section 4. Subsections (1), (2), and (3) of section
 160 681.109, Florida Statutes, are amended to read:

161 681.109 Florida New Motor Vehicle Arbitration Board;
 162 dispute eligibility.--

163 (1) If a manufacturer has a certified procedure, a
 164 consumer claim arising during the Lemon Law rights period may
 165 ~~must~~ be filed with the certified procedure no later than 60 days
 166 after the expiration of the Lemon Law rights period. If a
 167 decision is not rendered by the certified procedure within 40

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168 days of filing, the consumer may apply to the division to have
 169 the dispute removed to the board for arbitration.

170 (2) If a manufacturer has a certified procedure, a
 171 consumer claim arising during the Lemon Law rights period may
 172 ~~must~~ be filed with the certified procedure no later than 60 days
 173 after the expiration of the Lemon Law rights period. If a
 174 consumer is not satisfied with the decision or the
 175 manufacturer's compliance therewith, the consumer may file a
 176 civil action to have the dispute resolved by the courts ~~apply to~~
 177 ~~the division to have the dispute submitted to the board for~~
 178 ~~arbitration~~. A manufacturer may not seek review of a decision
 179 made under its procedure.

180 (3) ~~If a manufacturer has no certified procedure or if a~~
 181 ~~certified procedure does not have jurisdiction to resolve the~~
 182 ~~dispute,~~ A consumer may apply directly to the division to have
 183 the dispute submitted to the board for arbitration.

184 Section 5. Subsections (4), (10), and (11) of section
 185 681.1095, Florida Statutes, are amended, and subsection (17) is
 186 added to that section, to read:

187 681.1095 Florida New Motor Vehicle Arbitration Board;
 188 creation and function.--

189 (4) Before filing a civil action on a matter subject to s.
 190 681.104, the consumer must ~~first~~ submit the dispute to either
 191 the manufacturer's certified dispute settlement procedure or the
 192 division, and to the board if such dispute is deemed eligible
 193 for arbitration.

194 (10) A decision is final unless appealed by either party.
 195 A petition to the circuit court to appeal a decision must be

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196 made within 40 ~~30~~ days after receipt of the decision. The
197 petition shall be filed in the county where the consumer
198 resides, or where the motor vehicle was acquired, or where the
199 arbitration hearing was conducted. Within 7 days after the
200 petition has been filed, the appealing party must send a copy of
201 the petition to the department. If the department does not
202 receive notice of such petition within 40 days after the
203 manufacturer's receipt of a decision in favor of the consumer,
204 and the manufacturer has neither complied with, nor has
205 petitioned to appeal such decision, the department may apply to
206 the circuit court to seek imposition of a fine up to \$1,000 per
207 day against the manufacturer until the amount stands at twice
208 the purchase price of the motor vehicle, unless the manufacturer
209 provides clear and convincing evidence that the delay or failure
210 was beyond its control or was acceptable to the consumer as
211 evidenced by a written statement signed by the consumer. If the
212 manufacturer fails to provide such evidence or fails to pay the
213 fine, the department shall initiate proceedings against the
214 manufacturer for failure to pay such fine. The proceeds from the
215 fine herein imposed shall be placed in the Motor Vehicle
216 Warranty Trust Fund in the department for implementation and
217 enforcement of this chapter. If the manufacturer fails to comply
218 with the provisions of this subsection, the court shall affirm
219 the award upon application by the consumer.

220 (11) All provisions in this section and s. 681.109
221 pertaining to ~~compulsory~~ arbitration before the board, the
222 dispute eligibility screening by the division, the proceedings
223 and decisions of the board, and any appeals thereof, are exempt

224 from the provisions of chapter 120.

225 (17) The arbitrator may award a consumer who prevails in
 226 the arbitration reasonable attorney's fees.

