1988

Session Law 88-095

Florida Senate & House of Representatives

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**Committee Records**

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A bill to be entitled
An act relating to motor vehicle sales warranties; amending s. 681.101, F.S.;
providing clarifying language; amending s. 681.102, F.S.; providing definitions; amending s. 681.103, F.S.; requiring motor vehicle manufacturers to conform motor vehicles to the warranty; requiring such manufacturers to follow certain procedures relating to warranties; amending s. 681.104, F.S.;
providing notification requirements for consumers with nonconforming motor vehicles; providing procedures for the handling of such vehicles; providing for refunds or replacement vehicles; providing for the refunding of sales tax paid on certain vehicles, amending s. 681.108, F.S.; providing informal dispute settlement procedures; creating s. 681.109, F.S.; providing an arbitration system for motor vehicle owners who do not resolve disputes through a certified informal dispute settlement procedure; creating s. 681.1095, F.S., creating the Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs; providing for the appointment of board members; providing powers and duties of the board; providing procedures for arbitration; providing powers and duties of the Department of Legal Affairs relative to the board; providing for the appeal of board decisions; providing for attorney's fees, costs, and penalties for

CODING. Words stricken are deletions; words underlined are additions.
Be It Enacted by the Legislature of the State of Florida:

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

681.101 Legislative intent.--The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an authorized

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It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty provided for in this chapter issued by the manufacturer. However, nothing in this chapter ss--681.10-681.108 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

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

> 681 102 Definitions.--As used in this chapter, the terms have the following meanings:

1. "Board" means the Florida New Motor Vehicle Arbitration Board.

2. "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition purchase of the motor vehicle. For the purposes of this chapter ss--681.10-681.108, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

3. "Comparable motor vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same model, year, and equivalent condition at the time of replacement.

4. "Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle.

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primarily used for personal, family, or household purposes;
any person to whom such motor vehicle is transferred for the
same purposes during the duration of the Lemon Law rights
period an-express-warranty-applicable-to-such-motor-vehicle;
and any other person entitled by the terms of the such
warranty to enforce the obligations of the warranty.

(4) "Division" means the Division of Consumer Services
of the Department of Agriculture and Consumer Services.

"Express-warranty" means any written affirmation of fact or
promise made in connection with the sale of a motor vehicle by
a supplier to a consumer which relates to the nature of the
material or workmanship and affirms or promises that such
material or workmanship is free of defects or will meet a
specified level of performance over a specified period of
time. For the purposes of ss. 681:681:188, express
warranties do not include implied warranties.

(5) "Incidental charges" means those reasonable
unavoidable costs to the consumer which are directly caused by
the nonconformity of the motor vehicle. Consequential-damages
shall not be allowed under this act.

(6) "Lease price" means the aggregate of:
(a) Lessor's actual purchase costs
(b) Collateral charges, if applicable
(c) Any accessories, if applicable:
(d) Any fee paid to another to obtain the lease.
(e) Any insurance or other costs expended by the
lessor for the benefit of the lessee.
(f) An amount equal to state and local sales taxes,
not otherwise included as collateral charges, paid by the
lessor when the vehicle was initially purchased.

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"Lemon Law rights period" means the period ending
1 year after the date of the original delivery of a motor
vehicle to a consumer or the first 12,000 miles of operation,
whichever occurs first.

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

"Lessee cost costs" means the aggregate deposit
and rental payments previously paid to the lessor for the
leased vehicle less a reasonable offset allowance for the
lessee's consumer's use of the vehicle.

"Manufacturer" means a manufacturer as defined
in s. 320.60(9), a distributor as defined in s. 320.60(5), or
an importer as defined in s. 320.60(7). A dealer as defined
in s. 320.60(11)(a) shall not be deemed to be a manufacturer;
distributor, or importer as provided in this section. The
dealer or authorized service agent of the manufacturer, as
referred to under this chapter, means a motor vehicle dealer
licensed pursuant to s. 320 27(c)(1).

"Motor vehicle" means a new motor vehicle,
propelled by power other than muscular power, which is sold in
this state and which is operated over the public streets and
highways of this state to transport and is used as a means of
transporting persons or property, and includes a vehicle used
as a demonstrator or leased vehicle if a manufacturer's
warranty was issued as a condition of sale, or the lessee is
responsible for repairs. The term "motor vehicle" includes
only those vehicles propelled by power other than muscular
power, but the term does not include vehicles run only upon

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tracks, off-road vehicles, trucks over 10,000 pounds gross
vehicle weight, the living facilities of recreational
vehicles, motorcycles, or mopeds. The term "motor-vehicle"
includes a demonstrator or lease-purchase vehicle as long as a
manufacturer's warranty was issued as a condition of sale.

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

(14) "Reasonable offset for use" means the number of
miles attributable to a consumer up to the date of the third
repair attempt of the same nonconformity or the 20th
cumulative calendar day when the vehicle is out of service by
reason of repair of one or more nonconformities, whichever
occurs first, multiplied by the purchase price of the vehicle
and divided by 120,000.

(16) "Replacement motor vehicle" means a motor
vehicle which is identical or reasonably equivalent to the
motor vehicle to be replaced, as the motor vehicle to be
replaced existed at the time of acquisition purchase.

(17) "Division" means the Division of Consumer
Services of the Department of Agriculture and Consumer
Services.

(16) "Warranty" means any written warranty issued by
the manufacturer, or any affirmation of fact or promise made
by the manufacturer, excluding statements made by the dealer.

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in connection with the sale of a motor vehicle to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.

Section 3 Section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty all-applicable-express-warranties.--

(1) For-the-purposes-of-this-chapter, If a new motor vehicle does not conform to the warranty all-applicable express-warranties and the consumer reports the nonconformity to the manufacturer, or its authorized service agent, during the-term-of-such-express-warranties, or during the Lemon Law rights period period-of-1-year-following-the-date-of-original delivery-of-the-motor-vehicle-to-the-consumer, whichever period-expires-earlier, the manufacturer, or its authorized service agent, shall, at no cost to the consumer, make such repairs as are necessary to conform the vehicle to the warranty such-express-warranties, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period such-term-or-such-1-year-period.

(2) Each manufacturer shall provide a list of addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year, each manufacturer shall forward to the Department of Legal Affairs a copy of the owner's manual and any written warranty for each make and model of motor vehicle that it sells in this state.

(3) At the time of acquisition, the manufacturer shall inform the consumer in writing how to file a claim with a certified informal dispute settlement procedure if such
procedure has been established by the manufacturer pursuant to
s. 681.108 and shall provide the consumer a written statement
that explains the consumer's rights under this chapter. The
written statement shall be prepared by the Department of Legal
Affairs and shall contain a toll-free number for the division
that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service
agent, shall provide to the consumer each time his motor
vehicle is returned after being examined or repaired under the
warranty, a fully itemized, legible statement or repair order
indicating any test drive performed and the approximate length
of the test drive, any diagnosis made, and all work performed
on the motor vehicle including, but not limited to, a general
description of the problem reported by the consumer or an
identification of the defect or condition, parts and labor,
the date and the odometer reading when the motor vehicle was
submitted for examination or repair, and the date when the
repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is
amended to read:

681.104 Nonconformity of motor vehicles.--

(1) After three attempts have been made to repair the
same nonconformity or a motor vehicle has been out of service
by reason of repair of one or more nonconformities for 20
cumulative calendar days, the manufacturer shall provide
a list of the manufacturer's zone or regional service office
addresses in the owner's manual provided with the motor
vehicle. The consumer shall give written notification, by
registered or express mail to the manufacturer, of the need
for the repair of a nonconformity or nonconformities, in order
to allow the manufacturer a final attempt an opportunity to

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cure the nonconformity or nonconformities alleged-defect. If three attempts have been made to repair the same nonconformity, the manufacturer shall, within 7 calendar working days after receipt of such notification being-notified by-the-consumer, notify the consumer of a reasonably accessible repair facility and after to-conform-the-vehicle-to the-express-warranty-and-inform-the-consumer-if-an-informal dispute-settlement-procedure-has-been-established-by-the manufacturer-in-accordance-with-s.984.108-and-how-to-file-a claim-with-the-dispute-settlement-mechanism-and-shall-provide the-consumer-with-a-copy-of-this-chapter—After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall within 14 calendar have-18-working days to conform the motor vehicle to the express warranty. If such notification pertains to 20 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, the manufacturer has 10 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, commencing upon the date such notification is received, to conform the motor vehicle to the warranty. If the manufacturer fails to notify the consumer of a reasonably accessible repair facility or to perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity or nonconformities does not apply the-availability-of-this informal-dispute-settlement-procedure—the-requirements-of-s.984.108-do-not-apply.

(2)(a) If the manufacturer, or its authorized service agent, cannot conform the motor vehicle to the any-applicable express warranty by repairing or correcting any nonconformity
default-or-condition-which-impairs-the-use,-market-value,-or
safety-of-the-motor-vehicle-to-the-consumer after a reasonable
number of attempts, the manufacturer, within 40 calendar days,
shall, in consideration of its receipt of payment of a
reasonable offset for use, give-the-consumer-the-option-of
having-the-manufacturer replace the motor vehicle with a
comparable-or replacement motor vehicle acceptable to the
consumer; or having-the-manufacturer repurchase the motor
vehicle from the consumer and refund to the consumer the full
purchase price, including all reasonably incurred collateral
and incidental charges, less a reasonable offset allowance
for-the-consumer's-use-of-the-motor-vehicle. However, the
consumer has an unconditional right to choose a refund rather
than a replacement. The requirement for The subtraction of a
reasonable offset allowance for use applies only when either a
refund or a replacement motor vehicle is provided. Upon
receipt of such refund or replacement, A-"reasonable-allowance
for-use"-is-that-sum-of-money-arrived-at-by-multiplying-the
number-of-miles-driven-at-the-time-of-the-first-reported
noneconformity-of-the-motor-vehicle-which-noneconformity
resulted-in-a-claim-pursuant-to-this-act,-by-28-cents-per
mile--in-the-event-a-comparable-motor-vehicle-is-provided,-no
allowance-shall-be-subtracted-for-the-consumer's-use-of-the
motor-vehicle.--Under-the-provisions-of-this-section,-it-is
the-responsibility-of the consumer, lienholder, or lessor
shall to furnish to the manufacturer clear title to and
possession of the motor vehicle.

(b) Refunds shall be made to the consumer and
lienholder of record, if any, as their interests may appear.
If applicable, refunds shall be made to the lessor and lessee
as their interests may appear on the records of ownership kept
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by the Department of Highway Safety and Motor Vehicles, as
follows: the lessee shall receive the lessee cost and the
lessor shall receive the lease price less the aggregate
deposit and rental payments previously paid to the lessor for
the leased vehicle. The Department of Revenue shall refund to
the manufacturer any sales tax which the manufacturer refunded
to the consumer, lessee, or lessor under this section, if the
manufacturer provides to the department a written request for
a refund and evidence that the sales tax was paid when the
vehicle was purchased and that the manufacturer refunded the
sales tax to the consumer, lessee, or lessor.

(3)(a) It shall be presumed that a reasonable
number of attempts have been undertaken to conform a motor
vehicle to the warranty applicable-express-warranties if,
within-the-terms-conditions-or-limitations-of-the-express
warranty-or during the Lemon Law rights period of 3-year
following-the-date-of-original-delivery-of-the-motor-vehicle
to-a-consumer-whichever-expires-earlier, either:

1. The Substantially-the same nonconformity has been
subject to repair at least three or more times by the
manufacturer or its authorized service agent, plus a final
exclusive-of-the-initial attempt by the manufacturer to repair
the motor vehicle if undertaken as provided for in subsection
(1), and such nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason
of the repair of one or more nonconformities by the
manufacturer, or its authorized service agent, for a
cumulative total of 30 or more calendar working days,
exclusive of down time for routine maintenance as prescribed
by the owner's manual-and-exclusive-of-the-10-working-day
period-under-the-provisions-of-subsection-(1). The 30-day 15-

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A day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster conditions beyond the control of the manufacturer or its agent.

(b) The terms of paragraph (a), conditions or limitations of the express warranty or the period of 1-year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if a nonconformity the motor vehicle warranty problem has been reported but has not been cured repaired by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights applicable time period.

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

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the consumer, or

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

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

Any action brought under this chapter shall be commenced within 6 months following expiration of the terms, conditions or limitations of the express warranty or within 18 months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or in the event
that a consumer resorts to an informal dispute settlement procedure as provided in s. 681.108, within 6 months following the final action of the panel. In any action brought by the consumer with respect to an alleged noneconformity, the decision of the informal dispute settlement panel is admissible in evidence.

(b) If a consumer finally prevails in any action brought under this chapter, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for, or in connection with, the commencement and prosecution of such action.

Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 Informal dispute settlement procedure.--

(1) If a manufacturer has established an informal dispute settlement procedure which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983 and of this chapter, and has informed the consumer how to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) do not apply to any consumer who has not first resorted to such procedure. A certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty, the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter, and any other equitable considerations appropriate under the

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circumstances. In an action brought by a consumer concerning an alleged nonconformity, the decision of a certified informal dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure involves a panel for the purposes of this section, at least one member of such informal dispute settlement panel may shall be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect on October 1, 1983. The member designated by the division shall not be required to undergo training by the informal dispute settlement mechanism if he possesses one of the following qualifications:

(a) Membership in a nationally recognized arbitration or mediation association;
(b) Graduation from an accredited law school;
(c) Completion of a training program conducted or approved by the division;

(3) The informal dispute settlement procedure panel shall submit to the division a copy of each settlement approved by the procedure or decision made by a member or the panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement decisions shall be reported on forms to be promulgated by the division, which shall contain at a minimum the following information:

(a) Name and address of the consumer;
(b) Name and address of the dealership from which the car was purchased;
(c) Date the complaint was received;
(d) Relief requested by the consumer;

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(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member or the panel;

(g) Date of the settlement or decision;

(h) Statement Determination of whether the decision was accepted or rejected by the consumer; and

(i) Statement Determination of whether the decision was accepted or rejected by the manufacturer.

(4) Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(4)(a) The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the use, market value, or safety of the motor vehicle to the consumer.

(b) If the motor vehicle does not conform to all applicable express warranties as determined pursuant to paragraph (a), the informal dispute settlement panel shall then determine whether a reasonable number of attempts to have the motor vehicle repaired have been made.

(c) If the motor vehicle does not conform to all applicable express warranties and a reasonable number of attempts to repair have been made as determined pursuant to paragraphs (a) and (b), and the manufacturer has been given an

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

(1) If a consumer resorts to a manufacturer's certified informal dispute settlement procedure and a decision is not rendered or performed within the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's informal dispute settlement procedure and is not satisfied with the decision reached may apply to the division to have the dispute submitted to the board for arbitration. No manufacturer may seek review of a decision of its informal dispute settlement procedure.

(3) If a manufacturer has no certified informal dispute settlement procedure, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the division determines are potentially entitled to relief under this chapter.

(5) The division may reject a dispute that it determines to be fraudulent or outside the scope of the board's authority. Any dispute deemed by the division to be ineligible for arbitration by the board due to insufficient evidence may be reconsidered upon the submission of new information regarding the dispute. Following a second review,

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the division may reject a dispute if the evidence is clearly insufficient to qualify for relief. Any dispute rejected by the division shall be forwarded to the Department of Legal Affairs and a copy shall be sent by registered mail to the consumer and the manufacturer, containing a brief explanation as to the reason for rejection.

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

Section 7. Section 681.1095, Florida Statutes, is created to read:

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

(1) There is established within the Department of Legal Affairs, the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter.

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

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(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

(4) Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the division.

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.

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

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

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

(10) The board shall hear the dispute within 40 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a
dispute within 40 calendar days or render a decision within 60 calendar days does not invalidate the decision.

(11) A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the board. If the board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to $1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Department of Legal Affairs shall initiate proceedings against the manufacturer for failure to pay such fine. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter. If the manufacturer fails to comply with the provisions of this subsection, the court shall affirm the award upon application by the consumer.

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

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

(13) An appeal of a decision by the board to the
circuit court by a consumer or a manufacturer shall be de
novo. In a written petition to appeal a decision by the
board, the appealing party must state the action requested and
the grounds relied upon.

(14) If a decision of the board in favor of the
consumer is upheld by the court, recovery by the consumer
shall include, if applicable, the pecuniary value of the
award, attorney's fees incurred in obtaining confirmation of
the award and all costs and continuing damages in the amount
of $25 per day for all days beyond the 40 calendar day period
following the manufacturer's receipt of the board's decision.
If a court determines that the manufacturer acted in bad faith
in bringing the appeal or brought the appeal solely for the
purpose of harassment, the court shall double, and may triple,
the amount of the total award.

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

(16) The Department of Legal Affairs shall maintain
records of each dispute submitted to the board, including an
index of motor vehicles by year, make, and model, and shall
compile aggregate annual statistics for all disputes submitted
to, and decided by, the board, as well as annual statistics
for each manufacturer that include, but are not limited to,
the number and percent of:

(a) Replacement motor vehicle requests;

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(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing settlements;
(d) Purchase price refunds obtained in prehearing settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with in 40 calendar days nor petitioned for appeal within 30 calendar days;
(h) Board decisions appealed;
(i) Appeals affirmed by the court; and
(j) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment. The statistical compilations shall be public information.

Section 8. Section 681.110, Florida Statutes, is amended to read:

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

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Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.--A violation misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that meets the criteria of Title 16, Code of Federal Regulations, Part 703, or this chapter as shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.--

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

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

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

Section 11. Section 681.113, Florida Statutes, is created to read:

681.113 Dealer liability.--Nothing in this chapter imposes any liability on a dealer as defined in s

320.6011(1)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A

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dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is created to read:

681.114 Resale of returned vehicles.—A manufacturer who accepts the return of a motor vehicle pursuant to this chapter shall notify the Department of Legal Affairs and report the vehicle identification number of that motor vehicle within 10 calendar days after such acceptance. Upon wholesale or retail resale or transfer of title of such motor vehicle returned pursuant to this chapter or under a similar statute of any other state, the manufacturer or dealer shall give the buyer a disclosure statement containing the following information in ten point type in capital letters: "IMPORTANT: THIS VEHICLE WAS RETURNED DUE TO NONCONFORMITY WITH THE WARRANTY PURSUANT TO CHAPTER 681, FLORIDA STATUTES." The notice shall also be conspicuously printed on the motor vehicle's certificate of title.

Section 13. Section 681.115, Florida Statutes, is created to read:

681.115 Certain agreements void.—Any agreement entered into by a consumer for the purchase of a motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set

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forth in this chapter shall extend to a subsequent transfer of such motor vehicle.

Section 14. Section 681.116, Florida Statutes, is created to read:

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

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a dealer or lessor from the consumer or lessee at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. All fees collected shall be sent to the Department of Legal Affairs by the 20th day of the month following the month for which such fees were collected, for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly, one-fourth of the fees received to the division to carry out the provisions of ss. 681.108 and 681.109.

Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. The $300,000 appropriated by this section shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid...
provision or application, and to that end the provisions of this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes.

Section 20. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. This act shall take effect January 1, 1989, except that this section and sections 5 and 15 shall take effect upon becoming a law.

SENATE SUMMARY

Substantially revises the Motor Vehicle Warranty Enforcement Act or "Lemon Law." (See bill for details.)

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to motor vehicle sales
warranties; amending s. 681.101, F.S.;
providing clarifying language; amending s.
681.102, F.S.; providing definitions; amending
s. 681.103, F.S.; requiring motor vehicle
manufacturers to conform motor vehicles to the
warranty; requiring such manufacturers to
follow certain procedures relating to
warranties; amending s. 681.104, F.S.;
providing notification requirements for
consumers with nonconforming motor vehicles;
providing procedures for the handling of such
vehicles; providing for refunds or replacement
vehicles; providing for the refunding of sales
tax paid on certain vehicles; amending s.
681.108, F.S.; providing informal dispute
settlement procedures; creating s. 681.109,
F.S.; providing an arbitration system for motor
vehicle owners who do not resolve disputes
through a certified informal dispute settlement
procedure; creating s. 681.1095, F.S.; creating
the Florida New Motor Vehicle Arbitration Board
within the Department of Legal Affairs;
providing for the appointment of board members;
providing powers and duties of the board;
providing procedures for arbitration; providing
powers and duties of the Department of Legal
Affairs relative to the board; providing for
the appeal of board decisions; providing for
attorney's fees, costs, and penalties for

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noncompliance with awards by manufacturers;
requiring the department to maintain certain
records; requiring reports; amending s.
681.110, F.S.; providing the Department of
Legal Affairs with subpoena power; amending s.
681.111, F.S.; defining certain acts as unfair
trade practices; creating s. 681.112, F.S.;
providing judicial consumer remedies for
violations of ch. 681, F.S.; establishing
limitations on such actions; creating s.
681.113, F.S.; providing limitations of
liability for dealers; creating s. 681.114,
F.S.; providing procedures for the resale of
motor vehicles returned pursuant to ch. 681,
F.S.; creating s. 681.115, F.S.; prohibiting
certain limiting agreements; creating s.
681.116, F.S.; providing a preemption;
requiring the adoption of rules; requiring a
fee; providing appropriations; providing
severability; providing for future repeal and
legislative review; providing effective dates.

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

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

681.101 Legislative intent.--The Legislature
recognizes that a motor vehicle is a major consumer purchase
and that a defective motor vehicle undoubtedly creates a
hardship for the consumer. The Legislature further recognizes
that a duly franchised motor vehicle dealer is an authorized

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service agent of the manufacturer. It is the intent of the
Legislature that a good faith motor vehicle warranty complaint
by a consumer be resolved by the manufacturer or its agent,
within a specified period of time. It is further the intent
of the Legislature to provide the statutory procedures whereby
a consumer may receive a replacement motor vehicle, or a full
refund, for a motor vehicle which cannot be brought into
conformity with the express warranty provided for in this
chapter issued by the manufacturer. However, nothing in this
chapter ss. 681.100–681.108 shall in any way limit or expand
the rights or remedies which are otherwise available to a
consumer under any other law.

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

681.102 Definitions.—As used in this chapter, the
terms have the following meanings:

1. “Board” means the Florida New Motor Vehicle
Arbitration Board.

2. “Collateral charges” means those additional
charges to a consumer wholly incurred as a result of the
acquisition purchase of the motor vehicle. For the purposes
of this chapter ss. 681.100–681.108, collateral charges
include, but are not limited to, manufacturer-installed or
agent-installed items or service charges, earned finance
charges, sales taxes, and title charges.

3. “Comparable motor vehicle” means, with respect to
a motor vehicle that is replaced, a motor vehicle of the same
model, year, and equivalent condition at the time of
replacement.

4. “Consumer” means the purchaser, other than for
purchasing resales, or the lessee, of a motor vehicle.

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1. primarily used for personal, family, or household purposes;
2. any person to whom such motor vehicle is transferred for the
   same purposes during the duration of the Lemon Law rights
   period an-express-warranty-applicable-to-such-motor-vehicle;
3. and any other person entitled by the terms of the such
   warranty to enforce the obligations of the warranty.
4. (4) "Division" means the Division of Consumer Services
   of the Department of Agriculture and Consumer Services.
5. "Express-warranty" means any-written-affirmation-of-fact-or
   promise-made-in-connection-with-the-sale-of-a-motor-vehicle-by
   a-supplier-to-a-consumer-which-relates-to-the-nature-of-the
   material-or-workmanship-and-affirms-or-promises-that-such
   material-or-workmanship-is-free-of-defects-or-will-not-a
   specified-level-of-performance-over-a-specified-period-of
   time—for-the-purposes-of-as—681+10—681+105—express
   warranty—do-not-include-implied-warranties.
7. (5) "Incidental charges" means those reasonable
   unavoidable costs to the consumer which are directly caused by
   the nonconformity of the motor vehicle. Consequential-damages
   shall-not-be-allowed-under-this-act.
8. (6) "Lease price" means the aggregate of:
   (a) Lessor’s actual purchase costs.
9. (b) Collateral charges, if applicable.
10. (c) Accessories—if-applicable.
11. (d) Any fee paid to another to obtain the lease.
12. (e) Any insurance or other costs expended by the
    lessor for the benefit of the lessee.
13. (f) An amount equal to state and local sales taxes,
    not otherwise included as collateral charges, paid by the
    lessor when the vehicle was initially purchased.
14. (g) An amount equal to 5 percent of (a).

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(7) "Lemon Law rights period" means the period ending
1 year after the date of the original delivery of a motor
vehicle to a consumer or the first 12,000 miles of operation,
whichever occurs first.