227 Section 6. Subsection (2) of section 681.1096, Florida
 228 Statutes, is amended to read:

229 681.1096 RV Mediation and Arbitration Program; creation
 230 and qualifications.--

231 (2) Each manufacturer of a recreational vehicle involved
 232 in a dispute that is determined eligible under this chapter,
 233 ~~including chassis and component manufacturers which separately~~
 234 ~~warrant the chassis and components and which otherwise meet the~~
 235 ~~definition of manufacturer set forth in s. 681.102(14),~~ shall
 236 participate in a mediation and arbitration program that is
 237 deemed qualified by the department.

238 Section 7. Subsections (1), (2), (4), (5), (6), (7), and
 239 (8) of section 681.1097, Florida Statutes, are amended to read:

240 681.1097 RV Mediation and Arbitration Program; dispute
 241 eligibility and program function.--

242 (1) Before filing a civil action on a matter subject to s.
 243 681.104, a consumer who acquires a recreational vehicle may ~~must~~
 244 ~~first~~ submit the dispute to the program if the dispute is deemed
 245 eligible. Such consumer is not required to resort to a procedure
 246 certified pursuant to s. 681.108, notwithstanding that one of
 247 the manufacturers of the recreational vehicle has such a
 248 procedure. Such consumer is not required to resort to
 249 arbitration conducted by the board, except as provided in s.
 250 681.1096(4) and in this section.

251 (2) A consumer acquiring a recreational vehicle may ~~must~~
252 apply to participate in this program with respect to a claim
253 arising during the Lemon Law rights period by filing the
254 application in subsection (3) with the program no later than 60
255 days after the expiration of the Lemon Law rights period. The
256 claim is considered filed when the application is date-stamped
257 as received by the program.

258 (4) Mediation shall be optional ~~mandatory~~ for both the
259 consumer and manufacturer, ~~unless the dispute is settled prior~~
260 ~~to the scheduled mediation conference~~. The mediation conference
261 shall be confidential and inadmissible in any subsequent
262 adversarial proceedings. Participation shall be limited to the
263 parties directly involved in the dispute and their attorneys, if
264 any. All manufacturers shall be represented by persons with
265 settlement authority. The parties may, by agreement, consent to
266 expand the scope of a mediation conference to attempt to resolve
267 warranty claims by the consumer which may not be covered under
268 this chapter, if such claims were reported by the consumer to
269 the manufacturer or its authorized service agent during the term
270 of the manufacturer's express warranty.

271 (a) Upon determination that an application is eligible,
272 the program administrator shall notify the consumer and all
273 involved manufacturers in writing that an eligible application
274 has been received. Such notification shall include a statement
275 that a mediation conference will be scheduled, shall identify
276 the assigned mediator, and provide information regarding the
277 program's procedures. The program administrator shall provide
278 all involved manufacturers with a copy of the completed

279 application and obtain from each manufacturer a written response
280 to the allegations contained in the application along with
281 copies of any documents in support of such response. The written
282 response shall be on a form and submitted in the manner
283 prescribed by the program.

284 (b) The mediator shall be selected and assigned by the
285 program administrator. The parties may factually object to a
286 mediator based upon the mediator's past or present relationship
287 with a party or a party's attorney, direct or indirect, whether
288 financial, professional, social, or of any other kind. The
289 program administrator shall consider any such objection,
290 determine its validity, and notify the parties of any
291 determination. If the objection is determined valid, the program
292 administrator shall assign another mediator to the case.

293 (c) At the mediation conference, the mediator shall assist
294 the parties' efforts to reach a mutually acceptable settlement
295 of their dispute; however, the mediator shall not impose any
296 settlement upon the parties.

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

300 (e) If the mediation conference ends in an impasse, it
301 shall proceed to arbitration pursuant to subsection (5). The
302 program administrator shall immediately notify the parties in
303 writing that the dispute will proceed to arbitration and shall
304 identify the assigned arbitrators ~~arbitrator~~.