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

(9) "Lessee cost" means the aggregate deposit
and rental payments previously paid to the lessor for the
leased vehicle less a reasonable offset allowance for the
lessee's consumer's use of the vehicle.

(10) "Manufacturer" means a manufacturer as defined
in s. 320.60(9), a distributor as defined in s. 320.60(5), or
an importer as defined in s. 320.60(7). A dealer as defined
in s. 320.60(11)(a) shall not be deemed to be a manufacturer,
distributor, or importer as provided in this section. The
dealer or authorized service agent of the manufacturer, as
referred to under this chapter, means a motor vehicle dealer
licensed pursuant to s. 320.27(1)(1).

(11) "Motor vehicle" means a new motor vehicle,
propelled by power other than muscular power, which is sold in
this state and which is primarily operated over the public
streets and highways of this state to transport and is used as
a means-of-transporting persons or property, and includes a
vehicle used as a demonstrator or leased vehicle if a
manufacturer's warranty was issued as a condition of sale, or
the lessee is responsible for repairs;--The term "motor
vehicle" includes only those vehicles-propelled-by-power-other
than-muscular-power, but the term does not include vehicles

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run only upon tracks, off-road vehicles, trucks over 10,000
rounds gross vehicle weight, the living facilities of
recreational vehicles, motorcycles, or mopeds. The-term
"motor-vehicle" includes a demonstrator or lease-purchase
vehicle as long as a manufacturer's warranty was issued as a
condition-of-sale.

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

(13) "Purchase price" means the cash price as
defined in s. 520.31(1), inclusive of any allowance for a
trade-in vehicle.

(14) "Reasonable offset for use" means the number of
miles attributable to a consumer up to the date of the third
repair attempt of the same nonconformity or the 20th
cumulative calendar day when the vehicle is out of service by
reason of repair of one or more nonconformities, whichever
occurs first, multiplied by the purchase price of the vehicle
and divided by 120,000.

(15) "Replacement motor vehicle" means a motor
vehicle which is identical or reasonably equivalent to the
motor vehicle to be replaced, as the motor vehicle to be
replaced existed at the time of acquisition purchase.

(16) "Division" means the Division of Consumer
Services of the Department of Agriculture and Consumer
Services.

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

Section 3. Section 681.103, Florida Statutes, is
amended to read:

681.103 Duty of manufacturer to conform a motor
vehicle to the warranty all-applicable-express-warranties.--

(1) For the purposes of this chapter, if a new motor
vehicle does not conform to the warranty all-applicable
express-warranties and the consumer reports the nonconformity
to the manufacturer, or its authorized service agent, during
the term of such express-warranties or during the Lemon Law
rights period period-of-1-year-following-the-date-of-original
delivery-of-the-motor-vehicle-to-the-consumer-whichever
period-expires-earlier, the manufacturer, or its authorized
service agent, shall, at no cost to the consumer, make such
repairs as are necessary to conform the vehicle to the
warranty such-express-warranties, irrespective of whether such
repairs are made after the expiration of the Lemon Law rights
period such-term-or-such-1-year-period.

(2) Each manufacturer shall provide a list of
addresses and phone numbers for its zone or regional offices
for this state in the owner's manual. By January 1 of each
year, each manufacturer shall forward to the Department of
Legal Affairs a copy of the owner's manual and any written
warranty for each make and model of motor vehicle that it
sells in this state.

(3) At the time of acquisition, the manufacturer shall
inform the consumer in writing how to file a claim with a
certified informal dispute settlement procedure if such procedure has been established by the manufacturer pursuant to § 691.106 and shall provide the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer each time his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive, any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.—

(1) After three attempts have been made to repair the same nonconformity of a motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the each-manufacturer shall provide a list of the manufacturer's zone or regional service office addresses in the owner's manual provided with the motor vehicle. The consumer shall give written notification, by registered or express mail to the manufacturer of the need for the repair of a nonconformity or nonconformities in order

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to allow the manufacturer a final attempt an-opportunity to

cure the nonconformity or nonconformities alleged-defect. If
three attempts have been made to repair the same

nonconformity, the manufacturer shall, within 7 calendar 5

working days after receipt of such notification being-notified
by-the-consumer, notify the consumer of a reasonably
accessible repair facility and after to-conform-the-vehicle-to
the-express-warranty-and-inform-the-consumer-if-an-informal
dispute-settlement-procedure-has-been-established-by-the
manufacturer-in-accordance-with-s.-681:188-and-how-to-file-a
claim-with-the-dispute-settlement-mechanism-and-shall-provide
the-consumer-with-a-copy-of-this-chapter.--After delivery of
the vehicle to the designated repair facility by the consumer,
the manufacturer shall within 14 calendar have-10-working days

\[\text{to conform the motor vehicle to the express warranty. If such}
\]

notification pertains to 20 cumulative calendar days when the
vehicle has been out of service by reason of repair of one or
more nonconformities, the manufacturer has 10 cumulative
calendar days when the vehicle has been out of service by
reason of repair of one or more nonconformities, commencing
upon the date such notification is received, to conform the
motor vehicle to the warranty. If the manufacturer fails to
notify the consumer of a reasonably accessible repair facility
or perform the repairs within the time periods prescribed in
this subsection, the requirement that the manufacturer be
given a final attempt to cure the nonconformity or

nonconformities does not apply the-availability-of-this

informal-dispute-settlement-procedure, the-requirements-of-s-

681:188-do-not-apply.

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

agent, cannot conform the motor vehicle to the any-applicable

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express warranty by repairing or correcting any nonconformity
default-or-condition-which-impairs-the-use,-market-value,-or
safety-of-the-motor-vehicle-to-the-consumer after a reasonable
number of attempts, the manufacturer, within 40 calendar days;
shall, in consideration of its receipt of payment of a
reasonable offset for use, give-the-consumer-the-option-of
having-the-manufacturer replace the motor vehicle with a
comparable-or-replacement motor vehicle acceptable to the
consumer, or having-the-manufacturer repurchase the motor
vehicle from the consumer and refund to the consumer the full
purchase price, including all reasonably incurred collateral
and incidental charges, less a reasonable offset an-allocation
for the-consumer's use of-the-motor-vehicle. However, the
consumer has an unconditional right to choose a refund rather
than a replacement. The-requirement-for-the-subtraction-of-a
reasonable-allocation-for-use-applies-only-when-either-a-refund
or-a-replacement-motor-vehicle-is-provided. Upon receipt of
such refund or replacement, A "reasonable-allocation-for-use"
is-that-sum-of-money-arrived-at-by-multiplying-the-number-of
miles-driven-at-the-time-of-the-first-reported-nonconformity
of-the-motor-vehicle, which-nonconformity-resulted-in-a-claim
pursuant-to-this-act, by 20-cents-per-mile-in-the-event-a
comparable-motor-vehicle-is-provided, no-allocation-shall-be
subtracted-for-the-consumer's-use-of-the-motor-vehicle. Under
the-previsions-of-this-section, it is the-responsibility-of
the-consumer, lienholder, or lessor shall to furnish to the
manufacturer clear title to and possession of the motor
vehicle.

(b) Refunds shall be made to the consumer and
lienholder of record, if any, as their interests may appear.
If applicable, refunds shall be made to the lessor and lessee

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as their interests may appear on the records of ownership kept by the Department of Highway Safety and Motor Vehicles, as follows: the lessee shall receive the lessee cost and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. The Department of Revenue shall refund to the manufacturer any sales tax which the manufacturer refunded to the consumer, lessee, or lessor under this section, if the manufacturer provides to the department a written request for a refund and evidence that the sales tax was paid when the vehicle was purchased and that the manufacturer refunded the sales tax to the consumer, lessee, or lessor.

(3)(a) It is shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty applicable-express-warranties if, within-the-terms-conditions-or-limitations-of-the-express warranty-or during the Lemon Law rights period of-1-year following-the-date-of-original-delivery-of-the-motor-vehicle to-a-consumer-whichever-expires-earlier, either:

1. The Substantially-the same nonconformity has been subject to repair at least three or-more times by the manufacturer or its authorized service agent, plus a final exclusive-of-the-initial attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection (1), and such nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason of the repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 30 15 or more calendar working days, exclusive of down time for routine maintenance as prescribed by the owner’s manually-and-exclusive-of-the-10-working-day CODING: Words strikethrough are deletions; words underlined are additions.
period-under-the-provisions-of-subsection-(a). The 30-day 15-day period may be extended by any period of time during which repair services are not available to the consumer because of war; invasion; strike; fire; flood; or natural disaster conditions beyond the control of the manufacturer; or its agent.

(b) The terms of paragraph (a) conditions or limitations-of-the-express-warranty-or-the-period-of-1-year following-the-date-of-original-delivery-of-the-motor-vehicle to a consumer; whichever-expires-earlier may be extended if a nonconformity the-motor-vehicle-warranty-problem has been reported but has not been cured repaired by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights applicable-time period.

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

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the consumer; or

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

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

5(a)—Any action brought under this chapter shall be commenced within 6 months following expiration-of-the-terms conditions-or-limitations-of-the-express-warranty-or-within 18 months following-the-date-of-original-delivery-of-the-motor...
vehicle-to-a-consumer, whichever is earlier, or, in the event
that a consumer resorts to an informal dispute settlement
procedure as provided in § 681.108, within 6 months following
the final action of the panel... in any action brought by the
consumer with respect to an alleged nonconformity, the
decision of the informal dispute settlement panel is
admissible in evidence;

(b) If a consumer finally prevails in any action
brought under this chapter, he may be allowed by the court to
recover as part of the judgment a sum equal to the aggregate
amount of costs and expenses, including attorney’s fees based
on actual time expended, determined by the court to have been
reasonably incurred by the plaintiff for, or in connection
with, the commencement and prosecution of such action;

Section 5. Section 681.108, Florida Statutes, is
amended to read:

681.108 Informal dispute settlement procedure.—

(1) If a manufacturer has established an informal
dispute settlement procedure, which the division has certified
as substantially complying with the provisions of Title 16,
Code of Federal Regulations, Part 703, in effect October 1,
1983 and of this chapter, and has informed the consumer how to
file a claim with such procedure pursuant to s. 681.103(3),
the provisions of s. 681.104(2) do not apply to any consumer
who has not first resorted to such procedure. A certified
informal dispute settlement procedure shall, in rendering
decisions, take into account all legal and equitable factors
 germane to a fair and just decision, including, but not
limited to, the warranty, the rights and remedies conferred
under Title 16, Code of Federal Regulations, Part 703, in
effect October 1, 1983; the provisions of this chapter; and
any other equitable considerations appropriate under the circumstances. In an action brought by a consumer concerning an alleged nonconformity, the decision of a certified informal dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure involves a panel For-the-purposes-of-this-section, at least one member of such an informal-dispute-settlement panel may shall be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983. The member designated by the division shall not be required to undergo training by the informal dispute settlement mechanism if he possesses one of the following qualifications:

(a) Membership in a nationally recognized arbitration or mediation association;

(b) Graduation from an accredited law school or

c) Completion of a training program conducted or approved by the division.

(3) The informal dispute settlement procedure panel shall submit to the division a copy of each settlement approved by the procedure or decision made by a member or the panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement decisions shall be reported on forms to be promulgated by the division, which shall contain at a minimum the following information:

(a) Name and address of the consumer;

(b) Name and address of the dealership from which the car was purchased;

(c) Date the complaint was received;

(d) Relief requested by the consumer;

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(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member of the panel;

(g) Date of the settlement or decision;

(h) Statement Determination of whether the decision was accepted or rejected by the consumer; and

(i) Statement Determination of whether the decision was accepted or rejected by the manufacturer.

(4) Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(4)(a) The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the use, market value, or safety of the motor vehicle to the consumer;

(b) If the motor vehicle does not conform to all applicable express warranties as determined pursuant to paragraph (a), the informal dispute settlement panel shall then determine whether a reasonable number of attempts to have the motor vehicle repaired have been made;

(c) If the motor vehicle does not conform to all applicable express warranties and a reasonable number of attempts to repair have been made as determined pursuant to paragraphs (a) and (b), and the manufacturer has been given an
opportunity to repair the motor vehicle as provided in s.

681.04 + The panel shall find that the consumer is entitled
to refund or replacement as provided in s. 681.04 +

(d) The informal dispute settlement panel shall make a
recommendation as to the amount, of collateral and incidental\ncharges when appropriate.

(5) The division shall prepare an annual report

7 evaluating the operation of informal dispute settlement

9 procedures established by motor vehicle manufacturers of new
motor vehicles and shall issue a certificate of approval to

11 those manufacturers whose settlement procedures substantially
comply in all respects with the provisions of Title 16, Code
of Federal Regulations, Part 703, in effect October 1, 1983,
and with the provisions of this chapter. The report and

certification shall be public records. The division director
shall have the power to issue subpoenas requiring the

17 attendance of witnesses and the production of records

documents or other evidence in connection therewith in the
case of a refusal to obey a subpoena issued to any person the
director may apply to the circuit court for an order

21 compelling compliance.

22 (6) Any manufacturer establishing an informal dispute
settlement procedure shall file with the division a copy of
the annual audit required under the provisions of Title 16,
Code of Federal Regulations, Part 703, together with any
additional information that the division may require for
purposes of certification, including the number of refunds and
replacements made in this state pursuant to the provisions of
this act by the manufacturer during the period audited.

Section 6. Section 681.109, Florida Statutes, is
created to read:

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681.109 Florida New Motor Vehicle Arbitration Board

dispute eligibility.--

(1) If a consumer resorts to a manufacturer's
certified informal dispute settlement procedure and a decision
is not rendered or performed within the time designated in
Title 16, Code of Federal Regulations, Part 703, in effect
October 1, 1983, the consumer may apply to the division to
have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's
informal dispute settlement procedure and is not satisfied
with the decision reached may apply to the division to have
the dispute submitted to the board for arbitration. No
manufacturer may seek review of a decision of its informal
dispute settlement procedure.

(3) If a manufacturer has no certified informal
dispute settlement procedure, a consumer may apply directly to
the division to have the dispute submitted to the board for
arbitration.

(4) The division shall screen all requests for
arbitration before the board to determine eligibility. The
consumer's request for arbitration before the board shall be
made on a form prescribed by the Department of Legal Affairs.
The division shall forward to the board all disputes that the
division determines are potentially entitled to relief under
this chapter.

(5) The division may reject a dispute that it
determines to be fraudulent or outside the scope of the
board's authority. Any dispute deemed by the division to be
ineligible for arbitration by the board due to insufficient
evidence may be reconsidered upon the submission of new
information regarding the dispute. Following a second review,

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the division may reject a dispute if the evidence is clearly insufficient to qualify for relief. Any dispute rejected by the division shall be forwarded to the Department of Legal Affairs and a copy shall be sent by registered mail to the consumer and the manufacturer, containing a brief explanation as to the reason for rejection.

6. If the division rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the division, any determination made to reject a dispute is admissible in evidence.

Section 7. Section 681.1095, Florida Statutes, is created to read:

681.1095 Florida New Motor Vehicle Arbitration Board: creation and function.--

1. There is established within the Department of Legal Affairs, the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter.

2. The boards shall hear cases in various locations throughout the state so any consumer whose dispute is approved for arbitration by the division may attend an arbitration hearing at a reasonably convenient location and present a dispute orally. Arbitration proceedings under this section shall be open to the public on reasonable and nondiscriminatory terms.
(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

(4) Before filing a civil action on a matter subject to s. 681.106, the consumer must first submit the dispute to the division and to the board if such dispute is deemed eligible for arbitration.

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.

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1. The Department of Legal Affairs, at the board's request, may investigate disputes, subpoena records, documents, and other evidence, and compel the attendance of witnesses before the board.

2. At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

3. The board shall grant relief if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities.

4. The board shall hear the dispute within 40 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a

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(11) A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the board. If the board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to $1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Department of Legal Affairs shall initiate proceedings against the manufacturer for failure to pay such fine. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter. If the manufacturer fails to comply with the provisions of this subsection, the court shall award the consumer, upon application by the consumer.

(12) All provisions in this section pertaining to compulsory arbitration before the board, the proceedings and award upon application by the consumer.

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

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

(14) If a decision of the board in favor of the
consumer is upheld by the court, recovery by the consumer
shall include, if applicable, the pecuniary value of the
award, attorney's fees incurred in obtaining confirmation of
the award and all costs and continuing damages in the amount
of $25 per day for all days beyond the 40 calendar day period
following the manufacturer's receipt of the board's decision.
If a court determines that the manufacturer acted in bad faith
in bringing the appeal or brought the appeal solely for the
purpose of harassment, the court shall double, and may triple,
the amount of the total award.

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

(16) The Department of Legal Affairs shall maintain
records of each dispute submitted to the board, including an
index of motor vehicles by year, make, and model, and shall
compile aggregate annual statistics for all disputes submitted
to, and decided by, the board, as well as annual statistics
for each manufacturer that include, but are not limited to:
the number and percent of:

(a) Replacement motor vehicle requests;

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(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing settlements;
(d) Purchase price refunds obtained in prehearing settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with in 40 calendar days nor petitioned for appeal within 30 calendar days;
(h) Board decisions appealed;
(i) Appeals affirmed by the court; and
(i) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment. The statistical compilations shall be public information.
Section 8. Section 681.110, Florida Statutes, is amended to read:

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

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Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.--A violation misrepresentation by a manufacturer as to the existence of an informal-dispute-settlement-mechanism that meets the criteria of Title 16, Code of Federal Regulations, Part 703, or this chapter is shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.--

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

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the lemon law rights period, or, if a consumer resorts to an informal dispute settlement procedure or submits a dispute to the division or board, within 1 year after the final action of the procedure, division, or board.

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

Section 11. Section 681.113, Florida Statutes, is created to read:

681.113 Dealer liability.--Nothing in this chapter imposes any liability on a dealer as defined in a.

350.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A
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dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is created to read:

681.114. Resale of returned vehicles.--A manufacturer who accepts the return of a motor vehicle by reason of a determination or decision pursuant to this chapter shall notify the Department of Legal Affairs and report the vehicle identification number of that motor vehicle within 10 calendar days after such acceptance. No person shall knowingly transfer a title to, lease, or sell, either at wholesale or retail, a motor vehicle returned by reason of a determination or decision pursuant to this chapter or similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer, and the manufacturer warrants to correct such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The Department of Legal Affairs shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

Section 13. Section 681.115, Florida Statutes, is created to read:

681.115. Certain agreements void.--Any agreement entered into by a consumer for the purchase of a motor vehicle
that waives, limits, or disclaims the rights set forth in this chapter, is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 14. Section 681.116, Florida Statutes, is created to read:

681.116. Preemption.—This chapter preempts any similar county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a dealer or lessor from the consumer or lessee at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. All fees collected shall be sent to the Department of Legal Affairs by the 20th day of the month following the month for which such fees were collected, for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly, one-fourth of the fees received to the division to carry out the provisions of ss. 681.108 and 681.109.

Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. The $300,000 appropriated by this section shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such

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invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed on October 1, 1984, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes.

Section 20. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. This act shall take effect January 1, 1989, except that this section and sections 5 and 15 shall take effect upon becoming a law.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled An act relating to motor vehicle sales warranties; amending s. 681.101, F.S.; providing clarifying language; amending s. 681.102, F.S.; providing definitions; amending s. 681.103, F.S.; requiring motor vehicle manufacturers to conform motor vehicles to the warranty; requiring such manufacturers to follow certain procedures relating to warranties; amending s. 681.104, F.S.; providing notification requirements for consumers with nonconforming motor vehicles; providing procedures for the handling of such vehicles; providing for refunds or replacement vehicles; providing for the refunding of sales tax paid on certain vehicles; amending s. 681.105, F.S.; providing informal dispute settlement procedures; creating s. 681.109, F.S.; providing an arbitration system for motor vehicle owners who do not resolve disputes through a certified informal dispute settlement procedure; creating s. 681.1095, F.S.; creating the Florida New Motor Vehicle Arbitration Board and the Motor Vehicle Warranty Trust Fund within the Department of Legal Affairs; providing for the appointment of board members; providing powers and duties of the board; providing procedures for arbitration; providing powers and duties of the Department of Legal Affairs relative to the board; providing for the appeal of board decisions; providing for CODING: Words stricken are deletions; words underlined are additions.
attorney's fees, costs, and penalties for
noncompliance with awards by manufacturers;
requiring the department to maintain certain
records; requiring reports; amending s.
681.110, F.S.; providing the Department of
Legal Affairs with subpoena power; amending s.
681.111, F.S.; defining certain acts as unfair
trade practices; creating s. 681.112, F.S.;
providing judicial consumer remedies for
violations of ch. 681, F.S.; establishing
limitations on such actions; creating s.
681.113, F.S.; providing limitations of
liability for dealers; creating s. 681.114,
F.S.; providing procedures for the resale of
motor vehicles returned pursuant to ch. 681,
F.S.; creating s. 681.115, F.S.; prohibiting
certain limiting agreements; creating s.
681.116, F.S.; providing a presumption;
requiring the adoption of rules; requiring a
fee; providing appropriations; providing
severability; providing for future repeal and
legislative review; providing effective dates.

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

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

681.101 Legislative intent.—The Legislature
recognizes that a motor vehicle is a major consumer purchase
and that a defective motor vehicle undoubtedly creates a
hardship for the consumer. The Legislature further recognizes

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that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer or its agent within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty provided for in this chapter issued by the manufacturer. However, nothing in this chapter ss. 681.10-681.108 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

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

681.102 Definitions.--As used in this chapter, the term "Board" means the Florida New Motor Vehicle Arbitration Board.

"Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition purchase of the motor vehicle. For the purposes of this chapter ss. 681.10-681.108, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

"Comparable-motor-vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same model, year, and equivalent condition at the time of replacement.

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(3) "Consumer" means the purchaser, other than for
purposes of resale, or the lessee, of a motor vehicle
primarily used for personal, family, or household purposes;
any person to whom such motor vehicle is transferred for the
same purposes during the duration of the Lemon Law rights
period, an express warranty applicable to such motor vehicle;
and any other person entitled by the terms of the such
warranty to enforce the obligations of the warranty.

(4) "Division" means the Division of Consumer Services
of the Department of Agriculture and Consumer Services.

"Express warranty" means any written affirmation of fact or
promise made in connection with the sale of a motor vehicle by
a supplier to a consumer which relates to the nature of the
material or workmanship and affirms or promises that such
material or workmanship is free of defects or will meet a
specified level of performance over a specified period of
time. For the purpose of ss. 681.39-681.108, express
warranties do not include implied warranties.

(5) "Incidental charges" means those reasonable
unavoidable costs to the consumer which are directly caused by
the nonconformity of the motor vehicle. Consequential damages
shall not be allowed under this act.

(6) "Lease price" means the aggregate of:

(a) Lessor's actual purchase costs.
(b) Collateral charges, if applicable.
(c) Accessories, if applicable.
(d) Any fee paid to another to obtain the lease.
(e) Any insurance or other costs expended by the
lesser for the benefit of the lessee.

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

An amount equal to 5 percent of (a).

"Lemon law rights period" means the period ending 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first.

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

"Lessee cost" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less a reasonable offset allowance for the lessee's consumer's use of the vehicle.

"Manufacturer" means a manufacturer as defined in s. 320.60(9), a distributor as defined in s. 320.60(5), or an importer as defined in s. 320.60(7). A dealer as defined in s. 320.60(11)(a) shall not be deemed to be a manufacturer, distributor, or importer as provided in this section. The dealer or authorized service agent of the manufacturer, as referred to under this chapter, means a motor vehicle dealer licensed pursuant to s. 320.27(5)(1).

"Motor vehicle" means a new motor vehicle, propelled by power other than muscular power, which is sold in this state and which is primarily operated over the public streets and highways of this state to transport and is used as a means-of-transporting persons or property, and includes a vehicle used as a demonstrator or leased vehicle if a...
1. **Manufacturer's warranty was issued as a condition of sale, or**
2. **the lessee is responsible for repairs:**—The term “motor
3. vehicle” includes only those vehicles propelled by power other
4. than muscular power, but the term does not include vehicles
5. run only upon tracks, off-road vehicles, trucks over 10,000
6. pounds gross vehicle weight, the living facilities of
7. recreational vehicles, motorcycles, or mopeds. The term
8. “motor vehicle” includes a demonstrator or lease-purchase
9. vehicle as long as a manufacturer's warranty was issued as a
10. condition of sale.

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

(13) "Purchase price" means the cash price as
18. defined in s. 520.311(1), inclusive of any allowance for a
19. trade-in vehicle.

(14) "Reasonable offset for use" means the number of
21. miles attributable to a consumer up to the date of the third
22. repair attempt of the same nonconformity or the 20th
23. cumulative calendar day when the vehicle is out of service by
24. reason of repair of one or more nonconformities, whichever
25. occurs first, multiplied by the purchase price of the vehicle
26. and divided by 120,000.

(15) "Replacement motor vehicle" means a motor
28. vehicle which is identical or reasonably equivalent to the
29. motor vehicle to be replaced, as the motor vehicle to be
30. replaced existed at the time of acquisition purchase.

CODING: Words struck off are deletions; words underlined are additions.
(13) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

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

Section 3. Section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty all-applicable-express-warranties.--

(1) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty all-applicable express-warranties and the consumer reports the nonconformity to the manufacturer, or its authorized service agent, during the term-of-such-express-warranties, or during the Lemon Law rights period period-of-1-year-following-the-date-of-original delivery-of-the-motor-vehicle-to-the-consumer-whichever period-expires-earlier, the manufacturer, or its authorized service agent, shall, at no cost to the consumer, make such repairs as are necessary to conform the vehicle to the warranty such-express-warranties, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period such-term-or-such-1-year-period.

(2) Each manufacturer shall provide a list of addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year, each manufacturer shall forward to the Department of

CODING: Words stricken are deletions; words underlined are additions.
Legal Affairs. A copy of the owner's manual and any written warranty for each make and model of motor vehicle that it sells in this state.

(3) At the time of acquisition, the manufacturer shall inform the consumer in writing how to file a claim with a certified informal dispute settlement procedure if such procedure has been established by the manufacturer pursuant to s. 681.104 and shall provide the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer each time his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive; any diagnosis made; and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor; the date and the odometer reading when the motor vehicle was submitted for examination or repair; and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.—

(1) After three attempts have been made to repair the same nonconformity of a motor vehicle, has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the Each manufacturer shall provide

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addresses in the owner's manual, provided with the motor vehicle. The consumer shall give written notification, by registered or express mail, to the manufacturer of the need for the repair of a nonconformity or nonconformities, in order to allow the manufacturer a final attempt an opportunity to cure the nonconformity or nonconformities alleged defect. If three attempts have been made to repair the same nonconformity, the manufacturer shall, within 7 calendar working days after receipt of such notification being notified by the consumer, notify the consumer of a reasonably accessible repair facility and after to conform the vehicle to the express warranty and inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with § 681.106 and how to file a claim with the dispute settlement mechanism and shall provide the consumer with a copy of this chapter. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall within 14 calendar days have 10 working days to conform the motor vehicle to the express warranty. If such notification pertains to 20 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, the manufacturer has 10 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, commencing upon the date such notification is received, to conform the motor vehicle to the warranty. If the manufacturer fails to notify the consumer of a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity or
nonconformities do not apply the availability-of-this
informal-dispute-settlement-procedure-the-requirements-of-
681.108-do-not-apply.

(2)(a) If the manufacturer, or its authorized service
agent, cannot conform the motor vehicle to the any-applicable
express warranty by repairing or correcting any nonconformity
default-or-condition-which-impairs-the-use,-market-value,-or
safety-of-the-motor-vehicle-to-the-consumer after a reasonable
number of attempts, the manufacturer, within 40 calendar days:
shall, in consideration of its receipt of payment of a
reasonable offset for use, give the consumer the option of
having the manufacturer replace the motor vehicle with a
comparable-or-replacement motor vehicle acceptable to the
consumer, or having the manufacturer repurchase the motor
vehicle from the consumer and refund to the consumer the full
purchase price, including all reasonably incurred collateral
and incidental charges, less a reasonable offset an allowance
for the consumer's use of the motor vehicle. However, the
c consumer has an unconditional right to choose a refund rather
than a replacement. The requirement-for-the-subtraction-of-a
reasonable-allowance-for-use-applies-only-when-either-a-refund
or-a-replacement-motor-vehicle-is-provided. Upon receipt of
such refund or replacement, a "reasonable-allowance-for-use"
is that sum of money arrived at by multiplying the number-of
miles-driven-at-the-time-of-the-first-reported-nonconformity
of-the-motor-vehicle-which-nonconformity-resulted-in-a-claim
pursuant-to-this-act, by 80-cents-per-mile.—In-the-event-a
comparable-motor-vehicle-is-provided, no allowance shall-be
subtracted-for-the-consumer's-use-of-the-motor-vehicle.—Under
the-provisions-of-this-section,-it-is-the-responsibility-of
the consumer, lienholder, or lessor shall to furnish to the

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manufacturer clear title to and possession of the motor vehicle.

(b) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear. If applicable, refunds shall be made to the lessor and lessee as their interests may appear on the records of ownership kept by the Department of Highway Safety and Motor Vehicles, as follows: the lessee shall receive the lessee cost and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. The Department of Revenue shall refund to the manufacturer any sales tax on the purchase price, less the reasonable offset for use, which the manufacturer refunded to the consumer, lessee, or lessor under this section, if the manufacturer provides to the department a written request for a refund and evidence that the sales tax was paid when the vehicle was purchased and that the manufacturer refunded the sales tax to the consumer, lessee, or lessor.

(3)(a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty applicable-express-warranties if, within-the-terms, conditions, or limitations-of-the-express warranty or during the Lemon Law rights period of 3 years following-the-date-of-original-delivery-of-the-meter-vehicle to a consumer, whichever-expires-earlier, either:

1. The substantially-the same nonconformity has been subject to repair at least three or more times by the manufacturer or its authorized service agent, plus a final exclusive-of-the-initial attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection (1), and such nonconformity continues to exist; or

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2. The motor vehicle has been out of service by reason of the repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 20 or more calendar working days, exclusive of down time for routine maintenance as prescribed by the owner's manual and exclusive of the 10 working day period under the provisions of subsection (3). The 20-day 15-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster conditions beyond the control of the manufacturer or its agent.

(b) The terms of paragraph (a) conditions or limitations of the express warranty or the period of one year following the date of original delivery of the motor vehicle to the consumer, whichever expires earlier, may be extended if a nonconformity the motor vehicle warranty problem has been reported but not been cured repaired by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights applicable time period.

4. It is an affirmative defense to any claim under this chapter that:

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the consumer; or

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

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

(a) Any action brought under this chapter shall be commenced within six months following expiration of the term, condition, or limitation of the express warranty or within 18 months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or in the event that a consumer resorts to an informal dispute settlement procedure as provided in ss. 681.108, 681.1082, and 681.1084, within six months following the final decision of the panel. Any action brought by the consumer with respect to an alleged nonconformity, the decision of the informal dispute settlement panel is admissible in evidence.

(b) If a consumer finally prevails in any action brought under this chapter, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for, or in connection with, the commencement and prosecution of such action.

Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 Informal dispute settlement procedure.--

(1) If a manufacturer has established an informal dispute settlement procedure, which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983 and of this chapter, and has informed the consumer how to file a claim with such procedure pursuant to s. 681.108(3), the provisions of s. 681.104(2) do not apply to any consumer

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who has not first resorted to such procedure. A certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty, the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the circumstances. In an action brought by a consumer concerning an alleged nonconformity, the decision of a certified informal dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure involves a panel for the purposes of this section, at least one member of such an informal dispute settlement panel may shall be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983. The member designated by the division shall not be required to undergo training by the informal dispute settlement mechanism if he possesses one of the following qualifications:

(a) Membership in a nationally recognized arbitration or mediation association;

(b) Graduation from an accredited law school; or

(c) Completion of a training program conducted or approved by the division;

(3) The informal dispute settlement procedure panel shall submit to the division a copy of each settlement approved by the procedure or decision made by a member of the panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement decisions
shall be reported on forms to be promulgated by the division, which shall contain at a minimum the following information:

(a) Name and address of the consumer;
(b) Name and address of the dealership from which the car was purchased;
(c) Date the complaint was received;
(d) Relief requested by the consumer;
(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member of the panel;
(g) Date of the settlement or decision;
(h) Statement of whether the decision was accepted or rejected by the consumer; and
(i) Statement of whether the decision was accepted or rejected by the manufacturer.

(4) Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 49, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(4)(a) The informal-dispute-settlement-panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the use, market value, or safety of the motor vehicle to the consumer.

(b) If the motor vehicle does not conform to all applicable express warranties as determined pursuant to

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paragraph (a), the informal-dispute-settlement-panel shall
then-determine-whether-a-reasonable-number-of-attempts-to-have
the-motor-vehicle-repaired-have-been-made;
(c) If the-motor-vehicle-does-not-conform-to-all
applicable-express-warranties-and-a-reasonable-number-of
attempts-to-repair-have-been-made-as-determined-pursuant-to
paragraphs (a) and (b), and the-manufacturer-has-been-given-an
opportunity-to-repair-the-motor-vehicle-as-provided-in-sect. 681.104(f),
the-panel shall find that the-consumer-is-entitled
to-refund-or-replacement-as-provided-in-sect. 681.104(f).
(d) The informal-dispute-settlement-panel shall make a
recommendation-as-to-the-amount-of-collateral-and- incidental
charges-when-appropriate.
(5) The division shall prepare an annual report
evaluating the operation of informal dispute settlement
procedures-established-by-motor-vehicle manufacturers-of-new
motor-vehicles and shall issue a certificate of approval to
those manufacturers whose settlement procedures substantially
comply in all-respects with the provisions of Title 16, Code
of Federal Regulations, Part 703, in effect October 1, 1983,
and with the provisions of this chapter. The report and
certification shall be public records. The division-director
shall-have-the-power-to-issue-subpoenas-requiring-the
attendance-of-witnesses-and-the-production-of-records,
documents-or-other-evidence-in-connection-therewith--In-the
case-of-a-refusal-to- obey-a-subpoena-issued-to-any-person,-the
director-may-apply-to-the-circuit-court-for-an-order
compelling-compliance.
(6) Any manufacturer-establishing-an-informal-dispute
settlement-procedure shall file with the division-a copy of
the-annual-audit-required-under-the-provisions-of-Title-16,

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Section 6. Section 681.109, Florida Statutes, is created to read:

681.109 Florida Motor Vehicle Arbitration Board; dispute eligibility.--

(1) If a consumer resorts to a manufacturer's certified informal dispute settlement procedure and a decision is not rendered or performed within the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's informal dispute settlement procedure and is not satisfied with the decision reached may apply to the division to have the dispute submitted to the board for arbitration. No manufacturer may seek review of a decision of its informal dispute settlement procedure.

(3) If a manufacturer has no certified informal dispute settlement procedure, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the

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division determines are potentially entitled to relief under this chapter.

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

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

Section 7. Section 681.1095, Florida Statutes, is created to read:

681.1095 Florida New Motor Vehicle Arbitration Board; Motor Vehicle Warranty Trust Fund; creation and function.--

(1) There is established within the Department of Legal Affairs the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter. There is also created within the

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Department of Legal Affairs the Motor Vehicle Warranty Trust Fund, which shall be used to carry out the provisions of this act.

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

(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

(4) Before filing a civil action on a matter subject to s. 681.106, the consumer must first submit the dispute to the division and to the board if such dispute is deemed eligible for arbitration.

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1
wear following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Motor Vehicle Warranty Trust Fund, which shall be used for the purposes of this section.

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

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

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

(10) The board shall hear the dispute within 60 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the

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board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this charter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a dispute within 40 calendar days or render a decision within 60 calendar days does not invalidate the decision.

III. A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the board. If the board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to $1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to
pay the fine, the Department of Legal Affairs shall initiate
proceedings against the manufacturer for failure to pay such
fine. The proceeds from the fine herein imposed shall be
placed in the Motor Vehicle Warranty Trust Fund in the
Department of Legal Affairs for implementation and enforcement
of this chapter. If the manufacturer fails to comply with the
provisions of this subsection, the court shall affirm the
award upon application by the consumer.

(12) All provisions in this section pertaining to
compulsory arbitration before the board, the proceedings and
decisions of the board, and any appeals thereof, are except
from the provisions of chapter 120.

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

(14) If a decision of the board in favor of the
consumer is upheld by the court, recovery by the consumer
shall include, if applicable, the pecuniary value of the
award, attorney's fees incurred in obtaining confirmation of
the award and all costs and continuing damages in the amount
of $25 per day for all days beyond the 40 calendar day period
following the manufacturer's receipt of the board's decision.
If a court determines that the manufacturer acted in bad faith
in bringing the appeal or brought the appeal solely for the
purpose of harassment, the court shall double, and may triple,
the amount of the total award.

(15) When a judgment affirms a decision by the board
in favor of the consumer, appellate review may be conditioned
upon payment by the manufacturer of the consumer's attorney's

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fees and giving security for costs and expenses resulting from
the review period.

(16) The Department of Legal Affairs shall maintain
records of each dispute submitted to the board, including an
index of motor vehicles by year, make, and model, and shall
compile aggregate annual statistics for all disputes submitted
to, and decided by, the board, as well as annual statistics
for each manufacturer that include, but are not limited to,
the number and percent of:

(a) Replacement motor vehicle requests;
(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing
settlements;
(d) Purchase price refunds obtained in prehearing
settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with in 40
calendar days nor petitioned for appeal within 30 calendar
days;
(h) Board decisions appealed;
(i) Appeals affirmed by the court; and
(j) Appeals found by the court to be brought in bad
faith or solely for the purpose of harassment. The
statistical compilations shall be public information.

Section 8. Section 681.110, Florida Statutes, is
amended to read:

681.110 Compliance and disciplinary actions.--The
Department of Legal Affairs may division-hes-the-power-to
enforce and ensure compliance with the provisions of this
chapter and rules adopted thereunder, may issue subpoenas

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requiring the attendance of witnesses and production of evidence, and may seek relief in the circuit court to compel compliance with such subpoenas. The Department of Legal Affairs division may impose a civil penalty against a manufacturer not to exceed $1,000 for each count or separate offense. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter.

Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.--A violation of misrepresentation by a manufacturer as to the existence of an informal-dispute-settlement mechanism that meets the criteria of Title 16, Code of Federal Regulations, Part 783, or this chapter is shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.--

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

2. An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer reports to an informal dispute settlement procedure or submits a dispute to the division or board, within 1 year after the final action of the procedure, division, or board.
(3) This chapter does not prohibit a consumer from pursuing other rights or remedies under any other law.

Section 11. Section 681.113, Florida Statutes, is created to read:

681.113 Dealer liability.—Nothing in this chapter imposes any liability on a dealer as defined in s. 320.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter; in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is created to read:

681.114 Resale of returned vehicles.—A manufacturer who accepts the return of a motor vehicle by reason of a determination or decision pursuant to this chapter shall notify the Department of Legal Affairs and report the vehicle identification number of that motor vehicle within 10 calendar days after such acceptance. No person shall knowingly transfer a title to, lease, or sell, either at wholesale or retail, a motor vehicle returned by reason of a determination or decision pursuant to this chapter or similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee.

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Section 21. This act shall take effect January 1, 1989, except that this section and sections 5 and 15 shall take effect upon becoming a law.

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lessee, or buyer, and the manufacturer warrants to correct such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The Department of Legal Affairs shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

Section 13. Section 651.115, Florida Statutes, is created to read:

651.115 Certain agreements void.—Any agreement entered into by a consumer for the purchase of a motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 14. Section 681.116, Florida Statutes, is created to read:

681.116 Preemption.—This chapter preempts any similar county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a dealer or lessor from the consumer at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. Such fees shall be remitted to the county tax collector or private tax agency acting as agent for the Department of Revenue and paid to the Department of Revenue. All fees, less the cost of administration, shall be transferred to the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly one-
Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. From the $300,000 appropriated under this section, $225,000 shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund, and $75,000 shall be refunded by June 30, 1990, to the General Revenue Fund by the Division of Consumer Services. The amount of $1,500,000 from the Motor Vehicle Warranty Trust Fund and thirteen positions are appropriated to the Department of Legal Affairs for implementation of this act. One-fourth of the appropriated money above shall be transferred to the division, and twelve positions are appropriated to the division to carry out the provisions of ss. 681.106 and 681.109, Florida Statutes.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature prior to that date pursuant to section 11.11, Florida Statutes.

Section 20. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1992.

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A bill to be entitled

An act relating to new motor vehicle
warranties; amending s. 681.101, F.S.,
providing legislative intent; amending s.
681.102, F.S.; clarifying and adding
definitions, amending s. 681.104, F.S.;
prescribing what constitutes nonconformity of a
motor vehicle; imposing duties on
manufacturers; amending s. 681.108, F.S.;
establishing the Florida New Motor Vehicle
Arbitration Board; providing for its duties and
reimbursement; providing that the board is an
alternative to certain manufacturer-sponsored
arbitration programs; providing for an
arbitration fee; requiring a report; providing
for rulemaking; prescribing procedures;
providing for appeals; providing for fines;
providing for recovery of attorney's fees and
damages; requiring statistical compilations;
amending s. 681.111, F.S.; defining an unfair
or deceptive trade practice; creating s.
681.112, F.S.; providing remedies for a
manufacturer's violation of this chapter;
creating s. 681.113, F.S.; providing for the
resale of a vehicle returned for nonconformity;
creating s. 681.115, F.S.; providing that the
rights created by this act are unwaivable;
extending such rights to a subsequent owner;
repealing s. 681.103, F.S., relating to
manufacturer's duties to conform and s.
681.110, F.S., relating to disciplinary action;

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providing for repeal and review; providing an effective date.

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

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

681.101 Legislative intent.—The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, when for a defective motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer within a reasonable number of attempts. It is the intent of the Legislature to facilitate compliance with this chapter by empowering the Attorney General to enforce this chapter, impose penalties for certain violations, and administer arbitration proceedings in various locations throughout the state. It is the intent of the Legislature to create a nominal self-funding scheme whereby enough revenue is generated to cover the costs necessary to ensure that a consumer who purchases a new motor vehicle in this state receives the full benefits of this chapter for a period of approximately 1 year. It is the intent of the Legislature to

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avoid the creation of a public policy that protects one class of consumers at the expense of another by mandating that defective motor vehicles repurchased by the manufacturer are not to be resold to unsuspecting second purchasers without certain disclosures or restrictions. It is the intent of the Legislature to create the proper blend of private and public remedies necessary to enforce this chapter, such that a manufacturer will be sufficiently induced to take necessary steps to improve quality control at the time of production or provide better warranty service for the new motor vehicles that it sells in this state. However, nothing in ss. 681.10-681.108 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

Section 2. Section 681.102, Florida Statutes, 1986 Supplement, is amended to read:

681.102 Definitions.—As used in this chapter, the following terms have the following meanings:

(1) "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the purchase of the motor vehicle. For the purposes of ss. 681.10-681.108, collateral charges include, but are not limited to, arbitration service fees, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

(2) "Comparable motor vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same model, year, and equivalent condition at the time of replacement.

(3) "Condition" means a general problem that can result from a defect or malfunction of one or more parts.

CODING: Words struck are deletions; words underlined are additions.
"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes; any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the consumer's dispute such motor vehicle; and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Court" means the circuit court for the county where the consumer resides or where the contract was entered into or, if the consumer does not reside in this state, the circuit court for the county where an arbitration hearing was conducted pursuant to this chapter.

"Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance over a specified period of time; for the purposes of ss. 681:18-681:108, express warranties do not include implied warranties.

"Incidental charges" means reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining reasonable alternative transportation, those unavoidable costs to the consumer which are directly caused by the nonconformity of the motor vehicle; consequential damages shall not be allowed under this act.

"Lease price" means the aggregate of:

(a) Lessor's actual purchase costs.
(b) Collateral charges, if applicable.
(c) Accessories, if applicable.
(d) Any fee paid to another to obtain the lease.
(e) Any insurance or other costs expended by the 
lessor for the benefit of the lessee.
(f) An amount equal to state and local sales taxes 
paid by the lessor when the vehicle was initially purchased.
(g) An amount equal to 5 percent of (a).

(8) "Lessee" means any consumer who leases a motor 
vehicle for a period of at least 12 months pursuant to a 
written lease agreement which provides that the lessee is 
responsible for repairs to such motor vehicle or any consumer 
who leases a motor vehicle pursuant to a written lease- 
purchase agreement.

(9) "Lessee costs" means the aggregate deposit and 
rental payments previously paid to the lessor for the leased 
vehicle less a reasonable allowance for the consumer's use of 
the vehicle.

(10) "Manufacturer" means a manufacturer as defined 
in s. 320.60(9), a distributor as defined in s. 320.60(5), or 
an importer as defined in s. 320.60(7). A dealer as defined 
in s. 320.60(11)(a) shall not be deemed a manufacturer under 
this chapter.

(11) "Motor vehicle" means a motor vehicle which 
is sold in this state and which is operated over the public 
streets and highways of this state and is used as a means of 
transporting persons or property. The term "motor vehicle" 
includes only those vehicles propelled by power other than 
muscular power, but the term does not include vehicles run 
only upon tracks, off-road vehicles, or mopeds, or motor 
trucks over 10,000 pounds gross vehicle weight. The term 
"motor vehicle" includes a demonstrator or lease-purchase
vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(12) "Nonconformity" means a defect that substantially impairs the use, value, or safety of a new motor vehicle but does not include a defect that is the result of abuse, neglect, modification, or alteration of the new motor vehicle by the consumer or unauthorized by the manufacturer or its agents.

(13) "Purchase price" means the cash price as defined in s. 520.31(1), inclusive of any allowance for a trade-in vehicle.

(14) "Reasonable offset for use" means the number of miles attributable to the consumer multiplied by the purchase price of the vehicle and divided by 100,000 or 10 percent of the purchase price, whichever is less.

(15) "Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of purchase.

(16) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the operator's ability to control or operate the new motor vehicle for ordinary use or reasonably intended purposes or creates a risk of fire or explosion.

(17) "Warranty" means any implied warranty resulting from the warranty period pursuant to this chapter, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and

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fitness of a new motor vehicle for ordinary use or reasonable intended purposes throughout the duration of the warranty period.

(18) "Warranty period" means the period ending 1 year after the date of the original delivery to the consumer of a new motor vehicle, or the first 18,000 miles of operation, whichever occurs first.

73--Division--means-the-Division-of-Consumer Services-of-the-Department-of-Agriculture-and-Consumer Services:

Section 3. Section 681.104, Florida Statutes, 1986 Supplement, is amended to read:

(Substantial rewording of section. See s. 681.104, F.S., 1986 Supp., for present text.)

681.104 Nonconformity of motor vehicles; manufacturer's duties.--

(1) Each manufacturer shall provide a list of the addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year, each manufacturer shall forward to the Attorney General a copy of the owner's manual and any written warranty for each make of its new motor vehicles sold in this state.

(2) At the time of purchase, the manufacturer, either directly or through its authorized agent, shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Attorney General, in consultation with interested parties, and shall contain a toll-free number that the consumer may contact if he elects to proceed through arbitration as provided for under this chapter.

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For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer or its authorized agent during the term of the warranty period, the manufacturer or its authorized agent shall make such repairs as are necessary to conform the vehicle to the warranty, irrespective of whether such repairs are made after the expiration of the warranty period. If the same nonconformity is subject to repair by a new motor vehicle manufacturer or dealer under this chapter within 24 months after the date of original delivery to the consumer, it shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed.

Upon request from the consumer, the manufacturer or dealer shall make available a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding the inspection, diagnosis, or test-drive of the consumer's new motor vehicle or a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, or component, or the performance thereof.

The dealer shall provide to the consumer each time the consumer's vehicle is returned from being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made and all work performed on the vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the
vehicle was submitted for repair, and the date and odometer reading when the vehicle was made available to the consumer. The consumer must notify the manufacturer of the nonconformity before submitting the dispute to arbitration.

(6) If the manufacturer or its authorized agent is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity, defect, or condition that substantially impairs the use, value, or safety of the new motor vehicle after a reasonable number of attempts, the manufacturer shall, at the option of the consumer, within 40 calendar days replace the new motor vehicle with a replacement motor vehicle reasonably acceptable to the consumer or repurchase the motor vehicle from the consumer and refund to the consumer the purchase price, including all collateral charges and incidental costs, less a reasonable offset for use of the motor vehicle. This section does not prohibit a manufacturer from recovering appropriate costs from a dealer. Refunds shall be made to the consumer and lienholder of record, if any, as the lienholder’s interests may appear. Compensation for a reasonable offset for use of the motor vehicle shall be paid by the consumer to the manufacturer if the consumer accepts a replacement motor vehicle. A new motor vehicle dealer may not be held liable by the manufacturer for any incidental costs, purchase price refunds, or vehicle replacements in the absence of evidence indicating that dealership repairs or documentation or notification requirements pursuant to this chapter were carried out in a manner inconsistent with the manufacturer’s instructions. Consequential damages are not recoverable under this chapter.