305 (f) If the parties enter into a settlement at any time
306 after the dispute has been submitted to the program, such

307 settlement must be reduced to legible writing, signed by the
 308 consumer and all involved manufacturers, and filed with the
 309 program administrator. All settlements must contain, at a
 310 minimum, the following information:

- 311 1. Name and address of the consumer.
- 312 2. Name and address of each involved manufacturer.
- 313 3. Year, make, model, and vehicle identification number of
 314 the subject recreational vehicle.
- 315 4. Name and address of the dealership from which the
 316 recreational vehicle was acquired.
- 317 5. Date the claim was received by the program
 318 administrator.
- 319 6. Name of the mediator or arbitrators ~~arbitrator~~, if any.
- 320 7. A complete statement of the terms of the agreement,
 321 including, but not limited to: whether the vehicle is to be
 322 reacquired by a manufacturer and the identity of the
 323 manufacturer that will reacquire the vehicle; the amount of any
 324 moneys to be paid by the consumer or a manufacturer; the year,
 325 make, and model of any replacement motor vehicle or motor
 326 vehicle accepted by the consumer as a trade-assist; the date,
 327 time, location, and nature of any agreed-upon repair or
 328 replacement of a component part or accessory and an estimate as
 329 to the anticipated length of time for such repair or
 330 replacement; and a time certain for performance not to exceed 40
 331 days from the date the settlement agreement is signed by the
 332 parties.

333 (g) If a manufacturer fails to perform within the time
 334 required in any settlement agreement, the consumer must notify

335 the program administrator of such failure in writing within 30
336 days of the required performance date. Within 10 days of receipt
337 of such notice, the program administrator shall determine
338 whether the dispute is eligible to proceed to arbitration and
339 shall schedule the matter for an arbitration hearing pursuant to
340 subsection (5). If the program administrator determines the
341 dispute is not eligible for arbitration, the dispute shall be
342 rejected pursuant to subsection (3).

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

345 (a) The arbitration hearing shall be conducted by three
346 arbitrators ~~a single arbitrator~~ assigned by the program
347 administrator. The arbitrators are subject to the same
348 qualifications as three-member board panels provided by s.
349 681.1095 and may ~~arbitrator shall~~ not include ~~be the same person~~
350 ~~as~~ the mediator who conducted the prior mediation conference in
351 the dispute. The parties may factually object to an arbitrator
352 based on the arbitrator's past or present relationship with a
353 party or a party's attorney, direct or indirect, whether
354 financial, professional, social, or of any other kind. The
355 program administrator shall consider any such objection,
356 determine its validity, and notify the parties of any
357 determination. If the objection is determined valid, the program
358 administrator shall assign another arbitrator to the case.

359 (b) The arbitrators ~~arbitrator~~ may issue subpoenas for the
360 attendance of witnesses and for the production of records,
361 documents, and other evidence. Subpoenas so issued shall be
362 served and, upon application to the court by a party to the

363 arbitration, enforced in the manner provided by law for the
364 service and enforcement of subpoenas in civil actions. Fees for
365 attendance as a witness shall be the same as for a witness in
366 the circuit court.

367 (c) At all program arbitration proceedings, the parties
368 may present oral and written testimony, present witnesses and
369 evidence relevant to the dispute, cross-examine witnesses, and
370 be represented by counsel. The technical rules of evidence as
371 are applicable to civil court proceedings do not apply to
372 arbitrations conducted by the program. The arbitrators
373 ~~arbitrator~~ shall record the arbitration hearing and shall have
374 the power to administer oaths. The arbitrators ~~arbitrator~~ may
375 inspect the vehicle if requested by a party or if the
376 arbitrators consider ~~arbitrator considers~~ such inspection
377 appropriate. The parties may, by mutual written agreement,
378 consent to expand the scope of the arbitration hearing to permit
379 consideration by the arbitrators ~~arbitrator~~ of warranty claims
380 by the consumer that may not be covered under this chapter,
381 provided such claims were ~~first~~ reported by the consumer to the
382 manufacturer or its authorized service agent during the term of
383 the manufacturer's express warranty.