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(7) It shall be presumed that a reasonable number of attempts have been undertaken by the manufacturer or its authorized agents to conform the new motor vehicle to the warranty within the period covered by this chapter, if:

(a) A serious safety defect has been subject to repair two or more times and the defect continues to exist;

(b) The same nonconformity has been subject to examination or repair four or more times by the manufacturer or its agents; or

(c) The new motor vehicle is out of service by reason of repair of one or more nonconformities for a cumulative total of 30 calendar days.

(8) The warranty period and 30-day out-of-service period shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

(9) A manufacturer may not refuse, or direct its authorized agent to refuse, to examine or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(10) It is an affirmative defense to any claim under this chapter that:

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

(b) The nonconformity is the result of abuse, neglect, or modifications or alterations of the new motor vehicle except as performed by a manufacturer or its agents.

Section 4. Section 681.108, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 681.108, F.S., for present text.)

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Informal dispute settlement procedure.--

(1) If a manufacturer has established an informal dispute resolution settlement procedure, the buyer may resort to either that procedure or the Florida New Motor Vehicle Arbitration Board.

(2) There is established within the office of the Attorney General a Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed by the Attorney General for additional terms of 2 years. The Attorney General may appoint as many boards as necessary to carry out this chapter.

(3) The board shall hear cases in various locations throughout the state so that any customer who elects to present a dispute orally can attend an arbitration hearing at a reasonably convenient location. Arbitration proceedings under this section shall be open to the public, as accommodations permit, on reasonable and nondiscriminatory terms.

(4) The board shall consist of three permanent members and three alternate members. The members of the board shall apply the laws of the state in making their decisions. The board shall adopt rules necessary to carry out the provisions of this chapter. An administrator and clerical staff shall be assigned to the board by the Attorney General. The administrator shall conduct the proceedings. One member must be an automotive technical expert or a person knowledgeable in automobile mechanics. One member must be an attorney or a person knowledgeable in warranty law. One member must have prior experience in dispute mediation or arbitration or be interested in the arbitration of new motor vehicle warranty

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repair disputes. Board members must be trained in the application of this chapter and any rules under it. Board members shall be reimbursed for travel expenses pursuant to s. 112.061 and compensated for their services at a rate or wage prescribed by the Attorney General.

(5) An arbitration fee of $1 shall be collected by the dealer from the consumer at the time of the new motor vehicle purchase. Each consumer whose dispute is approved for arbitration shall be subject to a refundable $25 filing fee. Fees shall be forwarded to the Department of Highway Safety and Motor Vehicles. All moneys collected by the department shall be paid into the Florida Motor Vehicle Arbitration Fund, in the Attorney General’s office. Moneys in the account shall be used for the purposes of this chapter.

(6) At the end of each fiscal year, the Attorney General shall present to the Legislature a report that lists the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter.

(7) The Department of Legal Affairs shall adopt rules as necessary to implement this section including, but not limited to, rules relating to:

(a) The selection and training of board members;
(b) The administration of the arbitration proceedings;
(c) The rendering, drafting, and recording of arbitration decisions;
(d) The promotion of fairness and expediency at all arbitration proceedings; and
(e) The procedures to be followed and forms to be used in determining eligibility for arbitration under this chapter, in arranging prehearing conferences and recording prehearing
settlements, in gathering and circulating information and evidence relevant to the dispute, and in notifying the parties to the dispute of the time and location of the arbitration proceeding.

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may issue subpoenas for the attendance of witnesses and for the production of records, documents, and other evidence. The board may also inspect the vehicle if requested by a party to the dispute and if it deems such inspection appropriate.

(9) Before bringing a civil action on a matter subject to this chapter, the consumer must first submit the dispute to the board.

(10) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by the consumer within 6 months after the final unsuccessful repair attempt of the new motor vehicle covered by the chapter and if the consumer's dispute is deemed eligible for arbitration by the board.

(11) The board shall grant relief under this chapter, if the nonconformity substantially impairs the use, value, or safety of the motor vehicle and a reasonable number of attempts have been undertaken to correct the nonconformity, defect, or condition.

(12) The board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other evidence.

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information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. The board shall send by certified mail to the consumer and the manufacturer a statement that it has rejected a dispute for arbitration, together with a brief explanation of the reason therefor.

(13) If the board rejects the dispute for arbitration, the consumer may bring an action in court to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the board, any determination made to reject a dispute for arbitration is admissible in evidence.

(14) The board shall have 40 calendar days to hear the dispute. If the board determines that additional information is necessary, the board may continue the arbitration proceeding on a subsequent date within 10 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the board receives the consumer's request for arbitration on a form prescribed by the Department of Legal Affairs. The decision of the board shall be sent by certified mail to the consumer and the manufacturer, together with a written finding of whether the new motor vehicle meets the standards set forth under this chapter. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after its receipt of the board's decision, comply with the terms of the decision. Compliance occurs on the date the consumer either

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receives delivery of an acceptable replacement motor vehicle
or the refund stipulated in the arbitration award.

(15) A decision is final unless appealed by the
consumer or the manufacturer on one or more of the grounds
listed in subsection (16). A petition to the circuit court to
appeal a decision shall be made within 30 calendar days after
receipt of the board's decision. At the time the petition to
appeal is filed, the appealing party must send, by certified
mail, a copy of such petition to the board. If the board does
not receive notice of such petition after 40 calendar days,
the board shall contact the consumer to determine if
compliance has occurred. If compliance has not occurred, the
board shall contact the court to determine if a petition to
appeal has been filed by the manufacturer. If, at the end of
the 40 calendar day period, neither compliance with, nor a
petition to appeal, the board's decision has occurred, the
Attorney General shall impose a fine of up to $1,000 per day
on the manufacturer until the amount stands at twice the
purchase price of the new motor vehicle, unless the
manufacturer provides clear and convincing evidence that any
delay or failure was beyond its control or was acceptable to
the consumer as evidenced by a written statement signed by the
consumer. If the manufacturer fails to provide such evidence
or fails to pay the fine, the Attorney General shall initiate
proceedings against the manufacturer for failure to pay any
fine that accrues as a result of noncompliance with the
board's decision. The fine imposed by this subsection shall
be deposited into the Florida Motor Vehicle Arbitration Fund.

(16) An appeal of a decision by the board to a circuit
court by a consumer or a manufacturer shall be limited to
clear and convincing evidence that:

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(a) The award was procured by corruption, fraud, or other misconduct;
(b) The board refused to hear evidence pertinent and material to the dispute;
(c) The board exceeded its powers; or
(d) The board conducted the hearing contrary to this section or rules adopted pursuant to this section so as to prejudice substantially the rights of the manufacturer.

In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon.

(17) If the decision of the board is upheld by the court, recovery by the prevailing party shall include, if applicable, the pecuniary value of the award, attorneys' fees incurred in obtaining confirmation of the award together with all costs and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision if the manufacturer did not provide the consumer with the free use of a comparable replacement motor vehicle on loan. If it is determined by the court that a party acted without good cause in bringing the appeal or brought the appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award.

(18) When a judgment of the court affirms a decision by the board in favor of the consumer, a review may be conditioned upon the manufacturer paying the consumer's attorneys' fees and giving security for costs, expenses, and financial loss resulting from the passage of time for review.

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(19) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including any index of new motor vehicles by year, make, and model. The department shall compile aggregate annual statistics for all disputes submitted to, and decided by, the board, as well as annual statistics for each manufacturer that include, but are not limited to, the number and percent of:

(a) Replacement motor vehicle requests;
(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing settlements;
(d) Purchase price refunds obtained in prehearing settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with during the 40 calendar day period nor petitioned for appeal within the 30 calendar day periods;
(h) Board decisions appealed;
(i) Appeals affirmed by the court;
(j) Appeals that were held by the court to be brought without good cause; and
(k) Appeals that were held by the court to be brought solely for the purpose of harassment.

The statistical compilations shall be public information.

Section 5. Section 681.111, Florida Statutes, is amended to read:

681 111 Unfair or deceptive trade practice -- Any violation of a misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that

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Section 6. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.--

(1) A consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with all litigation costs, reasonable attorneys' fees, and any equitable relief the court deems appropriate. In any action brought because of the manufacturer's failure to comply with a decision rendered at an arbitration proceeding or petition to appeal a decision rendered at an arbitration proceeding, the court shall double, and may triple, the pecuniary value of the award stipulated in the arbitration decision as provided in s. 681.108.

(2) Any action brought under this chapter must be commenced within 4 years after the date of original delivery of the new motor vehicle to the consumer.

(3) This chapter does not prohibit the consumer from pursuing other rights or remedies under any other law.

Section 7. Section 681.113, Florida Statutes, is created to read:

681.113 Resale of returned vehicles.--A manufacturer that accepts return of the motor vehicle due to nonconformity that was not cured within a reasonable time as provided under this chapter shall notify the Attorney General. Upon the resale, either at wholesale or retail, or transfer of title of such motor vehicle previously returned after a final determination, adjudication, or settlement under this chapter

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or under similar statute of any other state, the manufacturer or dealer shall execute and deliver to the buyer an instrument in writing setting forth the following information in ten-point type in capital letters: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER DUE TO NONCONFORMITY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED UNDER CHAPTER 681, FLORIDA STATUTES." The notice shall also be conspicuously printed on the certificate of title for the motor vehicle.

Section 8. Section 681.115, Florida Statutes, is created to read:

681.115 Certain agreements void.--Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such new motor vehicle.

Section 9. Sections 681.103 and 681.110, Florida Statutes, are hereby repealed.

Section 10. This act applies to new motor vehicles purchased in this state on or after January 1, 1988.

Section 11. There is hereby appropriated from the General Revenue Fund to the Department of Legal Affairs $250,000 for start-up costs under chapter 681, Florida Statutes. Said amount shall be returned to the General Revenue Fund from funds generated under chapter 681, Florida Statutes.

Section 12. Chapter 681, Florida Statutes, is repealed October 1, 1993, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes.

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Section 13. This act shall take effect January 1, 1988.

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SENATE SUMMARY

Amends the Motor Vehicle Warranty Enforcement Act. Provides legislative intent. Revises definitions. Prescribes what constitutes nonconformity of a motor vehicle. Imposes duties on manufacturers. Establishes the Florida New Motor Vehicle Arbitration Board and provides for duties of the board and reimbursement of board members. Allows consumers to choose the procedures of the board as an alternative to manufacturer sponsored arbitration programs. Provides for an arbitration fee. Requires a report. Provides for rulemaking by the Department of Legal Affairs. Prescribes procedures. Provides for appeal. Provides for fines. Provides for recovery of attorney's fees and damages. Requires certain statistical compilations. Defines an unfair or deceptive trade practice. Provides remedies for a manufacturer's violation of the act. Provides for the resale of a vehicle that is returned for nonconformity. Provides that the rights created by the act may not be waived and extends the rights to a subsequent owner of a vehicle.

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A bill to be entitled

An act relating to new motor vehicle
warranties; amending s. 681.101, F.S., relating
to intent, providing for the enforcement of the
Motor Vehicle Warranty Enforcement Act by the
Attorney General; amending s. 681.102, F.S.;
clarifying and adding definitions, amending s.
681.104, F.S., relating to nonconformity of a
motor vehicle and manufacturer's duties with
respect thereto; amending s. 681.108, F.S.;
providing for the Florida New Motor Vehicle
Arbitration Board; providing for informal
dispute settlement procedures, providing a fee;
providing for a report; directing the
Department of Legal Affairs to adopt certain
rules; amending s. 681.111, F.S., relating to
unfair or deceptive trade practices; creating
s. 681.112, F.S.; providing remedies for
manufacturer's violation of this chapter;
creating s. 681.113, F.S., relating to the
resale of a vehicle returned for nonconformity;
creating s. 681.115, F.S.; rendering rights
created by this chapter unwaivable; providing
for the application of the act; providing an
effective date.

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

Section 1. Section 681.101, Florida Statutes, is
amended to read:
681.101 Legislative intent.--The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, when for a defective motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer within a reasonable number of attempts. It is the intent of the Legislature to facilitate compliance with this chapter by empowering the Attorney General to enforce this chapter, impose penalties for certain violations, and administer arbitration proceedings in various locations throughout the state. It is the intent of the Legislature to create a nominal self-funding scheme whereby enough revenue is generated to cover the costs necessary to ensure that a consumer who purchases a new motor vehicle in this state receives the full benefits of this chapter for a period of approximately 2 years. It is the intent of the Legislature to avoid the creation of a public policy that protects one class of consumers at the expense of another, by mandating that defective motor vehicles repurchased by the manufacturer are not to be resold to unsuspecting second purchasers without certain disclosures or restrictions. It is the intent of the Legislature to create the proper blend of private and public remedies necessary to enforce this chapter, such that a

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manufacturer will be sufficiently induced to take necessary
steps to improve quality control at the time of production or
provide better warranty service for the new motor vehicles
that it sells in this state. However, nothing in ss. 681.10-
681.108 shall in any way limit or expand the rights or
remedies which are otherwise available to a consumer under any
other law.

Section 2. Section 681.102, Florida Statutes, 1986
Supplement, is amended to read:

681.102 Definitions.--As used in this chapter, the
following terms have the following meanings:

(1) "Collateral charges" means those additional
charges to a consumer wholly incurred as a result of the
purchase of the motor vehicle. For the purposes of ss.
681.10-681.108, collateral charges include, but are not
limited to, arbitration service fees, manufacturer-installed
or agent-installed items or service charges, earned finance
charges, sales taxes, and title charges.

(2) "Comparable motor vehicle" means, with respect to
a motor vehicle that is replaced, a motor vehicle of the same
model, year, and equivalent condition at the time of
replacement.

(3) "Consumer" means the purchaser, other than for
purposes of resale, or the lessee, of a motor vehicle
primarily used for personal, family, or household purposes;
any person to whom such motor vehicle is transferred for the
same purposes during the duration of an express warranty
applicable to such motor vehicle; and any other person
entitled by the terms of such warranty to enforce the
obligations of the warranty.

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(4) "Court" means the circuit court for the county where the consumer resides or, if the consumer does not reside in this state, the circuit court for the county where an arbitration hearing was conducted pursuant to this chapter.

(4) "Express-warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance over a specified period of time. For the purposes of ss. 681:10-681:108, express warranties do not include implied warranties.

(5) "Incidental charges" means reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation, those unavoidable costs to the consumer which are directly caused by the nonconformity of the motor vehicle. Consequential damages shall not be allowed under this act.

(6) "Lease price" means the aggregate of:

(a) Lessor's actual purchase costs.

(b) Collateral charges, if applicable.

(c) Accessories, if applicable.

(d) Any fee paid to another to obtain the lease.

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

(f) An amount equal to state and local sales taxes paid by the lessor when the vehicle was initially purchased.

(g) An amount equal to 5 percent of paragraph (a).

(7) "Lessee" means any consumer who leases a motor vehicle pursuant to a written lease agreement which provides

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that the lessee is responsible for repairs to such motor
vehicle.

(8) "Lessee costs" means the aggregate deposit and
rental payments previously paid to the lessor for the leased
vehicle less a reasonable allowance for the consumer's use of
the vehicle.

(9) "Manufacturer" means a manufacturer as defined in
s. 320.60(9), a distributor as defined in s. 320.60(5), or an
importer as defined in s. 320.60(7).

(10) "Motor vehicle" means a motor vehicle which is
sold in this state and which is operated over the public
streets and highways of this state and is used as a means of
transporting persons or property. The term "motor vehicle"
includes only those vehicles propelled by power other than
muscular power, but the term does not include vehicles run
only upon tracks, off-road vehicles, or mopeds. The term
"motor vehicle" includes a demonstrator or lease-purchase
vehicle as long as a manufacturer's warranty was issued as a
condition of sale.

(11) "Nonconformity" means a defect that substantially
impairs the use, value, or safety of a new motor vehicle, but
does not include a defect that is the result of abuse,
ignorance, or unauthorized modification or alteration of the new
motor vehicle by the consumer.

(12)(1) "Purchase price" means the cash price as
defined in s. 520.31(1), inclusive of any allowance for a
trade-in vehicle.

(13)(1) "Replacement motor vehicle" means a motor
vehicle which is identical or reasonably equivalent to the
motor vehicle to be replaced, as the motor vehicle to be
replaced existed at the time of purchase.

CODING: Words strucken are deletions; words underlined are additions.
"Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the operator's ability to control or operate the new motor vehicle for ordinary use or reasonably intended purposes or creates a risk of fire or explosion.

Warranty means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a new motor vehicle for ordinary use or reasonable intended purposes throughout the duration of the warranty period. The term "warranty" also covers design defects, but not tires.

"Warranty period" means the period ending 2 years after the date of either the original delivery to the consumer of a new motor vehicle or the first miles of operation, whichever occurs first.

Section 681.101, Florida Statutes, 1986 Supplement, is amended to read:

(1) Each manufacturer shall provide a list of the addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year.

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(2) At the time of purchase, the manufacturer, either directly or through its authorized agent, shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Attorney General and shall contain a toll-free number that the consumer can contact if he elects to proceed through arbitration as provided for under this chapter.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer or its authorized agent during the term of the warranty period, the manufacturer or its authorized agent shall make repairs as are necessary to conform the vehicle to the warranty, irrespective of whether such repairs are made after the expiration of the warranty period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed.

(4) Upon request from the consumer, the manufacturer or dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding the inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.
The manufacturer or dealer shall provide to the consumer each time the consumer's vehicle is returned from being examined or repaired under the warranty a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle, including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date and odometer reading when the vehicle was returned to the consumer. It is the duty of the new motor vehicle dealer to notify the manufacturer within 7 days when the vehicle is submitted for the second repair of the same defect or condition by the sale dealer. Notification must be made by certified mail, return receipt requested.

The manufacturer is a party to the sales contract for a new motor vehicle.

If the manufacturer or its authorized agents are unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity, defect, or condition that substantially impairs the use, value, or safety of the new motor vehicle after a reasonable number of attempts, the manufacturer, within 40 calendar days shall, at the option of the consumer, replace the new motor vehicle with a replacement motor vehicle acceptable to the consumer or repurchase the motor vehicle from the consumer and refund to the consumer the purchase price, including all collateral charges and incidental costs, less a reasonable offset for use of the motor vehicle in excess of the first 12,000 miles of operation. Refunds shall be made to the consumer and lienholder of record, if any, as the lienholder's interests.
may appear. Compensation for a reasonable offset for use of the motor vehicle in excess of the first 12,000 miles of operation shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle. No new motor vehicle dealer may be held liable by the manufacturer for any incidental costs, purchase price refunds, or vehicle replacements in the absence of evidence indicating that dealership repairs or documentation or notification requirements pursuant to this chapter were carried out in a manner inconsistent with the manufacturer's instructions.

(8) A reasonable number of attempts have been undertaken by the manufacturer or its authorized agents to conform the new motor vehicle to the warranty within the warranty period, if:

(a) A serious safety defect has been subject to repair two or more times and the defect continues to exist;

(b) The same nonconformity has been subject to examination or repair four or more times by the manufacturer or its agents; or

(c) The new motor vehicle is out-of-service by reason of repair or one or more nonconformities for a cumulative total of 30 calendar days.

(9) The warranty period and 30-day out-of-service period shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

(10) No manufacturer may refuse, or direct its authorized agent to refuse, to examine or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.
It is an affirmative defense to any claim under this chapter that:

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

(b) The nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle by the consumer.

Section 4. Section 681.108, Florida Statutes, is amended to read:

(Informal dispute resolution procedure. See s. 681.108, F.S., for present text.)

Informal dispute settlement procedure.—

(1) If a manufacturer has established an informal dispute resolution settlement procedure which the Attorney General has found to substantially comply with this chapter, the buyer may resort to either that procedure or the Florida New Motor Vehicle Arbitration Board.

(2) There is established within the office of the Attorney General a Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed by the Attorney General for additional terms of 2 years.

(3) The board shall hear cases in various locations throughout the state so any customer who elects to present a dispute orally can attend an arbitration hearing at a reasonably convenient location. Arbitration proceedings under this section shall be open to the public, as accommodations permit, on reasonable and nondiscriminatory terms.

(4) The board shall consist of three permanent members and three alternate members. The members of the board shall

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apply the laws of the state in making their decisions. An administrator and clerical staff shall be assigned to the board by the Attorney General. The administrator shall conduct the proceedings, administer oaths, and take affirmations. One member shall be an automotive technical expert, or be a person knowledgeable in automobile mechanics. One member shall be an attorney, or be a person knowledgeable in warranty law. One member shall have prior experience in dispute mediation or arbitration, or be a person interested in the arbitration of new motor vehicle warranty repair disputes. Board members shall be trained in the application of this chapter and any rules under it. Board members shall be reimbursed for travel expenses pursuant to s. 112.061.

(5) An arbitration fee of $1 shall be collected by the dealer from the consumer. The fee shall be forwarded to the Department of Highway Safety and Motor Vehicles. All moneys collected by the department shall be paid into the Florida Motor Vehicle Arbitration Fund, in the Attorney General's office. Moneys in the account shall be used for the purposes of this chapter.

(6) At the end of each fiscal year, the Attorney General shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter.

(7) The Department of Legal Affairs shall adopt rules as necessary to implement this section, including, but not limited to, rules relating to:

(a) The selection and training of board members;
(b) The administration of the arbitration proceedings;
(c) The rendering, drafting, and recording of arbitration decisions;

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(d) The promotion of fairness and expediency at all arbitration proceedings; and

(e) The procedures to be followed and forms to be used in determining eligibility for arbitration under this chapter, in arranging prehearing conferences and recording prehearing settlements, in gathering and circulating information and evidence relevant to the dispute, and in notifying the parties to the dispute of the time and location of the arbitration proceeding.

(9) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel. The board may issue subpoenas for the attendance of witnesses and for the production of records, documents, and other evidence.

(10) Before bringing a civil action on a matter subject to this chapter, the consumer must first submit the dispute to the board or a program certified by the Department of Legal Affairs as complying with the provisions of this chapter. No consumer may be required by any manufacturer or its authorized agent to give notice directly to the manufacturer of the existence of any nonconformity before submitting the dispute to the board.

(11) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by the consumer within 30 months after the date of original delivery of the new motor vehicle to the consumer and if the consumer's dispute is deemed eligible for arbitration by the board.

(12) The board shall grant relief under this chapter, if the nonconformity, defect, or condition substantially impairs the use, value, or safety of the motor vehicle, and a

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reasonable number of attempts have been undertaken to correct
the nonconformity, defect, or condition.

(12) The board may reject for arbitration any dispute
that it determines to be frivolous, fraudulent, or beyond its
authority. Any dispute deemed by the board to be ineligible
for arbitration due to insufficient evidence may be
reconsidered by the board upon the submission of other
information or documents regarding the dispute that would
allegedly qualify for relief under this chapter. Following a
second review, the board may reject the dispute for
arbitration if evidence is still clearly insufficient to
qualify the dispute for relief under this chapter. Any
dispute rejected for arbitration by the board shall be sent by
certified mail to the consumer and the manufacturer, and shall
contain a brief explanation as to the reason therefor.

(13) If the board rejects the dispute for arbitration
or if the dispute is arbitrated and the consumer rejects the
arbitration decision, the consumer may bring an action in
court to enforce the remedies provided under this chapter. In
any civil action arising under this chapter and relating to a
matter considered by the board, any determination made to
reject a dispute for arbitration or any decision rendered by
the board is admissible in evidence.

(14) The board shall have 40 calendar days to hear the
dispute. If the board determines that additional information
is necessary, the board may continue the arbitration
proceeding on a subsequent date within 10 calendar days of the
initial hearing. The board shall decide the dispute within 60
calendar days from the date the board receives the consumer's
request for arbitration on a form prescribed by the Department
of Legal Affairs, unless waived by the consumer who wishes to
defer arbitration proceedings until the board meets at a geographical location more convenient for the consumer. The decision of the board shall be sent by certified mail to the consumer and the manufacturer, and shall contain a written finding of whether the new motor vehicle meets the standards set forth under this chapter. A copy of the consumer's acceptance of the decision shall immediately be sent by the board to the manufacturer by certified mail, return receipt requested. The manufacturer must, within 40 calendar days from its receipt of the consumer's acceptance of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer either receives delivery of an acceptable replacement motor vehicle or the refund stipulated in the arbitration award.

(15) A decision accepted by the consumer is final unless appealed by the manufacturer. A petition to circuit court to appeal a decision shall be made within 30 calendar days after the manufacturer's receipt of the consumer's acceptance of the decision. At the time the petition is filed, the manufacturer shall send by certified mail a copy of such petition to the board. If the board receives no notice of such petition after 40 calendar days, the board shall contact the consumer to determine if compliance has occurred. If compliance has not occurred, the board shall contact the court to determine if a petition to appeal has been filed. If, at the end of the 40-calendar-day period, neither compliance with, nor a petition to appeal, the board's decision has occurred, the Attorney General shall impose a fine of $1,000 per day until compliance occurs, unless the manufacturer provides clear and convincing evidence that any delay or failure was beyond its control or was acceptable to...
the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Attorney General shall initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs.

(16) Grounds to appeal a decision by the board to circuit court shall be by clear and convincing evidence that:

(a) The award was procured by corruption, fraud, or other misconduct;

(b) The board refused to hear evidence pertinent and material to the dispute;

(c) The board exceeded its powers; or

(d) The board conducted the hearing contrary to this section or rules adopted under it so as to prejudice substantially the rights of the manufacturer.

In a written petition to appeal a decision by the board, the manufacturer must state the action requested and the grounds relied upon.

(17) If the decision of the board is upheld by the court, recovery by the prevailing consumer shall include the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award, together with all costs and continuing damages in the amount of $25 per day for all days beyond the 40-calendar-day period following the manufacturer's receipt of the consumer's acceptance of the board's decision where the manufacturer did not provide the consumer with the free use of a comparable loaner replacement motor vehicle. If it is determined by the court that the manufacturer acted without good cause in bringing the appeal

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or brought the appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award.

(18) When a judgment of the court affirms a decision by the board, a review may be conditioned upon the manufacturer paying the consumer's attorney's fees and giving security for costs, expenses, and financial loss resulting from the passage of time for review.

(19) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including any index of new motor vehicles by year, make, and model. The department shall compile aggregate annual statistics for all disputes submitted to, and decided by, the board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of:

(a) Replacement motor vehicle requests;
(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing settlements;
(d) Purchase price refunds obtained in prehearing settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with during the 40-calendar-day period nor petitioned for appeal within the 30-calendar-day period;
(h) Board decisions appealed;
(i) Appeals affirmed by the court;
(j) Appeals that were held by the court to be brought without good cause; and

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(k) Appeals that were held by the court to be brought solely for the purpose of harassment.

The statistical compilations shall be public information.

Section 5. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.—A misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that meets the criteria of Title 16 Code of Federal Regulations Part 703, or this chapter shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 6. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.—

1. A consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with all litigation costs, reasonable attorney’s fees, and any equitable relief the court deems appropriate. In any action brought because of the manufacturer’s failure to comply with a decision rendered at an arbitration proceeding or petition to appeal a decision rendered at an arbitration proceeding, the court shall double, and may triple, the pecuniary value of the award stipulated in the arbitration decision as provided for in s. 681.108.

2. Any action brought under this chapter must be commenced within 4 years after the date of original delivery of the new motor vehicle to the consumer.

3. This chapter does not prohibit the consumer from pursuing other rights or remedies under any other law.

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Section 7. Section 681.113, Florida Statutes, is created to read:

681.113 Resale of returned vehicles.--A manufacturer that accepts return of the motor vehicle due to nonconformity that was not cured within a reasonable time as provided under this chapter shall notify the Attorney General. Upon the resale, either at wholesale or retail, or transfer of title of such motor vehicle previously returned after a final determination, adjudication, or settlement under this chapter or under similar statute of any other state, the manufacturer or dealer shall execute and deliver to the buyer an instrument in writing setting forth the following information in 10-point type in capital letters: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER DUE TO NONCONFORMITY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED UNDER CHAPTER 681, FLORIDA STATUTES." The notice shall also be conspicuously printed on the motor vehicle's certificate of title.

Section 8. Section 681.115, Florida Statutes, is created to read:

681.115 Certain agreements void.--Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such new motor vehicle.

Section 9. This act shall apply to new motor vehicles purchased in this state on or after January 1, 1988.

Section 10 This act shall take effect January 1, 1988.

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Revises the Motor Vehicle Warranty Enforcement Act to:

1. Provide for enforcement of the act by the Attorney General rather than by the Division of Consumer Services of the Department of Agriculture and Consumer Services.

2. Provide for manufacturer's duties with respect to nonconforming motor vehicles.

3. Create a Florida New Motor Vehicle Arbitration Board within the office of the Attorney General to hear disputes with respect to the act and to provide funding for the board through an arbitration fee.

4. Provide detailed procedures for arbitration and resolution of disputes.

5. Provide for specific consumer remedies under the act.

6. Provide for the resale of returned motor vehicles under described circumstances.

7. Provide that any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in the act is void as contrary to public policy.
A bill to be entitled

An act relating to motor vehicle sales

warranties; amending s. 681.101, F.S.;

providing clarifying language; amending s.

681.102, F.S.; providing definitions; amending

s. 681.103, F.S.; requiring motor vehicle

manufacturers to conform motor vehicles to the

warranty, requiring such manufacturers to

follow certain procedures relating to

warranties; amending s. 681.104, F.S.;

providing notification requirements for

consumers with nonconforming motor vehicles;

providing procedures for the handling of such

vehicles; providing for refunds or replacement

vehicles; providing for the refunding of sales

tax paid on certain vehicles; amending s.

681.105, F.S.; providing informal dispute

settlement procedures; creating s. 681.109,

F.S.; providing an arbitration system for motor

vehicle owners who do not resolve disputes

through a certified informal dispute settlement

procedure; creating s. 681.1095, F.S.; creating

the Florida New Motor Vehicle Arbitration Board

within the Department of Legal Affairs;

providing for the appointment of board members;

providing powers and duties of the board;

providing procedures for arbitration; providing

powers and duties of the Department of Legal

Affairs relative to the board; providing for

the appeal of board decisions; providing for

attorney's fees, costs, and penalties for

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noncompliance with awards by manufacturers; 
requiring the department to maintain certain 
records; requiring reports; amending s. 
681.110, F.S.; providing the Department of 
Legal Affairs with subpoena power; amending s. 
681.111, F.S.; defining certain acts as unfair 
trade practices; creating s. 681.112, F.S.; 
providing judicial consumer remedies for 
vio1ations of ch. 681, F.S.; establishing 
limitations on such actions; creating s. 
681.113, F.S.; providing limitations of 
liability for dealers; creating s. 681.114, 
F.S.; providing procedures for the resale of 
motor vehicles returned pursuant to ch. 681, 
F.S.; creating s. 681.115, F.S.; prohibiting 
certain limiting agreements; creating s. 
681.116, F.S.; providing a preemption; 
requiring the adoption of rules; requiring a 
fee; providing appropriations; providing 
severability; providing for future repeal and 
legislative review; providing effective dates.

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

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

681.101 Legislative intent.--The Legislature 
recognizes that a motor vehicle is a major consumer purchase 
and that a defective motor vehicle undoubtedly creates a 
hardship for the consumer. The Legislature further recognizes 
that a duly franchised motor vehicle dealer is an authorized 

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It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer or its agent within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty provided for in this chapter issued-by-the-manufacturer. However, nothing in this chapter ss.681.100-681.100 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

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

681.102 Definitions.—As used in this chapter, the term terms-have-the-following-meanings:

(1) "Board" means the Florida New Motor Vehicle Arbitration Board.

(2) "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition purchase of the motor vehicle. For the purposes of this chapter ss.681.100-681.100, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

(3) "Comparable motor vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same model, year, and equivalent condition at the time of replacement.

(3) "Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle.

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primarily used for personal, family, or household purposes;
any person to whom such motor vehicle is transferred for the
same purposes during the duration of the Lemon Law rights
period an-express-warranty-applicable-to-such-motor-vehicle;
and any other person entitled by the terms of the such
warranty to enforce the obligations of the warranty.

(4) "Division" means the Division of Consumer Services
of the Department of Agriculture and Consumer Services.
"Express-warranty" means any written affirmation of fact or
promise made in connection with the sale of a motor vehicle by
a supplier to a consumer which relates to the nature of the
material or workmanship and affirms or promises that such
material or workmanship is free of defects or will meet a
specified level of performance over a specified period of
time.---For the purposes of ss 681:10-681:1087 express
warranties do not include implied warranties:

(5) "Incidental charges" means those reasonable
unavoidable costs to the consumer which are directly caused by
the nonconformity of the motor vehicle. Consequential damages
shall not be allowed under this act:

(6) "Lease price" means the aggregate of:
(a) Lessor's actual purchase costs.
(b) Collateral charges, if applicable.

++Accessories++ if applicable:
(c)ff Any fee paid to another to obtain the lease.
(d)ff Any insurance or other costs expended by the
lesser for the benefit of the lessee.

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

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

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"Lemon Law rights period" means the period ending 1 year after the date of the original delivery of a motor
vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first.

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

"Lessee cost costs" means the aggregate deposit
and rental payments previously paid to the lessor for the
leased vehicle less a reasonable offset allowance for the
lessee's consumer's use of the vehicle.

"Manufacturer" means a manufacturer as defined
in s. 320.60(9), a distributor as defined in s. 320.60(5), or
an importer as defined in s. 320.60(7). A dealer as defined
in s. 320.60(11)(a) shall not be deemed to be a manufacturer,
distributor, or importer as provided in this section. The
dealer or authorized service agent of the manufacturer, as
referred to under this chapter, means a motor vehicle dealer
licensed pursuant to s. 320.27(c)(1).

"Motor vehicle" means a new motor vehicle,
propelled by power other than muscular power, which is sold in
this state and which is operated over the public streets and
highways of this state to transport and is used as a means of
transporting persons or property, and includes a vehicle used
as a demonstrator or leased vehicle if a manufacturer's
warranty was issued as a condition of sale, or the lessee is
responsible for repairs. The term "motor vehicle" includes
only those vehicles propelled by power other than muscular
power, but the term does not include vehicles run only upon

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tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, the living facilities of recreational vehicles, motorcycles, or mopeds. The term "motor-vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

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

(13) "Purchase price" means the cash price as defined in s. 520.31(1), inclusive of any allowance for a trade-in vehicle.

(14) "Reasonable offset for use" means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity or the 20th cumulative calendar day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle and divided by 120,000.

(15) "Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of acquisition purchase.

"Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

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

Section 3. Section 681.103, Florida Statutes, is
amended to read:

681.103 Duty of manufacturer to conform a motor
vehicle to the warranty applicable express warranties.--
(1) For the purposes of this chapter, If a new motor
vehicle does not conform to the warranty applicable
express warranties and the consumer reports the nonconformity
to the manufacturer, or its authorized service agent, during
the term of such express warranties or during the Lemon Law
rights period period of one year following the date of original
delivery of the motor vehicle to the consumer, whichever
period expires earlier, the manufacturer, or its authorized
service agent, shall, at no cost to the consumer, make such
repairs as are necessary to conform the vehicle to the
warranty such express warranties, irrespective of whether such
repairs are made after the expiration of the Lemon Law rights
period such term or such one year period.

(2) Each manufacturer shall provide a list of
addresses and phone numbers for its zone or regional offices
for this state in the owner's manual. By January 1 of each
year, each manufacturer shall forward to the Department of
Legal Affairs a copy of the owner's manual and any written
warranty for each make and model of motor vehicle that it
sells in this state.

(3) At the time of acquisition, the manufacturer shall
inform the consumer in writing how to file a claim with a
certified informal dispute settlement procedure if such
procedure has been established by the manufacturer pursuant to s. 681.108 and shall provide the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer each time his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive, any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.--

(1) After three attempts have been made to repair the same nonconformity or a motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the manufacturer shall provide addresses-in-the-manufacturer's-zone-or-regional-service-office the consumer shall give written notification, by registered or express mail to the manufacturer, of the need for the repair of a nonconformity or nonconformities, in order to allow the manufacturer a final attempt an-opportunity to
cure the nonconformity or nonconformities alleged-defect. If
three attempts have been made to repair the same
nonconformity, the manufacturer shall, within 7 calendar 5
working days after receipt of such notification being-notified
by-the-consumer, notify the consumer of a reasonably
accessible repair facility and after to-conform-the-vehicle-to
the-express-warranty-and-inform-the-consumer-if-an-informal
dispute-settlement-procedure-has-been-established-by-the
manufacturer-in accordance-with-§-681108-and-how-to-file-a
claim-with-the-dispute-settlement-mechanism-and-shall-provide
the-consumer-with-a-copy-of-this-chapter.--After delivery of
the vehicle to the designated repair facility by the consumer,
the manufacturer shall within 14 calendar have-10-working days
to conform the motor vehicle to the express warranty. If such
notification pertains to 20 cumulative calendar days when the
vehicle has been out of service by reason of repair of one or
more nonconformities, the manufacturer has 10 cumulative
calendar days when the vehicle has been out of service by
reason of repair of one or more nonconformities, commencing
upon the date such notification is received, to conform the
motor vehicle to the warranty. If the manufacturer fails to
notify the consumer of a reasonably accessible repair facility
or to perform the repairs within the time periods prescribed
in this subsection, the requirement that the manufacturer be
given a final attempt to cure the nonconformity or
nonconformities does not apply the-availability-of-the
informal-dispute-settlement-procedure-the-requirements-of-§-
681108-do-not-apply.

(2)(a) If the manufacturer, or its authorized service
agent, cannot conform the motor vehicle to the any-applicable
express warranty by repairing or correcting any nonconformity
default-or-condition-which-impairs-the-use-market-value-or
safety-of-the-motor-vehicle-to-the-consumer after a reasonable
number of attempts, the manufacturer, within 40 calendar days,
shall, in consideration of its receipt of payment of a
reasonable offset for use, give-the-consumer-the-option-of
having-the-manufacturer replace the motor vehicle with a
comparable-or replacement motor vehicle acceptable to the
consumer, or having-the-manufacturer repurchase the motor
vehicle from the consumer and refund to the consumer the full
purchase price, including all reasonably incurred collateral
and incidental charges, less a reasonable offset and-allowance
for-the-consumer's-use-of-the-motor-vehicle. However, the
consumer has an unconditional right to choose a refund rather
than a replacement. The requirement-for the subtraction of a
reasonable offset allowance for use applies only when either a
refund or a replacement motor vehicle is provided. Upon
receipt of such refund or replacement, a "reasonable-allowance
for-use" is that sum-of-money-arrived-at-by-multiplying-the
number-of-miles-driven-at-the-time-of-the-first-reported
nonconformity-of-the-motor-vehicle-which-nonconformity
resulted-in-a-claim-pursuant-to-this-act-by-28-cents-per
mile--in-the-event-a-comparable-motor-vehicle-is-provided-the
allowance-shall-be-subtracted-for-the-consumer's-use-of-the
motor-vehicle.--Under-the-provisions-of-this-section-it-is
the-responsibility-of the consumer, lienholder, or lessor
shall to furnish to the manufacturer clear title to and
possession of the motor vehicle.

(b) Refunds shall be made to the consumer and
lienholder of record, if any, as their interests may appear.
If applicable, refunds shall be made to the lessor and lessee
as their interests may appear on the records of ownership kept

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by the Department of Highway Safety and Motor Vehicles, as
follows: the lessee shall receive the lessee cost and the
lessor shall receive the lease price less the aggregate
deposit and rental payments previously paid to the lessor for
the leased vehicle. The Department of Revenue shall refund to
the manufacturer any sales tax which the manufacturer refunded
to the consumer, lessee, or lessor under this section, if the
manufacturer provides to the department a written request for
a refund and evidence that the sales tax was paid when the
vehicle was purchased and that the manufacturer refunded the
sales tax to the consumer, lessee, or lessor.

(3)(a) It is shall-be presumed that a reasonable
number of attempts have been undertaken to conform a motor
vehicle to the warranty applicable-express-warranties if,
within-the-terms-conditions-or-limitations-of-the-express
warranty-or during the Lemon Law rights period of-1-year
following-the-date-of-original-delivery-of-the-motor-vehicle
to-a-consumer, whichever-expires-earlier, either:

1. The Substantially-the same nonconformity has been
subject to repair at least three or-more times by the
manufacturer or its authorized service agent, plus a final
exclusive-of-the-initial attempt by the manufacturer to repair
the motor vehicle if undertaken as provided for in subsection
(1), and such nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason
of the repair of one or more nonconformities by the
manufacturer, or its authorized service agent, for a
cumulative total of 30 15 or more calendar working days,
exclusive of down time for routine maintenance as prescribed
by the owner’s manual-and-exclusive-of-the-10-working-day
period-under-the-provisions-of-subsection (1). The 30-day 15-
day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster, conditions beyond the control of the manufacturer or its agent.

(b) The terms of paragraph (a)-conditions or limitations of the express warranty or the period of 1-year following the date of original delivery of the motor vehicle to a consumer-whichever-expires-carry-on-may be extended if a nonconformity the motor vehicle warranty problem has been reported but has not been cured repaired by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights applicable-time period.

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

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the consumer; or

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

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

Any action brought under this chapter shall be commenced within 6-months following expiration of the terms or limitations of the express warranty or within 18-months following the date of original delivery of the motor vehicle to a consumer-whichever-is-earlier-or-the-event

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that a consumer resorts to an informal dispute settlement procedure as provided in s. 681.108, within 6 months following the final action of the panel—in any action brought by the consumer with respect to an alleged nonconformity—the decision of the informal dispute settlement panel is admissible in evidence:

(b) if a consumer finally prevails in any action brought under this chapter, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for, or in connection with, the commencement and prosecution of such action.

Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 Informal dispute settlement procedure.—

(1) If a manufacturer has established an informal dispute settlement procedure which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983 and of this chapter, and has informed the consumer how to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) do not apply to any consumer who has not first resorted to such procedure. A certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the

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circumstances. In an action brought by a consumer concerning
an alleged nonconformity, the decision of a certified informal
dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure
involves a panel for the purposes of this section, at least
one member of such an informal dispute settlement panel
may shall be designated by the division. Members of an
informal dispute settlement procedure shall be trained in the
provisions of this chapter and in Title 16, Code of Federal
Regulations, Part 703, in effect on October 1, 1983. The
member-designated-by-the-division-shall-not-be-required-to
undergo-training-by-the-informal-dispute-settlement-mechanism
if he possesses one of the following qualifications:

(a) Membership in a nationally-recognized arbitration
or mediation association;

(b) Graduation from an accredited law school; or

(c) Completion of a training program conducted or
approved by the division;

(3) The informal dispute settlement procedure panel
shall submit to the division a copy of each settlement
approved by the procedure or decision made by a member or the
panel within 30 days after the settlement is reached or the
decision is rendered. The decision or settlement decisions
shall be reported on forms to be promulgated by the division;
which shall contain at a minimum the following information:

(a) Name and address of the consumer;

(b) Name and address of the dealership from which the
car was purchased;

(c) Date the complaint was received;

(d) Relief requested by the consumer;

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(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member or the panel;

(g) Date of the settlement or decision;

(h) Statement Determination of whether the decision was accepted or rejected by the consumer; and

(i) Statement Determination of whether the decision was accepted or rejected by the manufacturer.

(4) Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

‡47a‡The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the use, market value, or safety of the motor vehicle to the consumer.

‡b‡If the motor vehicle does not conform to all applicable express warranties as determined pursuant to paragraph ‡a‡, the informal dispute settlement panel shall then determine whether a reasonable number of attempts to have the motor vehicle repaired have been made.

‡c‡If the motor vehicle does not conform to all applicable express warranties and a reasonable number of attempts to repair have been made as determined pursuant to paragraphs ‡a‡ and ‡b‡, and the manufacturer has been given an...
opportunity-to-repair-the-motor-vehicle-as-provided-in-s:
681:104(t7-the-panel1-shall-find-that-the-consumer-is-entitled
to-refund-or-replacement-as-provided-in-s-681:104(t7):

(d)-The-informal-dispute-settlement-panel1-shall-make-a
recommendation-as-to-the-amount-of-collateral-and- incidental
charges-when-appropriate.

(5) The division shall prepare an annual report
evaluate the operation of informal dispute settlement
procedures established by motor vehicle manufacturers of- new
motorvehicles and shall issue a certificate of approval to
those manufacturers whose settlement procedures substantially
comply in-all-respects with the provisions of Title 16, Code
of Federal Regulations, Part 703, in effect October 1, 1983,
and with the provisions of this chapter. The report and
certification shall be public records. The-division-director
shall-have-the-power-to-issue-subpoenas-requiring-the
attendance-of-witnesse and-the-production-of-records,
documentry-or-other-evidence-in-connection-therewith---in-the
case-of-a-refusal-to-obey-a-subpoena-issued-to-any-person---the
director-may-apply-to-the-court-for-an-order
compelling-compliance.

Any-manufacturer-establishing-an-informal-dispute
settlement-procedure-shall-file-with-the-division-a-copy-of
the-annual-audit-required-under-the-provisions-of-Title-16,
Code-of-Federal-Regulations,Part-703, together-with-any
additional-information-that-the-division-may-require-for
purposes-of-certification---including-the-number-of-refunds-and
replacements-made-in-this-state-pursuant-to-the-provisions-of
this-act-by-the-manufacturer-during-the-period-audited.

Section 6. Section 681.109, Florida Statutes, is
created to read:

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681.109 Florida New Motor Vehicle Arbitration Board:

    dispute eligibility.--

(1) If a consumer resorts to a manufacturer's certified informal dispute settlement procedure and a decision is not rendered or performed within the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's informal dispute settlement procedure and is not satisfied with the decision reached may apply to the division to have the dispute submitted to the board for arbitration. No manufacturer may seek review of a decision of its informal dispute settlement procedure.

(3) If a manufacturer has no certified informal dispute settlement procedure, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the division determines are potentially entitled to relief under this chapter.

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

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

Section 7. Section 681.1095, Florida Statutes, is
created to read:

681.1095 Florida New Motor Vehicle Arbitration Board;
creation and function.—
(1) There is established within the Department of
Legal Affairs, the Florida New Motor Vehicle Arbitration
Board, consisting of members appointed by the Attorney General
for an initial term of 1 year. Board members may be
reappointed for additional terms of 2 years. The Attorney
General may establish as many boards as necessary to carry out
the provisions of this chapter.
(2) The boards shall hear cases in various locations
throughout the state so any consumer whose dispute is approved
for arbitration by the division may attend an arbitration
hearing at a reasonably convenient location and present a
dispute orally. Arbitration proceedings under this section
shall be open to the public on reasonable and
nondiscriminatory terms.

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(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

(4) Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the division.

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.

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

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

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

(10) The board shall hear the dispute within 40 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a
dispute within 40 calendar days or render a decision within 60 calendar days does not invalidate the decision.

(11) A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the board. If the board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to $1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Department of Legal Affairs shall initiate proceedings against the manufacturer for failure to pay such fine. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter. If the manufacturer fails to comply with the provisions of this subsection, the court shall affirm the award upon application by the consumer.

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

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

(13) An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon.

(14) If a decision of the board in favor of the consumer is upheld by the court, recovery by the consumer shall include, if applicable, the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award and all costs and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision. If a court determines that the manufacturer acted in bad faith in bringing the appeal or brought the appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award.

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

(16) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including an index of motor vehicles by year, make, and model, and shall compile aggregate annual statistics for all disputes submitted to, and decided by, the board, as well as annual statistics for each manufacturer that include, but are not limited to, the number and percent of:

(a) Replacement motor vehicle requests;

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(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing settlements;
(d) Purchase price refunds obtained in prehearing settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with in 40 calendar days nor petitioned for appeal within 30 calendar days;
(h) Board decisions appealed;
(i) Appeals affirmed by the court; and
(j) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment. The statistical compilations shall be public information.