384 (d) The arbitrators ~~program arbitrator~~ may continue a
385 hearing on their ~~his or her~~ own motion or upon the request of a
386 party for good cause shown. A request for continuance by the
387 consumer constitutes a waiver of the time period set forth in s.
388 681.1096(3)(k) for completion of all proceedings under the
389 program.

390 (e) The arbitrators ~~arbitrator~~ shall, in rendering
391 decisions, take into account all legal and equitable factors
392 germane to a fair and just decision, including, but not limited
393 to, the warranty and the provisions of this chapter.

394 (f) The arbitrators ~~program~~ ~~arbitrator~~ shall render a
395 decision within 10 days of the closing of the hearing. The
396 decision shall be in legible writing on a form prescribed by the
397 program. The program administrator shall send a copy of the
398 decision to the consumer and each involved manufacturer by
399 registered mail.

400 (g) A manufacturer shall comply with an arbitration
401 decision within 40 days of the date the manufacturer receives
402 the written decision. Compliance occurs on the date the consumer
403 receives the relief specified in the arbitration award.

404 (h) If a manufacturer fails to comply within the time
405 required, and no appeal has been filed, the consumer shall
406 notify the program administrator of such failure in writing
407 within 30 days. The program administrator shall notify the
408 department of a manufacturer's failure to comply. A consumer may
409 apply to a court of competent jurisdiction in this state for
410 entry of an order confirming the award. Such application shall
411 be by motion filed within 40 days after the manufacturer's
412 failure to comply and shall be heard in the manner and upon
413 notice provided by law or rule of court for the making and
414 hearing of motions. Such application shall be served in the
415 manner provided by law for the service of a civil summons. The
416 consumer shall send a copy of the application for confirmation

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417 of the award and any order entered by the court confirming the
418 award to the program administrator.

419 (i) Either party may request that the arbitrators ~~program~~
420 ~~arbitrator~~ make a technical correction to the decision by filing
421 a written request with the program administrator within 10 days
422 after receipt of the written decision. Technical corrections
423 shall be limited to computational errors, correction of a
424 party's name or information regarding the recreational vehicle,
425 and typographical or spelling errors. Technical correction of a
426 decision shall not toll the time for filing an appeal or for
427 manufacturer compliance.

428 (6) Except as otherwise provided, all provisions in this
429 section pertaining to ~~mandatory~~ mediation and arbitration,
430 eligibility screening, mediation proceedings, arbitration
431 hearings and decisions, and any appeals thereof are exempt from
432 the provisions of chapter 120.

433 (7) A decision of the arbitrators ~~arbitrator~~ is binding
434 unless appealed by either party by filing a petition with the
435 circuit court within the time and in the manner prescribed by s.
436 681.1095(10) and (12). Section 681.1095(13) and (14) apply to
437 appeals filed under this section. If a decision of the
438 arbitrators ~~a program arbitrator~~ in favor of a consumer is
439 confirmed by the court, recovery by the consumer shall include
440 the pecuniary value of the award, attorney's fees incurred in
441 obtaining confirmation of the award, and all costs and
442 continuing damages in the amount of \$25 per day for each day
443 beyond the 40-day period following a manufacturer's receipt of
444 the arbitrators' ~~arbitrator's~~ decision. If a court determines

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445 the manufacturer acted in bad faith in bringing the appeal or
446 brought the appeal solely for the purpose of harassment, or in
447 complete absence of a justiciable issue of law or fact, the
448 court shall double, and may triple, the amount of the total
449 award.

450 (8) In any civil action arising under this chapter
451 relating to a dispute arbitrated pursuant to this section, the
452 decision of the arbitrators ~~arbitrator~~ is admissible in
453 evidence.

454 Section 8. Section 681.113, Florida Statutes, is repealed.

455 Section 9. This act shall take effect July 1, 2007.