Section 8. Section 681.110, Florida Statutes, is amended to read:

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

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Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.—A violation misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that meets the criteria of Title 16, Code of Federal Regulations Part 703 or this chapter shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.—

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

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

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

Section 11. Section 681.113, Florida Statutes, is created to read:

681.113 Dealer liability.—Nothing in this chapter imposes any liability on a dealer as defined in s. 320.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer’s warranties. A

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dealer may not be made a party defendant in any action
involving or relating to this chapter, except as provided in
this section. The manufacturer shall not charge back or
require reimbursement by the dealer for any costs, including,
but not limited to, any refunds or vehicle replacements,
incurred by the manufacturer arising out of this chapter, in
the absence of evidence that the related repairs had been
carried out by the dealer in a manner substantially
inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is
created to read:

681.114 Resale of returned vehicles.—A manufacturer
who accepts the return of a motor vehicle pursuant to this
chapter shall notify the Department of Legal Affairs and
report the vehicle identification number of that motor vehicle
within 10 calendar days after such acceptance. Upon wholesale
or retail resale or transfer of title of such motor vehicle
returned pursuant to this chapter or under a similar statute
of any other state, the manufacturer or dealer shall give the
buyer a disclosure statement containing the following
information in ten point type in capital letters: "IMPORTANT:
THIS VEHICLE WAS RETURNED DUE TO NONCONFORMITY WITH THE
WARRANTY PURSUANT TO CHAPTER 681, FLORIDA STATUTES." The
notice shall also be conspicuously printed on the motor
vehicle's certificate of title.

Section 13. Section 681.115, Florida Statutes, is
created to read:

681.115 Certain agreements void.—Any agreement
entered into by a consumer for the purchase of a motor vehicle
that waives, limits, or disclaims the rights set forth in this
chapter is void as contrary to public policy. The rights set

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forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 14. Section 681.116, Florida Statutes, is created to read:

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

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a dealer or lessor from the consumer or lessee at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. All fees collected shall be sent to the Department of Legal Affairs by the 20th day of the month following the month for which such fees were collected, for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly, one-fourth of the fees received to the division to carry out the provisions of ss. 681.108 and 681.109.

Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. The $300,000 appropriated by this section shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid
provision or application, and to that end the provisions of
this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed
on October 1, 1994, and shall be reviewed by the Legislature
prior to that date pursuant to section 11.61, Florida
Statutes.

Section 20. This act applies to motor vehicles
purchased or leased in this state on or after January 1, 1989.

Section 21. This act shall take effect January 1,
1989, except that this section and sections 5 and 15 shall
take effect upon becoming a law.

SENATE SUMMARY

Substantially revises the Motor Vehicle Warranty
Enforcement Act or "Lemon Law." (See bill for details.)

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A bill to be entitled
An act relating to motor vehicle sales
warranties; amending s. 681.101, F.S.;
providing clarifying language; amending s.
681.102, F.S.; providing definitions; amending
s. 681.103, F.S., requiring motor vehicle
manufacturers to conform motor vehicles to the
warranty; requiring such manufacturers to
follow certain procedures relating to
warranties; amending s. 681.104, F.S.;
providing notification requirements for
consumers with nonconforming motor vehicles;
providing procedures for the handling of such
vehicles; providing for refunds or replacement
vehicles; providing for the refunding of sales
tax paid on certain vehicles; amending s.
681.108, F.S.; providing informal dispute
settlement procedures; creating s. 681.109,
F.S.; providing an arbitration system for motor
vehicle owners who do not resolve disputes
through a certified informal dispute settlement
procedure; creating s. 681.1095, F.S.; creating
the Florida New Motor Vehicle Arbitration Board
within the Department of Legal Affairs;
providing for the appointment of board members;
providing powers and duties of the board;
providing procedures for arbitration; providing
powers and duties of the Department of Legal
Affairs relative to the board; providing for
the appeal of board decisions; providing for
attorney's fees, costs, and penalties for

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null
service agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer's agent within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty provided for in this chapter issued-by-the-manufacturer. However, nothing in this chapter ss.681.10-681.18 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

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

681.102 Definitions.—As used in this chapter, the terms have the following meanings:

(1) "Board" means the Florida New Motor Vehicle Arbitration Board.

(2) "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition purchase of the motor vehicle. For the purposes of this chapter ss.681.10-681.18, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

(3) "Comparable motor vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same model-year and equivalent condition at the time of replacement.

(3) "Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle.

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primarily used for personal, family, or household purposes; any person to whom such motor vehicle is transferred for the same purposes during the duration of the Lemon Law rights period an-express-warranty-applicable-to-such-motor-vehicle; and any other person entitled by the terms of the such warranty to enforce the obligations of the warranty.

(4) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services. "Express-warranty" means any written affirmation-of-fact or promise made-in-connection-with-the-sale-of-a-motor-vehicle-by a-supplier-to-a-consumer-which-relates-to-the-nature-of-the material-or-workmanship-and-affirms-or-promises-that-such material-or-workmanship-is-free-of-defects-or-will-meet-a specified-level-of-performance-over-a-specified-period-of time--For-the-purposes-of-ss-1601-10-6617087-express warranties-do-not-include-implied-warranties.

(5) "Incidental charges" means those reasonable unavoidable costs to the consumer which are directly caused by the nonconformity of the motor vehicle. Consequential-damages shall-not-be-allowed-under-this-act.

(6) "Lease price" means the aggregate of:
(a) Lessor's actual purchase costs.
(b) Collateral charges, if applicable.
(c)---Accessories, if-applicable.
(d)†‡ Any fee paid to another to obtain the lease.
(e)†‡ Any insurance or other costs expended by the lessor for the benefit of the lessee.
(f)†‡ An amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.

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(7) "Lemon Law rights period" means the period ending 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first.

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

(9) "Lessee cost costs" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less a reasonable offset allowance for the lessee's consumer's use of the vehicle.

(10) "Manufacturer" means a manufacturer as defined in s. 320.60(9), a distributor as defined in s. 320.60(5), or an importer as defined in s. 320.60(7). A dealer as defined in s. 320.60(11)(a) shall not be deemed to be a manufacturer, distributor, or importer as provided in this section. The dealer or authorized service agent of the manufacturer, as referred to under this chapter, means a motor vehicle dealer licensed pursuant to s. 320.27(c)(l).

(11) "Motor vehicle" means a new motor vehicle, propelled by power other than muscular power, which is sold in this state and which is primarily operated over the public streets and highways of this state to transport and/or used as a means of transporting persons or property, and includes a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs. The term "motor vehicle" includes only those vehicles propelled by power other than muscular power, but the term does not include vehicles

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run only upon tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, the living facilities of recreational vehicles, motorcycles, or mopeds. The term "motor-vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

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

(13) "Purchase price" means the cash price as defined in s. 520.31(1), inclusive of any allowance for a trade-in vehicle.

(14) "Reasonable offset for use" means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity or the 20th cumulative calendar day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle and divided by 120,000.

(15) "Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of acquisition purchase.

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

Section 3. Section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty applicable-express-warranties.--

(1) For-the-purposes-of-this-chapter, If a new motor vehicle does not conform to the warranty applicable express-warranties and the consumer reports the nonconformity to the manufacturer, or its authorized service agent, during the-term-of-such-express-warranties-or during the Lemon Law rights period period-of-1-year-following-the-date-of-original delivery-of-the-motor-vehicle-to-the-consumer-whichever period-expires-earlier, the manufacturer, or its authorized service agent, shall, at no cost to the consumer, make such repairs as are necessary to conform the vehicle to the warranty such-express-warranties, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period such-term-or-such-1-year-period.

(2) Each manufacturer shall provide a list of addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year, each manufacturer shall forward to the Department of Legal Affairs a copy of the owner's manual and any written warranty for each make and model of motor vehicle that it sells in this state.

(3) At the time of acquisition, the manufacturer shall inform the consumer in writing how to file a claim with a
certified informal dispute settlement procedure if such procedure has been established by the manufacturer pursuant to s. 681.108 and shall provide the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer each time his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive, any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.--

(1) After three attempts have been made to repair the same nonconformity or a motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the manufacturer shall provide a list of the manufacturer's zone or regional service office addresses in the owner's manual provided with the motor vehicle. The consumer shall give written notification, by registered or express mail to the manufacturer, of the need for the repair of a nonconformity or nonconformities, in order
to allow the manufacturer a final attempt an-opportunity to
cure the nonconformity or nonconformities alleged-defect. If
three attempts have been made to repair the same
nonconformity, the manufacturer shall, within 7 calendar 5
working days after receipt of such notification being-notified
by-the-consumer, notify the consumer of a reasonably
accessible repair facility and after co-conform-the-vehicle-to
the-express-warranty-and-inform-the-consumer-if-an-informal
dispute-settlement-procedure-has-been-established-by-the
manufacturer-in-accordance-with-g-601106-and-how-to-file-a
clear-with-the-dispute-settlement-mechanism-and-shall-provide
the-consumer-with-a-copy-of-this-chapter--After delivery of
the vehicle to the designated repair facility by the consumer,
the manufacturer shall within 14 calendar have-10-working days
to conform the motor vehicle to the express warranty. If such
notification pertains to 20 cumulative calendar days when the
vehicle has been out of service by reason of repair of one or
more nonconformities, the manufacturer has 10 cumulative
calendar days when the vehicle has been out of service by
reason of repair of one or more nonconformities, commencing
upon the date such notification is received, to conform the
motor vehicle to the warranty. If the manufacturer fails to
notify the consumer of a reasonably accessible repair facility
or perform the repairs within the time periods prescribed in
this subsection, the requirement that the manufacturer be
given a final attempt to cure the nonconformity or
nonconformities does not apply the-availability-of-this
informal-dispute-settlement-procedure-the-requirements-of-s-
601106-do-not-apply.

(2)(a) If the manufacturer, or its authorized service
agent, cannot conform the motor vehicle to the any-applicable
Section 556.5035 - Express warranty

1. The manufacturer, within 40 calendar days, shall, in consideration of its receipt of payment of a reasonable offset for use, give the consumer the option of having the manufacturer replace the motor vehicle with a comparable or replacement motor vehicle acceptable to the consumer or having the manufacturer repurchase the motor vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral and incidental charges, less a reasonable offset or allowance for the consumer's use of the motor vehicle. However, the consumer has an unconditional right to choose a refund rather than a replacement. Upon receipt of such refund or replacement, the requirement for the subtraction of a reasonable allowance for use may be satisfied by the consumer, lienholder, or lessor as the responsibility of the consumer, lienholder, or lessor shall to furnish to the manufacturer clear title to and possession of the motor vehicle.

(b) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear. If applicable, refunds shall be made to the lessor and lessee.
as their interests may appear on the records of ownership kept
by the Department of Highway Safety and Motor Vehicles, as
follows: the lessee shall receive the lessee cost and the
lessor shall receive the lease price less the aggregate
deposit and rental payments previously paid to the lessor for
the leased vehicle. The Department of Revenue shall refund to
the manufacturer any sales tax which the manufacturer refunded
to the consumer, lessee, or lessor under this section, if the
manufacturer provides to the department a written request for
a refund and evidence that the sales tax was paid when the
vehicle was purchased and that the manufacturer refunded the
sales tax to the consumer, lessee, or lessor.

(3)(a) It shall be presumed that a reasonable
number of attempts have been undertaken to conform a motor
vehicle to the warranty applicable-express-warranties if,
within-the-terms-conditions-or-limitations-of-the-express
warranty-or during the Lemon Law rights period of-i-year
following-the-date-of-original-delivery-of-the-motor-vehicle
to-a-consumer-whichever-expire-earlier, either:

  1. The Substantially-the same nonconformity has been
subject to repair at least three or-more times by the
manufacturer or its authorized service agent, plus a final
exclusive-of-the-initial-attempt by the manufacturer to repair
the motor vehicle if undertaken as provided for in subsection
(1), and such nonconformity continues to exist; or

  2. The motor vehicle has been out of service by reason
of the repair of one or more nonconformities by the
manufacturer, or its authorized service agent, for a
cumulative total of 30 i5 or more calendar working days,
exclusive of down time for routine maintenance as prescribed
by the owner's manual-and-exclusive-of-the-10-working-day

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the consumer; or

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

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

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Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 Informal dispute settlement procedure.—

(1) If a manufacturer has established an informal dispute settlement procedure, which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983 and of this chapter, and has informed the consumer how to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) do not apply to any consumer who has not first resorted to such procedure. A certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter; and

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any other equitable considerations appropriate under the circumstances. In an action brought by a consumer concerning an alleged nonconformity, the decision of a certified informal dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure involves a panel for the purposes of this section, at least one member of such an informal dispute settlement panel may shall be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983. The member designated by the division shall not be required to undergo training by the informal dispute settlement mechanism if he possesses one of the following qualifications:

(a) Membership in a nationally recognized arbitration or mediation association;

(b) Graduation from an accredited law school; or

(c) Completion of a training program conducted or approved by the division.

(3) The informal dispute settlement procedure panel shall submit to the division a copy of each settlement approved by the procedure or decision made by a member or the panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement decisions shall be reported on forms to be promulgated by the division, which shall contain at minimum the following information:

(a) Name and address of the consumer;

(b) Name and address of the dealership from which the car was purchased;

(c) Date the complaint was received;

(d) Relief requested by the consumer;

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(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member of the panel;

(g) Date of the settlement or decision;

(h) Statement determination of whether the decision was accepted or rejected by the consumer; and

(i) Statement determination of whether the decision was accepted or rejected by the manufacturer.

(4) Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(4)(a) The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the user, market value, or safety of the motor vehicle to the consumer;

(b) if the motor vehicle does not conform to all applicable express warranties as determined pursuant to paragraph (a), the informal dispute settlement panel shall then determine whether a reasonable number of attempts to have the motor vehicle repaired have been made;

(c) if the motor vehicle does not conform to all applicable express warranties and a reasonable number of attempts to repair have been made as determined pursuant to paragraphs (a) and (b), and the manufacturer has been given an

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opportunity-to-repair-the-motor-vehicle-as-provided-in-sr

681:04187-the-panel-shall-find-that-the-consumer-is-entitled
to-refund-or-replacement-as-provided-in-sr-681:04187

tod-the-informal-dispute-settlement-panel-shall-make-a
recommendation-as-to-the-amount-of-collateral-and- incidental
charges-when-appropriate.

(5) The division shall prepare an annual report
evaluating the operation of informal dispute settlement
procedures established by motor vehicle manufacturers of new
motor- vehicles and shall issue a certificate of approval to
those manufacturers whose settlement procedures substantially
comply in all respects with the provisions of Title 16, Code
of Federal Regulations, Part 703, in effect October 1, 1983,
and with the provisions of this chapter. The report and
certification shall be public records. The division-director
shall-have-the-power-to-issue-subpoenas-requiring-the
attendance-of-witnesses-and-the-production-of-records;
documents, or other evidence in connection therewith, in the
case-of-a-refusal-to-obey-a-subpoena-issued-to-any-person, the
director-may-apply-to-the-circuit-court-for-an-order
compelling-compliance.

(6) Any manufacturer establishing an informal dispute
settlement procedure shall file with the division a copy of
the-annual-audit-required-under-the-provisions-of-Title-16,
Code-of-Federal-Regulations, Part 703, together with any
additional-information that the division may require for
purposes-of-certification, including the number of refunds and
replacements made in this state pursuant to the provisions of
this act by the manufacturer during the period audited.

Section 6. Section 681.109, Florida Statutes, is
created to read:

CODING: Words stricken are deletions; words underlined are additions.
681.109 Florida New Motor Vehicle Arbitration Board; dispute eligibility.—

(1) If a consumer resorts to a manufacturer's certified informal dispute settlement procedure and a decision is not rendered or performed within the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's informal dispute settlement procedure and is not satisfied with the decision reached may apply to the division to have the dispute submitted to the board for arbitration. No manufacturer may seek review of a decision of its informal dispute settlement procedure.

(3) If a manufacturer has no certified informal dispute settlement procedure, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the division determines are potentially entitled to relief under this chapter.

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

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

Section 7. Section 681.1095, Florida Statutes, is created to read:

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

(1) There is established within the Department of Legal Affairs, the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter.

(2) The boards shall hear cases in various locations throughout the state so any consumer whose dispute is approved for arbitration by the division may attend an arbitration hearing at a reasonably convenient location and present a dispute orally. Arbitration proceedings under this section shall be open to the public on reasonable and nondiscriminatory terms.
(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

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

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.

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

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

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

(10) The board shall hear the dispute within 40 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a

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dispute within 40 calendar days or render a decision within 60
calendar days does not invalidate the decision.

(11) A decision is final unless appealed by either
party. A petition to the circuit court to appeal a decision
must be made within 30 calendar days after receipt of the
decision. Within 7 calendar days after the petition has been
filed, the appealing party must send, by registered or express
mail, a copy of the petition to the board. If the board
receives no notice of such petition within 40 calendar days
after the manufacturer's receipt of a decision in favor of the
consumer, and the manufacturer has neither complied with, nor
has petitioned to appeal such decision, the Department of
Legal Affairs may apply to the circuit court to seek
imposition of a fine up to $1,000 per day against the
manufacturer until the amount stands at twice the purchase
price of the motor vehicle, unless the manufacturer provides
clear and convincing evidence that the delay or failure was
beyond its control or was acceptable to the consumer as
evidenced by a written statement signed by the consumer. If
the manufacturer fails to provide such evidence or fails to
pay the fine, the Department of Legal Affairs shall initiate
proceedings against the manufacturer for failure to pay such
fine. The proceeds from the fine herein imposed shall be
placed in the Motor Vehicle Warranty Trust Fund in the
Department of Legal Affairs for implementation and enforcement
of this chapter. If the manufacturer fails to comply with the
provisions of this subsection, the court shall affirm the
award upon application by the consumer.

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

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

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

(14) If a decision of the board in favor of the consumer is upheld by the court, recovery by the consumer shall include, if applicable, the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award and all costs and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision.

If a court determines that the manufacturer acted in bad faith in bringing the appeal or brought the appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award.

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

(16) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including an index of motor vehicles by year, make, and model, and shall compile aggregate annual statistics for all disputes submitted to, and decided by, the board, as well as annual statistics for each manufacturer that include, but are not limited to, the number and percent of:

(a) Replacement motor vehicle requests;

CODING: Words stricken are deletions; words underlined are additions.
(b) Purchase price refund requests;

(c) Replacement motor vehicles obtained in prehearing settlements;

(d) Purchase price refunds obtained in prehearing settlements;

(e) Replacement motor vehicles awarded in arbitration;

(f) Purchase price refunds awarded in arbitration;

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

(h) Board decisions appealed;

(i) Appeals affirmed by the court; and

(j) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment. The statistical compilations shall be public information.

Section 8. Section 681.110, Florida Statutes, is amended to read:

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

CODING: Words stricken are deletions; words underlined are additions
Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.—A violation of a representation by a manufacturer as to the existence of an informal dispute settlement mechanism that meets the criteria of Title 16, Code of Federal Regulations, Part 703 or this chapter is shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.—

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

2. An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute settlement procedure or submits a dispute to the division or board, within 1 year after the final action of the procedure, division, or board.

3. This chapter does not prohibit a consumer from pursuing other rights or remedies under any other law.

Section 11. Section 681.113, Florida Statutes, is created to read:

681.113 Dealer liability.—Nothing in this chapter imposes any liability on a dealer as defined in s. 320.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A
dealer may not be made a party defendant in any action
involving or relating to this chapter, except as provided in
this section. The manufacturer shall not charge back or
require reimbursement by the dealer for any costs, including,
but not limited to, any refunds or vehicle replacements,
incurred by the manufacturer arising out of this chapter, in
the absence of evidence that the related repairs had been
carried out by the dealer in a manner substantially
inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is
created to read:

681.114 Resale of returned vehicles.—A manufacturer
who accepts the return of a motor vehicle pursuant to this
chapter shall notify the Department of Legal Affairs and
report the vehicle identification number of that motor vehicle
within 10 calendar days after such acceptance. Upon wholesale
or retail resale or transfer of title of such motor vehicle
returned pursuant to this chapter or under a similar statute
of any other state, the manufacturer or dealer shall give the
buyer a disclosure statement containing the following
information in ten point type in capital letters: "IMPORTANT:
THIS VEHICLE WAS RETURNED DUE TO NONCONFORMITY WITH THE
WARRANTY PURSUANT TO CHAPTER 681, FLORIDA STATUTES." The
notice shall also be conspicuously printed on the motor
vehicle's certificate of title.

Section 13. Section 681.115, Florida Statutes, is
created to read:

681.115 Certain agreements void.—Any agreement
entered into by a consumer for the purchase of a motor vehicle
that waives, limits, or disclaims the rights set forth in this
chapter is void as contrary to public policy. The rights set

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Section 14. Section 681.116, Florida Statutes, is created to read:

681.116 Preemption.—This chapter preempts any similar county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a dealer or lessor from the consumer or lessee at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. All fees collected shall be sent to the Department of Legal Affairs by the 20th day of the month following the month for which such fees were collected, for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly, one-fourth of the fees received to the division to carry out the provisions of ss. 681.101 and 681.109.

Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. The $300,000 appropriated by this section shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid...
provision or application, and to that end the provisions of this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes.

Section 20. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. This act shall take effect January 1, 1989, except that this section and sections 5 and 15 shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 556

Several changes were made to the bill including:

-- a clarification of the provision requiring the consumer to first submit the dispute to the division, and if deemed eligible, to the board, before filing a civil action on a matter subject to s. 681.104; and

-- a clarification that an appeal of a board decision to the circuit court must be trial de novo.
A bill to be entitled
An act relating to motor vehicle sales
warranties; amending s. 681.101, F.S.;
providing clarifying language; amending s.
681.102, F.S.; providing definitions; amending
s. 681.103, F.S.; requiring motor vehicle
manufacturers to conform motor vehicles to the
warranty; requiring such manufacturers to
follow certain procedures relating to
warranties; amending s. 681.104, F.S.;
providing notification requirements for
consumers with nonconforming motor vehicles;
providing procedures for the handling of such
vehicles; providing for refunds or replacement
vehicles; providing for the refunding of sales
tax paid on certain vehicles; amending s.
681.108, F.S.; providing informal dispute
settlement procedures; creating s. 681.109,
F.S.; providing an arbitration system for motor
vehicle owners who do not resolve disputes
through a certified informal dispute settlement
procedure; creating s. 681.1095, F.S.; creating
the Florida New Motor Vehicle Arbitration Board
within the Department of Legal Affairs;
providing for the appointment of board members;
providing powers and duties of the board;
providing procedures for arbitration; providing
powers and duties of the Department of Legal
Affairs relative to the board; providing for
the appeal of board decisions; providing for
attorney's fees, costs, and penalties for
noncompliance with awards by manufacturers;
requiring the department to maintain certain
records; requiring reports; amending s.
681.110, F.S.; providing the Department of
Legal Affairs with subpoena power; amending s.
681.111, F.S.; defining certain acts as unfair
trade practices; creating s. 681.112, F.S.;
providing judicial consumer remedies for
violations of ch. 681, F.S.; establishing
limitations on such actions; creating s.
681.113, F.S.; providing limitations of
liability for dealers; creating s. 681.114,
P.S.; providing procedures for the resale of
motor vehicles returned pursuant to ch. 681,
P.S.; creating s. 681.115, F.S.; prohibiting
certain limiting agreements; creating s.
681.116, F.S.; providing a preemption;
requiring the adoption of rules; requiring a
fee to be collected by motor vehicle dealers
and persons engaged in the business of leasing
motor vehicles; providing appropriations;
providing severability; providing for future
repeal and legislative review; providing
effective dates.

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

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

681.101 Legislative intent.--The Legislature
recognizes that a motor vehicle is a major consumer purchase
and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer or its agent within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty provided for in this chapter issued by the manufacturer. However, nothing in this chapter ss7-68110-68110 shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

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

681.102 Definitions.—As used in this chapter, the term terms have the following meanings:

1. "Board" means the Florida New Motor Vehicle Arbitration Board.

2. "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition purchase of the motor vehicle. For the purposes of this chapter ss7-68110-68110, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, and title charges.

"Comparable-motor-vehicle" means, with respect to a motor vehicle that is replaced, a motor vehicle of the same

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"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes; any person to whom such motor vehicle is transferred for the same purposes during the duration of the Lemon Law rights period on-express-warranty-applicable-to-such-motor-vehicle; and any other person entitled by the terms of the such warranty to enforce the obligations of the warranty.

"Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services, "Express-warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material-or-workmanship-and-affirms-or-promises-that-such material-or-workmanship-is-free-of-defects-or-will-meet-a specified-level-of-performance-over-a-specified-period-of time.--For-the-purposes-of-Ss.:60/1;0/60/1:08/-express warranties-do-not-include-implied-warranties;

"Incidental charges" means those reasonable unavoidable costs to the consumer which are directly caused by the nonconformity of the motor vehicle. CONSEQUENTIAL DAMAGES shall-not-be-allowed-under-this-act;

"Lease price" means the aggregate of:
(a) Lessor's actual purchase costs.
(b) Collateral charges, if applicable.
(c) Accessory charges, if applicable;
(d) Any fee paid to another to obtain the lease.
(d) Any insurance or other costs expended by the lessor for the benefit of the lessee.

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

An amount equal to 5 percent of (a).

"Lemon Law rights period" means the period ending 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first.

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

"Lessee cost costs" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less a reasonable offset allowance for the lessee's consumer's use of the vehicle.

"Manufacturer" means a manufacturer as defined in s. 320.60(9), a distributor as defined in s. 320.60(5), or an importer as defined in s. 320.60(7). A dealer as defined in s. 320.60(11)(a) shall not be deemed to be a manufacturer, distributor, or importer as provided in this section. The dealer or authorized service agent of the manufacturer, as referred to under this chapter, means a motor vehicle dealer licensed pursuant to s. 320.27(c)(1).

"Motor vehicle" means a new motor vehicle, propelled by power other than muscular power, which is sold in this state and which is primarily operated over the public streets and highways of this state to transport and/or used as a means of transporting persons or property, and includes a vehicle used as a demonstrator or leased vehicle if a
1 manufacturer's warranty was issued as a condition of sale, or
2 the lessee is responsible for repairs. The term "motor
3 vehicle" includes only those vehicles propelled by power other
4 than muscular power, but the term does not include vehicles
5 run only upon tracks, off-road vehicles, trucks over 10,000
6 pounds gross vehicle weight, the living facilities of
7 recreational vehicles, motorcycles, or mopeds. The term
8 "motor vehicle" includes a demonstrator or lease-purchase
9 vehicle as long as a manufacturer's warranty was issued as a
10 condition of sale.

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

17 (13) "Purchase price" means the cash price as
18 defined in s. 520.31(1), inclusive of any allowance for a
19 trade-in vehicle.

20 (14) "Reasonable offset for use" means the number of
21 miles attributable to a consumer up to the date of the third
22 repair attempt of the same nonconformity or the 20th
23 cumulative calendar day when the vehicle is out of service by
24 reason of repair of one or more nonconformities, whichever
25 occurs first, multiplied by the purchase price of the vehicle
26 and divided by 120,000.

27 (15) "Replacement motor vehicle" means a motor
28 vehicle which is identical or reasonably equivalent to the
29 motor vehicle to be replaced, as the motor vehicle to be
30 replaced existed at the time of acquisition purchase.

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

Section 3. Section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty all-applicable express-warranties.--

(1) For-the-purposes-of-this-chapter, If a new motor vehicle does not conform to the warranty all-applicable express-warranties and the consumer reports the nonconformity to the manufacturer, or its authorized service agent, during the-term-of-such-express-warranties, or during the Lemon Law rights period period-of-1-year-following-the-date-of-original delivery-of-the-motor-vehicle-to-the-consumer-whichsoever period-expires-earlier, the manufacturer, or its authorized service agent, shall, at no cost to the consumer, make such repairs as are necessary to conform the vehicle to the warranty such-express-warranties, irrespective of whether such repairs are made after the expiration of the Lemon Law rights period such-term-or-such-1-year-period.

(2) Each manufacturer shall provide a list of addresses and phone numbers for its zone or regional offices for this state in the owner's manual. By January 1 of each year, each manufacturer shall forward to the Department of
Legal Affairs a copy of the owner's manual and any written warranty for each make and model of motor vehicle that it sells in this state.

(3) At the time of acquisition, the manufacturer shall inform the consumer in writing how to file a claim with a certified informal dispute settlement procedure if such procedure has been established by the manufacturer pursuant to s. 681.108 and shall provide the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the division that the consumer can contact to commence arbitration.

(4) A manufacturer, through its authorized service agent, shall provide to the consumer each time his motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any test drive performed and the approximate length of the test drive, any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

Section 4. Section 681.104, Florida Statutes, is amended to read:

681.104 Nonconformity of motor vehicles.--

(1) After three attempts have been made to repair the same nonconformity or a motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 cumulative calendar days, the manufacturer shall provide

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addresses in the owner's manual provided with the motor vehicle. The consumer shall give written notification, by registered or express mail to the manufacturer, of the need for the repair of a nonconformity or nonconformities, in order to allow the manufacturer a final attempt an opportunity to cure the nonconformity or nonconformities alleged defect. If three attempts have been made to repair the same nonconformity, the manufacturer shall, within 7 calendar working days after receipt of such notification being notified by the consumer, notify the consumer of a reasonably accessible repair facility and after to conform the vehicle to the express warranty and inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with 9-661-148 and how to file a claim with the dispute settlement mechanism and shall provide the consumer with a copy of this chapter. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall within 14 calendar have 10 working days to conform the motor vehicle to the express warranty. If such notification pertains to 20 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, the manufacturer has 10 cumulative calendar days when the vehicle has been out of service by reason of repair of one or more nonconformities, commencing upon the date such notification is received, to conform the motor vehicle to the warranty. If the manufacturer fails to notify the consumer of a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity or

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nonconformities does not apply the availability-of-the
informal-dispute-settlement-procedure-the-requirements-of-
60% do not apply.

(2)(a) If the manufacturer, or its authorized service
agent, cannot conform the motor vehicle to the any-applicable
express warranty by repairing or correcting any nonconformity
default-or-condition-which-impairs-the-use-market-value-or
safety-of-the-motor-vehicle-to-the-consumer after a reasonable
number of attempts, the manufacturer, within 40 calendar days,
shall, in consideration of its receipt of payment of a
reasonable offset for use, give-the-consumer-the-option-of
having-the-manufacturer replace the motor vehicle with a
comparable-or replacement motor vehicle acceptable to the
consumer, or having-the-manufacturer repurchase the motor
vehicle from the consumer and refund to the consumer the full
purchase price, including all reasonably incurred collateral
and incidental charges, less a reasonable offset an-allowance
for the-consumer's use of-the-motor-vehicle. However, the
consumer has an unconditional right to choose a refund rather
than a replacement. Upon receipt of such refund or
replacement, The-requirement-for-the-subtraction-of-a
reasonable-allowance-for-use-applies-only-when-either-a-refund
or-a-replacement-motor-vehicle-is-provided---A"reasonable
allowance-for-use"-is-that-sum-of-money-arrived-at-by
multiplying-the-number-of-miles-driven-at-the-time-of-the
first-reported-nonconformity-of-the-motor-vehicle-which
nonconformity-resulted-in-a-claim-pursuant-to-this-act-by-20
cents-per-mile---in-the-event-a-comparable-motor-vehicle-is
provided, no allowance shall be subtracted for-the-consumer's
use-of-the-motor-vehicle---Under-the-provisions-of-this
section-it-is-the-responsibility-of the consumer, lienholder,

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or lessor shall furnish to the manufacturer clear title to
and possession of the motor vehicle.

(b) Refunds shall be made to the consumer and
liensholder of record, if any, as their interests may appear.
If applicable, refunds shall be made to the lessor and lessee
as their interests may appear on the records of ownership kept
by the Department of Highway Safety and Motor Vehicles, as
follows: the lessee shall receive the lessee cost and the
lessor shall receive the lease price less the aggregate
deposit and rental payments previously paid to the lessor for
the leased vehicle. The Department of Revenue shall refund to
the manufacturer any sales tax which the manufacturer refunded
to the consumer, lessee, or lessor under this section, if the
manufacturer provides to the department a written request for
a refund and evidence that the sales tax was paid when the
vehicle was purchased and that the manufacturer refunded the
sales tax to the consumer, lessee, or lessor.

(3)(a) It is presumed that a reasonable
number of attempts have been undertaken to conform a motor
vehicle to the warranty applicable-express-warranties if,
within-the-terms-conditions-or-restrictions-of-the-express
warranty-or during the Lemon Law rights period of-1-year
following-the-date-of-original-delivery-of-the-motor-vehicle
to-a-consumer-whichever-expires-earlier, either:

1. The Substantially-the same nonconformity has been
subject to repair at least three or-more times by the
manufacturer or its authorized service agent, plus a final
exclusive-of-the-initial attempt by the manufacturer to repair
the motor vehicle if undertaken as provided for in subsection
(l), and such nonconformity continues to exist; or

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2. The motor vehicle has been out of service by reason of the repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 30 or more calendar working days, exclusive of down time for routine maintenance as prescribed by the owner's manual-and-exclusive-of-the-10-working-day period-under-the-provisions-of-subsection-(f). The 30-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster conditions-beyond-the-control-of-the-manufacturer,-or-its agent.

(b) The terms of paragraph (a)-conditions-or limitations-of-the-express-warranty-or-the-period-of-1-year following-the-date-of-original-delivery-of-the-motor-vehicle to-a-consumer-whichever-expires-earlier may be extended if a nonconformity the-motor-vehicle-warranty-problem has been reported but has not been cured repaired by the manufacturer, or its authorized service agent, by the expiration of the Lemon Law rights applicable-time period.

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

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

(b) The nonconformity is the result of an accident, abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by persons other than the manufacturer or its authorized service agent the-consumer; or

(c) The claim by the consumer was not filed in good faith.
Any other affirmative defense allowed by law may be raised against the claim.

Any action brought under this chapter shall be commenced within 6 months following expiration of the terms, conditions, or limitations of the express warranty or within 18 months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or in the event that a consumer resorts to an informal dispute settlement procedure as provided in s. 681.108, within 6 months following the final action of the panel, in any action brought by the consumer with respect to an alleged nonconformity, the decision of the informal dispute settlement panel to.

admissible in evidence, brought under this chapter, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for, or in connection with, the commencement and prosecution of such action.

Section 5. Section 681.108, Florida Statutes, is amended to read:

681.108 Informal dispute settlement procedure.--

(1) If a manufacturer has established an informal dispute settlement procedure, which the division has certified as substantially complying with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983 and of this chapter, and has informed the consumer how to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) do not apply to any consumer.
who has not first resorted to such procedure. A certified informal dispute settlement procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the circumstances. In an action brought by a consumer concerning an alleged nonconformity, the decision of a certified informal dispute settlement procedure is admissible in evidence.

(2) Where the informal dispute settlement procedure involves a panel. For the purposes of this section, at least one member of such an informal dispute settlement panel may shall be designated by the division. Members of an informal dispute settlement procedure shall be trained in the provisions of this chapter and in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983. The member designated by the division shall not be required to undergo training by the informal dispute settlement mechanism if he possesses one of the following qualifications:

(a) Membership in a nationally recognized arbitration or mediation association;

(b) Graduation from an accredited law school; or

(c) Completion of a training program conducted or approved by the division.

(3) The informal dispute settlement procedure panel shall submit to the division a copy of each settlement approved by the procedure or decision made by a member or the panel within 30 days after the settlement is reached or the decision is rendered. The decision or settlement decisions

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shall be reported on forms to be promulgated by the division which shall contain at a minimum the following information:

(a) Name and address of the consumer;

(b) Name and address of the dealership from which the car was purchased;

(c) Date the complaint was received;

(d) Relief requested by the consumer;

(e) Name of each member of the informal dispute settlement panel rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision of a member of the panel;

(g) Date of the settlement or decision;

(h) Statement determination of whether the decision was accepted or rejected by the consumer; and

(i) Statement determination of whether the decision was accepted or rejected by the manufacturer.

Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the user, market value, or safety of the motor vehicle to the consumer.

If the motor vehicle does not conform to all applicable express warranties as determined pursuant to

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paragraph (c) - the informal dispute settlement panel shall then determine whether a reasonable number of attempts to have the motor vehicle repaired have been made; and if the motor vehicle does not conform to all applicable express warranties and a reasonable number of attempts to repair have been made as determined pursuant to paragraphs (a) and (b), and the manufacturer has been given an opportunity to repair the motor vehicle as provided in subsection (g) of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1993.

(d) - The informal dispute settlement panel shall make a recommendation as to the amount of collateral and incidental charges when appropriate.

(5) The division shall prepare an annual report evaluating the operation of informal dispute settlement procedures established by motor vehicle manufacturers of new motor vehicles and shall issue a certificate of approval to those manufacturers whose settlement procedures substantially comply in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, and with the provisions of this chapter. The report and certification shall be public records. The division director shall have the power to issue subpoenas requiring the attendance-of-witnesses and the production of documents or other evidence in connection therewith; in the case of a refusal to obey a subpoena issued to any person, the director may apply to the circuit court for an order compelling compliance.

(6) - Any manufacturer establishing an informal dispute settlement procedure shall file with the division a copy of the annual audit required under the provisions of Title 16.

Section 6. Section 681.109, Florida Statutes, is created to read:

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

(1) If a consumer resorts to a manufacturer's certified informal dispute settlement procedure and a decision is not rendered or performed within the time designated in Title 16, Code of Federal Regulations, Part 703, in effect October 1, 1983, the consumer may apply to the division to have the dispute removed to the board for arbitration.

(2) A consumer who resorts to a manufacturer's informal dispute settlement procedure and is not satisfied with the decision reached may apply to the division to have the dispute submitted to the board for arbitration. No manufacturer may seek review of a decision of its informal dispute settlement procedure.

(3) If a manufacturer has no certified informal dispute settlement procedure, a consumer may apply directly to the division to have the dispute submitted to the board for arbitration.

(4) The division shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the Department of Legal Affairs. The division shall forward to the board all disputes that the

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division determines are potentially entitled to relief under this chapter.

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

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

Section 7. Section 681.1095, Florida Statutes, is created to read:

681.1095 Florida New Motor Vehicle Arbitration Board; creation and function.—

(1) There is established within the Department of Legal Affairs, the Florida New Motor Vehicle Arbitration Board, consisting of members appointed by the Attorney General for an initial term of 1 year. Board members may be reappointed for additional terms of 2 years. The Attorney General may establish as many boards as necessary to carry out the provisions of this chapter.
(2) The boards shall hear cases in various locations throughout the state so any consumer whose dispute is approved for arbitration by the division may attend an arbitration hearing at a reasonably convenient location and present a dispute orally. Arbitration proceedings under this section shall be open to the public on reasonable and nondiscriminatory terms.

(3) Each board shall consist of three permanent members and three alternate members. The members of the board shall construe and apply the provisions of this chapter, and rules adopted thereunder, in making their decisions. An administrator and a secretary shall be assigned to each board by the Department of Legal Affairs. One member shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer. Board members shall be trained in the application of this chapter and any rules adopted and shall be reimbursed for travel expenses pursuant to s. 112.061, and compensated at a rate or wage prescribed by the Attorney General.

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

(5) All manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer within 30 calendar days following the final action of a certified informal dispute settlement procedure or within 1 year following the expiration of the Lemon Law rights period and the dispute is deemed eligible for arbitration.

(6) Each consumer whose dispute is approved for arbitration shall be subject to a $50 filing fee, refundable.
if he withdraws the dispute from arbitration prior to the hearing. The manufacturer, upon notification that a dispute has been approved, shall pay a $50 filing fee, refundable if the consumer withdraws the dispute from arbitration prior to the hearing. All fees shall be paid to the Florida New Motor Vehicle Arbitration Fund, which shall be used for the purposes of this section.

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

(8) At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The board may also inspect the vehicle if requested by a party or if the board deems such inspection appropriate.

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

(10) The board shall hear the dispute within 40 calendar days. If the board determines that additional information is necessary, it may continue the arbitration proceeding on a subsequent date within 15 calendar days after the initial hearing. The board shall decide the dispute within 60 calendar days after the date the division approves the consumer's request for arbitration. The decision of the board shall be sent by registered mail to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 calendar days...
after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence. The failure of the board to hear a dispute within 40 calendar days or render a decision within 60 calendar days does not invalidate the decision.

(11) A decision is final unless appealed by either party. A petition to the circuit court to appeal a decision must be made within 30 calendar days after receipt of the decision. Within 7 calendar days after the petition has been filed, the appealing party must send, by registered or express mail, a copy of the petition to the board. If the board receives no notice of such petition within 40 calendar days after the manufacturer's receipt of a decision in favor of the consumer, and the manufacturer has neither complied with, nor has petitioned to appeal such decision, the Department of Legal Affairs may apply to the circuit court to seek imposition of a fine up to $1,000 per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the Department of Legal Affairs shall initiate proceedings against the manufacturer for failure to pay such fine. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the

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Department of Legal Affairs for implementation and enforcement of this chapter. If the manufacturer fails to comply with the provisions of this subsection, the court shall affirm the award upon application by the consumer.

(12) All provisions in this section pertaining to compulsory arbitration before the board, the proceedings and decisions of the board, and any appeals thereof, are exempt from the provisions of chapter 120.

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

(14) If a decision of the board in favor of the consumer is upheld by the court, recovery by the consumer shall include, if applicable, the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award and all costs and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision. If a court determines that the manufacturer acted in bad faith in bringing the appeal or brought the appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award.

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

(16) The Department of Legal Affairs shall maintain records of each dispute submitted to the board, including an
index of motor vehicles by year, make, and model, and shall
compile aggregate annual statistics for all disputes submitted
to, and decided by, the board, as well as annual statistics
for each manufacturer that include, but are not limited to,
the number and percent of:

(a) Replacement motor vehicle requests;
(b) Purchase price refund requests;
(c) Replacement motor vehicles obtained in prehearing
settlements;
(d) Purchase price refunds obtained in prehearing
settlements;
(e) Replacement motor vehicles awarded in arbitration;
(f) Purchase price refunds awarded in arbitration;
(g) Board decisions neither complied with in 40
calendar days nor petitioned for appeal within 30 calendar
days;
(h) Board decisions appealed;
(i) Appeals affirmed by the court; and
(j) Appeals found by the court to be brought in bad
faith or solely for the purpose of harassment. The
statistical compilations shall be public information.

Section 3. Section 681.110, Florida Statutes, is
amended to read:

681.110 Compliance and disciplinary actions.--The
Department of Legal Affairs may have the power to
enforce and ensure compliance with the provisions of this
chapter and rules adopted thereunder, may issue subpoenas
requiring the attendance of witnesses and production of
evidence, and may seek relief in the circuit court to compel
compliance with such subpoenas. The Department of Legal
Affairs division may impose a civil penalty against a

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manufacturer not to exceed $1,000 for each count or separate offense. The proceeds from the fine herein imposed shall be placed in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs for implementation and enforcement of this chapter.

Section 9. Section 681.111, Florida Statutes, is amended to read:

681.111 Unfair or deceptive trade practice.--A violation of misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that meets the criteria of Title 16 Code of Federal Regulations Part 703 or this chapter is shall be deemed an unfair or deceptive trade practice as defined in part II of chapter 501.

Section 10. Section 681.112, Florida Statutes, is created to read:

681.112 Consumer remedies.--

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

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

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

Section 11. Section 681.113, Florida Statutes, is created to read:

CODING: Words stricken are deletions; words underlined are additions.
681.113 Dealer liability.--Nothing in this chapter imposes any liability on a dealer as defined in s. 320.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. Section 681.114, Florida Statutes, is created to read:

681.114 Resale of returned vehicles.--A manufacturer who accepts the return of a motor vehicle by reason of a determination or decision pursuant to this chapter shall notify the Department of Legal Affairs and report the vehicle identification number of that motor vehicle within 10 calendar days after such acceptance. No person shall knowingly transfer a title to, lease, or sell, either at wholesale or retail, a motor vehicle returned by reason of a determination or decision pursuant to this chapter or similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer, and the manufacturer warrants to correct such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The Department of Legal Affairs shall

CODING: Words stricken are deletions; words underlined are additions.
prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

Section 13. Section 681.115, Florida Statutes, is created to read:

681.115 Certain agreements void.--Any agreement entered into by a consumer for the purchase of a motor vehicle that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 14. Section 681.116, Florida Statutes, is created to read:

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

Section 15. The Department of Legal Affairs shall adopt rules to implement this chapter.

Section 16. A $2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. Such fees shall be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the Division of Consumer Services of the Department of Agriculture and Consumer

CODING: Words struck are deletions; words underlined are additions.
Services to carry out the provisions of sections 681.108 and 681.109, Florida Statutes. The Department of Legal Affairs shall contract with the Division of Consumer Services for payment of services performed by the division pursuant to sections 681.108 and 681.109, Florida Statutes.

Section 17. The sum of $225,000 is hereby appropriated from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and the sum of $75,000 is hereby appropriated to the Division of Consumer Services, for the fiscal year 1988-1989. The $300,000 appropriated by this section shall be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund. The amount of $700,000 from the Motor Vehicle Warranty Trust Fund is appropriated to, and an additional 13 positions are authorized for the Department of Legal Affairs for implementation of this act.

Section 18. If any provision of this chapter or the application thereof is held invalid in whole or in part, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared severable.

Section 19. Chapter 681, Florida Statutes, is repealed on October 1, 1994, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes.

Section 20. This act applies to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. This act shall take effect January 1, 1989, except that this section and sections 5 and 15 shall take effect upon becoming a law.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR Senate Bill 556

1. Requires the manufacturer of a vehicle returned due to nonconformity, to warrant such vehicle for one year or 12,000 miles, whichever occurs first, prior to the sale, transfer, or lease of such vehicle.

2. Requires the Department of Legal Affairs to prescribe by rule the form, content, and procedure pertaining to the required nonconformity disclosure statement.

3. Appropriates $700,000 from the Motor Vehicle Warranty Trust Fund and 13 positions to the Department of Legal Affairs to implement the bill.

4. Requires the Department of Revenue to administer the collection of the $2 fee collected from the consumer for each sale or lease contract.

5. The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the Division of Consumer Services to carry out the provisions of ss. 681.108 and 681.109. The Department of Legal Affairs shall contract with the division for payment of services performed by the division pursuant to ss. 681.108 and 681.109.
March 25, 1987

Mr. Walter Dartland  
Department of Legal Affairs  
Capitol  
Tallahassee, Florida

Dear Mr. Dartland:

Enclosed please find a copy, as requested, of the paper prepared by Ms. Lassie Wildern, Ford Motor Company, and submitted by her at the March 23, 1987 Senate Economic, Community and Consumer Affairs Committee's lemon law workshop.

Please let me know if I can be of further assistance.

Sincerely,

[Signature]
Barbara Balzer  
Legislative Analyst

BB/sl  
Enclosure
Florida Senate
Repair/Replace Bill

March 20, 1987

This proposed amended lemon law would create a state-run arbitration board in Florida and prohibit manufacturers' boards that fail to interpret and enforce the law. Ford Motor Company opposes this bill.

Section 681.101 Legislative intent. The vehicle dealer is not an agent of the manufacturer. The fact that Florida, along with other states, has found it necessary to enact franchise laws governing the relationship between dealers and manufacturers indicates that the state views dealers as independent business entities. All characterizations of the dealer as the manufacturer's agent should be deleted.

Section 681.102 (1). Delete the reference to arbitration service fees. This bill would establish a tax on every new vehicle sold to fund the arbitration system. Since the system will be funded, it is inappropriate to provide for double recovery of the fees.

Section 681.102 (4). Delete everything after "resides" in line 30. This measure applies to vehicles sold in Florida; it cannot have extra-territorial application.

Section 681.102 (5). If an offer of reasonable alternative transportation is made by a manufacturer or authorized dealer and the offer is refused by the consumer, the manufacturer and authorized dealer should have no liability to the consumer for alternative transportation under this section.

Section 681.102 (6). Delete in its entirety. A lease transaction is fundamentally different from a purchase transaction. The consumer has opted to pay for the use of a vehicle, not for purchase and ownership. A lease transaction, therefore, should not be covered by this provision. If leases are to be covered, the sole remedy for a nonconforming leased vehicle should be replacement. To provide repurchase would enrich unjustly both the lessor and the lessee and would not reflect the basis of their original bargain.
This provision improperly establishes a judicial function in the executive branch, infringes on the manufacturer's right to trial by jury and presents serious questions of legality under state and federal law. This issue is being litigated currently in two states.

Section 681.108 (9). The consumer should be required to give notice in writing directly to the manufacturer before submitting a dispute to any board.

Section 681.108 (10). Arbitration must be binding on both parties or voluntary for both parties. Making arbitration available at the request of only one party raises serious questions of legality. These issues are the subject of current litigation. If the arbitration is available and binding on both parties, the parties must be afforded full de novo review.

Section 681.108 (13). Arbitration must be binding on both parties or on neither party. To compel arbitration and then permit only one party to elect not to accept a decision is unfair.

Section 681.108 (15). An open-ended fine of $1,000 per day is unduly punitive. By creating such a severely punitive measure, this provision would create an unjustifiable hardship on manufacturers in an otherwise private dispute. This measure would not be available if the manufacturer chose to bring suit to resolve the dispute.

Section 681.108 (16). Each of the parties should have the right to a de novo review of any arbitration decision. The standards for appeal of the board's decision by the manufacturer are so burdensome that the manufacturer effectively has no right of appeal. Manufacturers have no interest in litigating matters appropriately resolved. Where there is no effective right of appeal, there is no assurance of fairness on the part of the board. The measure established for appeal, in conjunction with the penalties set forth in Section (17), deprives the manufacturer of its constitutionally-protected right to a trial by jury and right to appeal.

Section 681.108 (18). Delete in its entirety. This provision burdens substantially the constitutionally-protected access of private litigants to the state court system.

Section 681.112 (1). Delete everything after "appropriate" in line 20. This provision creates an unjustifiable penalty on appeals by the manufacturer and effectively denies the manufacturer of constitutionally-protected rights.

Section 681.113 (1). It is unfair to require a disclosure upon the sale of a vehicle that has been repaired satisfactorily prior to resale. Further, this section fails to provide any means whereby a repaired vehicle can be sold.

Lassie M. Wildern
Senior Attorney
I. SUMMARY:

A. Present Situation:

Chapter 681, Florida Statutes, is the "Motor Vehicle Warranty Enforcement Act."

Section 681.101, F.S., provides the legislative intent of the chapter.

Section 681.102, F.S., provides, among others, definitions of "motor vehicle," "manufacturers," "purchase price," and "replacement motor vehicle."

Section 681.103, F.S., requires the manufacturer to make repairs as are necessary to conform the vehicle to warranties, irrespective of whether such repairs are made after the expiration of the warranty or one year following original delivery, whichever is less, if the consumer reported the nonconformity to the manufacturer during the warranty or one year period.

Section 681.104, F.S., requires the consumer to notify the manufacturer of the need for repair and the manufacturer to notify the consumer within 5 days of a reasonable accessible repair facility and inform the consumer if it has established an informal dispute settlement program that complies with Title 16, Code of Federal Regulations, Part 703 and this chapter. The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle.

If the manufacturer or its agent cannot conform the vehicle after a reasonable number of repair attempts, it must give the consumer the option of having the manufacturer replace the vehicle with a comparable or replacement vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges less a reasonable allowance for use. A reasonable number of attempts to conform the vehicle to warranty is presumed to have occurred if the nonconformity has been the subject of at least 3 repair attempts, exclusive of the manufacturer's initial attempt, or the vehicle has been in service for at least 15 working days, exclusive of the 10 days originally afforded the manufacturer.

Affirmative defenses available to the manufacturer are: (1) the nonconformity does not impair the use, market value, or safety of the vehicle; (2) the nonconformity is the result of abuse, neglect, or unauthorized modifications of the vehicle by the consumer; or (3) the claim filed by the consumer was not in good faith.
Any action brought under this chapter must be brought within 6 months after expiration of the warranty, within 18 months of original delivery of the vehicle, or within a month of a final action of a certified panel.

Section 681.108, F.S., requires consumers to use a manufacturer's informal dispute settlement panel certified by the division before seeking vehicle repurchase or replacement under this chapter. At least 3 members of each such panel must be appointed by the Division of Consumer Services. Such panels are required to provide the division with a copy of each decision within 30 days of rendition. The decision is to contain the consumer's name and address, the dealership's name and address, the date the complaint was received, the relief requested, the name of each panel member, the panel's decision, and whether the manufacturer or the consumer accepted the decision. If the panel finds that a reasonable number of repair attempts have been made, the panel is required to order a refund or replacement vehicle.

The division is directed to prepare an annual report evaluating the operation of all manufacturer-sponsored settlement programs and to certify programs which comply with the provisions of Part 703 of Title 16 of the Code of Federal Regulation (Part 703). The division is authorized to subpoena documents connected therewith.

Any manufacturer establishing a settlement program must file with the division a copy of the annual audit required by Part 703 to be submitted to the F.T.C.

Section 681.110, F.S., empowers the Division of Consumer Services with enforcement authority.

B. Effect of Proposed Changes:

Section 681.101, F.S., relating to intent, is expanded to include references to the enforcement powers of the attorney general, the self-funding scheme, and the resale of returned nonconforming vehicles.

Section 681.102, F.S., is amended to add the definition of "condition," "court," "nonconformity," "reasonable offset for use," "serious safety defect," "warranty," and "warranty period," to delete the definitions of "express warranty," and "Division," and to change the definitions of "incidental charges," "lessee," "manufacturer," and motor vehicle.

Section 681.104, F.S., is amended to delete reference to the manufacturer's 10 day initial attempt to cure the nonconformity and to construe a reasonable number of repair attempts to mean a serious safety defect that has been subjected to 2 or more repair attempts; 4, instead of 3, attempts by the manufacturer or its agent to cure the same nonconformity within the warranty period; or 30 cumulative days, instead of 15 working days, in-service.

Section 681.108, F.S., is amended to delete reference to the Division of Consumer Services and Part 703. The section creates the Florida New Motor Vehicle Arbitration Board within the Attorney General's office consisting of 3 permanent members: (1) an automotive technical expert, (2) an attorney or person knowledgeable in warranty law, and (3) a person with prior experience or interest in arbitration. The members are to be trained in the application of chapter 681, F.S., and be reimbursed for travel expenses.

A one-dollar arbitration fee is to be collected from the new car buyer by the dealer as part of the purchase-price and is to be forwarded to the Florida New Motor Vehicle Arbitrator Fund within the AG's account to be used to operate the board. The
Department of Legal Affairs is to prepare a report on revenue generated and expenses incurred in implementing and operating the arbitration program.

The Department of Legal Affairs is authorized to adopt rules relating to the selection and training of board members, the administration of arbitration proceedings, the rendering and recording of arbitration decisions, the procedures to be followed in arranging prehearing conferences and recording prehearing settlements, and notifying the parties to the dispute of the time and location of arbitration.

Parties are allowed to present oral and written testimony, witnesses, and evidence. The board is authorized to issue subpoenas for the attendance of witnesses and the production of documents.

The bill requires the consumer to submit his dispute to either the Florida New Motor Vehicle Arbitration Board or to a manufacturer-sponsored program.

The bill requires manufacturers to submit to arbitration conducted by the board if such arbitration is requested by the consumer within 6 months from the date of the final repair attempt.

The board is authorized to grant relief or reject certain disputes for arbitration. If the board rejects the dispute for arbitration or the dispute is arbitrated and the consumer rejects the decision, the consumer is allowed to bring action in court to seek remedies provided under this chapter.

The bill requires the board to hear the dispute in 40 days and to decide the dispute within 60 days from the date it receives the consumer's request for arbitration on a form prescribed by the AG. The board is required to send its decision to the consumer and the manufacturer and if the decision is in favor of the consumer, the manufacturer must comply with the decision within 40 days.

The bill provides that a decision is final unless appealed by the consumer or the manufacturer. A party must appeal in circuit court within 30 days of receiving notice of the decision and send a copy of the petition to appeal to the board. If the board does not receive such copy within 40 days, it is required to contact the consumer to determine if compliance has occurred. If it has not occurred, the board must contact the court to determine if a petition to appeal has been filed. If a petition has not been filed and compliance has not occurred, the AG is required to impose a fine of $1,000 a day until the amount stands at twice the purchase price unless the manufacturer provides clear and convincing evidence that a delay or failure was beyond its control or was acceptable to the consumer. The grounds of appeal of a board decision to circuit court are limited.

If the board's decision is upheld, the prevailing party may collect the value of the award, attorney's fees, costs, and continuing damage of $25 a day for all days beyond the 40 day period following the manufacturer's receipt of the consumer's acceptance of the board's decision where the manufacturer failed to provide free use of a loaner vehicle. If it is found that a party acted without good cause in bringing the appeal, the court may treble the total amount of the award.

The Department of Legal Affairs is required to maintain records of each dispute submitted to the board and compile aggregate annual statistic of disputes submitted to the board and certain listed annual statistics for each manufacturer.
The bill amends s.681.111, F.S., to provide any violation of the chapter, not only a misrepresentation regarding the existence of a mechanism, is an unfair or deceptive trade practice.

The bill creates section 681.112, F.S., which allows the consumer to bring an action to recover damages caused by a violation of this chapter if commenced within 4 years of the date of original delivery.

The bill creates section 681.113, F.S., which requires the manufacturer which seeks to resell a vehicle returned for failure to cure a nonconformity to provide the buyer with specific conspicuous notice of such circumstance.

The bill creates s.681.115, F.S., which voids any agreement for the purchase of a new motor vehicle that waives, limits, or declaims the rights set forth in this chapter and extends such rights to a subsequent transferee.

The bill repeals s.681.103, F.S., relating to manufacturers duty to conform and s.681.110, F.S., relating to disciplinary actions by the division.

The bill provides the chapter will apply to new motor vehicles bought in Florida on or after January 1, 1988, and provides for a $250,000 appropriation from the General Revenue Fund to the Department of Legal Affairs for start-up costs to be repaid from funds generated by the chapter.

The act is made effective on January 1, 1988.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The amendment defining “warranty period” to mean the period ending 2 years after the date of the original delivery to the consumer of the new motor vehicle will benefit consumers to the extent that their reasonable number of repair attempts occurs after the first year which is the warranty period presently protected in the chapter. However, the economic impact of this statutorily imposed warranty period is tempered by the amendment relating to what constitutes a reasonable number of repair attempts from 3 to 4 repair attempts or from 15 working days to 30 calendar days in-service.

The provision creating the Florida New Motor Vehicle Arbitration Board could benefit new car buyers to the extent that they are more likely to obtain vehicle repurchase or replacement arbitration awards from state-run arbitration or from state-certified programs than from the current motor vehicle manufacturer-sponsored arbitration programs. One study indicates buy-back awards jump 42 percent when a mechanism is converted from warranty sponsored to state-run arbitration.

The provision imposing a $1 arbitration fee upon each new car buyer to be deposited in the Florida New Motor Vehicle Arbitration Fund will adversely affect the estimated annual 1,036,133 new car buyers in Florida to the extent they buy a new car.

The provision requiring manufacturers to comply with an arbitration decision favorable to the consumer within 40 days or face a $1,000 per day fine could benefit consumers to the extent that the provision provides statutory incentive for the manufacturer to comply with the board’s decision where no such incentive existed in manufacturer-sponsored arbitration programs.
Motor vehicle manufacturers which presently sponsor arbitration programs in Florida could benefit to the extent that consumers elect to use state-run arbitration instead of manufacturer-sponsored arbitration and relieve those programs of an indeterminable amount of their dispute load.

B. Government:

The provision imposing a $1 arbitration fee upon each new car buyer to be deposited in the Florida New Motor Vehicle Arbitration Fund could result in an over $1,000,000 fund in that, according to the Department of Highway Safety and Motor Vehicles, approximately 1,036,133 new cars are sold in Florida each year. The AG's office is authorized to use the fund to implement and operate the Florida New Motor Vehicle Arbitration Board. This fund would also be utilized to cover the costs of promulgating related rules.

The provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumers within 40 days of notification of the consumer's acceptance would provide government with additional revenue to operate the board.

The provision appropriating $250,000 from the General Revenue Fund to the Department of Legal Affairs would adversely affect the Fund until the amount is repaid and would benefit the Department of Legal Affairs to the extent the "loan" would allow for the start-up of the state-run arbitration mechanism.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
Differences Between SB 1260 and PCS/SB 1260
Relating to New Motor Vehicle Warranties

-- PCS/SB 1260 amends s.681.101, F.S., relating to the intent of the chapter to delete reference to the Attorney General's enforcement power, arbitration proceedings throughout the state, and a self-funding scheme.

-- PCS/SB 1260 amends s.681.102, F.S., relating to definitions to delete the definitions of "condition," "court," "serious safety defect," and "warranty." The PCB also amends the definitions of "incidental charges," "nonconformity," "reasonable offset for use," and "warranty period," and includes a definition of "express warranty" and "Division."

-- PCB/SB 1260 significantly amends s.681.104, F.S., to provide that a nonconformity is to be deemed cured if it is repaired so that the same nonconformity does not recur within 180 days after the attempted repair. If the nonconformity is not cured after a reasonable number of repair attempts, the consumer must notify the manufacturer of the need for repair. The manufacturer must notify the consumer within 10 days of receipt of such notice of a repair facility to repair the nonconformity and inform the consumer if a s.681.108 complying dispute settlement mechanism has been established by the manufacturer, of how to file a claim with the mechanism, and provide the consumer with a copy of this chapter. If the manufacturer is unable to cure, it must either replace or repurchase the vehicle and the consumer may reject a replacement and demand a refund.

-- It is presumed that a reasonable number of repair attempts have been made to cure if within the warranty period (1) substantially the same nonconformity has been subject to 3 repair attempts, exclusive of the final attempt by the manufacturer, or (2) the vehicle has been out of service 15 or more working days exclusive of down time for routine maintenance as prescribed by the owner's manual and the manufacturer's final 10 day provision. PCB/SB 1260 deletes reference to the manufacturer's duty to provide reports relating to the inspection, diagnosis, or test-drive of the consumer's new car or a copy of the manufacturer's technical service bulletin. The PCB also deletes reference to the dealer's duty to provide a statement or repair order for repairs made under warranty.

-- PCB/SB 1260 significantly amends s.681.106, F.S., to require a consumer resort to a manufacturer's s.681.106, F.S., complying mechanism before filing an action in civil court. A civil action must be filed within 6 months following the accrual of the action or after the final decision of a mechanism. The bill prohibits a class action under this section and provides that the consumer and the manufacturer are the only proper parties to an action brought under this section.
PCB/SB 1260 significantly amends § 681.108, F.S., to provide that if the division determines a mechanism complies with Part 703 and this chapter, the consumer may be required by warranty to submit the warranty dispute to such manufacturer's mechanism. If the manufacturer does not establish such complying mechanism, the consumer may initiate a civil action. The consumer must submit the dispute to the mechanism within 6 months of the expiration of the warranty or be barred from filing a civil action. The mechanism has 40 days to render a decision and upon failure to do so, the consumer may withdraw his complaint and file a civil action. The mechanism must send its decision to the parties disclosing whatever remedy appropriate, including repair, and specify a reasonable time for performance.

The decision is binding on the manufacturer who must comply within 40 days unless it obtains an extension. A consumer may reject the decision and initiate a civil action. The bill deletes reference to the Florida New Motor Vehicle Arbitration Board.

PCS/SB 1260 creates §681.109, F.S., to direct the division to prepare an annual report determining whether a manufacturer's mechanism complies with Part 703. Each manufacturer with a complying mechanism must file with the division a copy of the annual audit required by Part 703, and the number of complaints submitted to and resolved by the mechanism on a quarterly basis. The division director is given certain subpoena power and a manufacturer is allowed to seek ch.120, F.S., administrative review of any decision or action of the division which determines that the manufacturer's mechanism does not comply with Part 703.

PCS/SB 1260 repeals all reference to unfair or deceptive trade practices.

PCS/SB 1260 creates §681.112, F.S., which preempts to the state all motor vehicle warranty enforcement matters.

PCS/SB 1260 creates the Florida Motor Vehicle Sales Warranty Study Commission composed of 6 members: 1 Senator, 1 Representative, 1 motor vehicle dealer, 1 motor vehicle manufacturer, 1 chairman, and 1 person of the state not employed as members or representatives of the above groups. Members serve without pay but are reimbursed for expenses, including travel, pursuant to §112.061. The commission is to be appointed by August 1, 1987 until its duties are concluded but no later than June 30, 1988. The commission is to analyze the effectiveness of Florida's current lemon law in providing consumers with prompt and inexpensive resolution of lemon complaints, the feasibility of alternative methods for the resolution of such
complaints, and other proposals as may improve the effectiveness of the lemon law.

-- The Department of Legal Affairs is to act as commission staff and is given subpoena power. The commission is to prepare and submit a final report to the Senate President, House Speaker, and the AG by January 1, 1988. The report is to contain findings and the recommendations of the commission and drafts of appropriate legislation.

-- A July 1, 1988 effective date is provided.
Situation Under the Existing Lemon Law:

On paper, the Florida lemon law, enacted in 1983, and subsequently amended in 1984, 1985, and 1986, ranks among the most comprehensive of the nation's 44 lemon laws. It is one of 15 lemon laws that give the consumer the option to choose a refund or vehicle replacement if a major warranty problem is not repaired within a reasonable time. It is one of 15 lemon laws that cover leased vehicles. It is one of 19 lemon laws that provide for a reimbursement of incidental charges in the event the consumer receives a purchase price refund. It is one of 11 lemon laws that require manufacturer-sponsored arbitration programs to consider or apply the lemon law as a condition to obtain approval or state-certification. It is one of eight lemon laws that require manufacturer-sponsored arbitration programs to submit dispute outcome information to a state agency as a condition to obtain approval or state-certification.

In practice, the Florida lemon law has not worked as intended. According to two national surveys conducted in 1985 and 1986 by J.D. Power & Associates, 310 of 3402 respondents (or 9.1%) who purchased new cars in Florida, indicated that they experienced at least one major problem requiring four repair attempts or one or
more problems involving repairs on 30 or more days during the first year ownership. Although these numbers translate into tens of thousands of Floridians who, on an annual basis, might qualify for purchase price refunds or vehicle replacements, few Floridians have obtained such relief.

The shortcomings of the existing law can be attributed to the barriers that impede the consumer's access to relief. The courts are impractical for most "lemon" owners to utilize. It is estimated that fewer than two dozen lemon law cases have gone to trial in Florida. Arbitration programs, established by most manufacturers, including GM, Ford, and Chrysler, are a court alternative that "lemon" owners do utilize, but rarely attain successful results. A statistical report by the Florida Division of Consumer Services revealed 19 purchase price refunds or vehicle replacements out of 709 disputes decided by these programs.

Situation From a National Perspective:

Florida's lemon law experiences are not unique. Nationally, the manufacturer-sponsored arbitration programs have been criticized in evaluations performed by the Massachusetts Office of Consumer Affairs and Attorneys General of Alaska, Connecticut, New Jersey, New Mexico, and New York. The agency reports indicate that, for the most part, these arbitration programs failed to gather relevant information, to conduct unbiased proceedings, and to consider or apply the lemon law in their decisions. These
findings are empirically substantiated in the 1985 and 1986 J.D. Power & Associates national surveys, whereby 484 of 613 (or 79%) of the new car owners who contacted these arbitration programs were dissatisfied with the results.

In response to this situation, Connecticut, Massachusetts, and New York amended their lemon laws, creating state-administered arbitration programs as another alternative. Since 1985, when Connecticut implemented its state-run arbitration program to hear lemon law disputes, followed by Massachusetts in 1986 and New York in 1987, the consumer has prevailed (either received a refund or vehicle replacement) in 1352 of 2222 (or 61%) of the disputes decided through September of 1987. In other jurisdictions that implemented state-run arbitration programs under their original lemon laws, Texas and Vermont in 1985, and Washington, D.C. in 1986, consumers have prevailed in over 40% of the decisions. Agency officials from these six jurisdictions estimate that ten to twenty percent of all disputes approved for arbitration are settled prior to arbitration by the consumer's acceptance of a refund or vehicle replacement. Montana and Washington will implement state-administered arbitration programs for lemon law disputes in 1988.

Summary of the Bill:

The most significant provision in the bill would create a state-run arbitration program. Consumers would only be required to first submit their disputes to the manufacturer's arbitration
program if that program is certified by the Division of Consumer Services. However, if the decision of a certified program is unfavorable to the consumer, the consumer is free to reject it and proceed to the state-run arbitration program. If a manufacturer did not offer a state-certified program, the consumer can come directly to the state-run program. The state-run arbitration program would be administered by the Office of the Attorney General and would consist of three-member arbitration boards in various locations (at least four) throughout the state.

Under the proposed law, decisions of the state-run program are final, unless appealed within 30 calendar days. If the manufacturer neither complies with, nor appeals, a consumer award, the court can affirm the award upon application by the consumer, and the Attorney General is authorized to impose a fine of up to $1,000 per day for each day of non-compliance. If the manufacturer appeals an award that is upheld by the court, the consumer is also entitled to receive attorneys fees and $25 per day if a loaner vehicle had not been provided during the interim between the state-run arbitration decision and the court decision. If the court determines that the manufacturer's appeal was brought in bad faith or solely for the purpose of harassment, it can double or even triple the amount of the total award. All records of disputes submitted to the state-run program and any subsequent appeals thereof, are to be indexed by each manufacturer and maintained by the Attorney General's Office as public information.
The proposed law would also revise some of the existing lemon law standards and remedies. Under the existing law, the manufacturer must correct all warranty problems within 25 working days. Under the proposed law, that standard would be changed to 30 calendar days. Another change in the proposed law would extend the four repair attempt/30 calendar day standard throughout the second year of ownership for any problem reported, but not fixed, during the first year of ownership. Another provision in the proposed law would alter the amount deducted for the consumer's use of the vehicle based upon a formula that takes into account the purchase price of the vehicle.

Other changes in the proposed law involve provisions designed to facilitate consumer awareness of lemon law rights and remedies. The proposed law specifies that at the time of sale, consumers would receive a written statement prepared by the Attorney General explaining their rights under the lemon law. The statement would also contain the toll-free number of the Division of Consumer Services which a consumer could contact at any point in time for further information. Another disclosure requirement in the proposed law would protect the rights of subsequent purchasers of vehicles previously returned to the manufacturer as a result of arbitration or litigation. The proposed law would require that the prior status of such a vehicle be placed on the title of the vehicle.

Other major changes contained in the proposed law would extend the time a consumer could bring a lemon law cause-of-action from
18 months to two years from the date of purchase, make any lemon law violation an unfair or deceptive trade practice, and empower the Attorney General to enforce the lemon law.

Under the proposed law, implementation responsibilities would be divided between the Division of Consumer Services and the Attorney General's Office. The Division of Consumer Services would respond to inquiries concerning lemon law information via a toll-free number; evaluate and certify manufacturer-sponsored arbitration programs, if such programs operate in accordance with lemon law requirements; and, screen lemon law disputes upon request by the consumer for eligibility for arbitration in the state-run program. The Attorney General's Office would prepare a lemon law rights brochure and application form for the state-run arbitration program; administer the state-run arbitration program; adopt rules as necessary to implement the lemon law; and investigate and enforce lemon law violations.

**Fiscal Impact:**

The proposed program would be self-funded. Seed money for the program, in the amount of $300,000, would be borrowed from the General Revenue Fund for Fiscal Year 1988-89. By June 30, 1990, this amount would be returned to the General Revenue Fund. A $2 fee to fund the program would be collected after January 1, 1989, on each new motor vehicle purchased or leased in this state. Any dispute that is approved for arbitration in the state-run program would require a fee of $100, of which the consumer and the
manufacturer would each pay $50.

Projected Impact of the Proposed Law:

The mere existence of the state-run arbitration program should resuscitate several concepts and provisions in the existing law that have been virtually dormant since their enactment. Through awards and pre-hearing settlements, hundreds and possibly thousands of "lemon" owners in Florida each year would receive purchase price refunds or vehicle replacements in a matter of months without the need to file a lawsuit, or even hire an attorney. Manufacturers, who have been reluctant to sponsor arbitration programs that comply with "the letter of the law," may now be inclined to establish programs that at least operate according to "the spirit of the law." The proximity of state-certified or state-run arbitration should benefit tens of thousands of Floridians each year who experience serious, lingering warranty problems, by increasing the likelihood that most of these problems will be successfully corrected.

The original lemon law held out the promise to new car buyers that state-sanctioned warranty performance standards, associated remedies (a refund or vehicle replacement when those standards were exceeded), and arbitration as a court alternative would protect their rights. The proposed law aspires to honor that promise. It should provide Floridians with one of the best "buyer protection plans" in the country.
I. SUMMARY:

A. Present Situation:

Chapter 681, Florida Statutes, is the "New Motor Vehicle Warranty Enforcement Act."

Section 681.101, F.S., provides the legislative intent of the chapter.

Section 681.102, F.S., provides among others, definitions of "motor vehicle," "manufacturer," "purchase price," and "replacement motor vehicle."

Section 681.103, F.S., requires the manufacturer to make repairs as are necessary to conform the vehicle to the express warranty, regardless of whether such repairs are made after the expiration of the warranty or one year following original delivery, whichever is less, if the consumer reported the nonconformity to the manufacturer during the warranty or one year period.

Sections 681.104, F.S., requires the consumer to notify the manufacturer of the need for repair and the manufacturer to notify the consumer within 5 days of a reasonable accessible repair facility and inform the consumer if it has established an informal dispute settlement program that complies with Title 16, Code of Federal Regulations, Part 703 and this chapter. The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle.

If the manufacturer or its agent cannot conform the vehicle after a reasonable number of repair attempts, it must either replace the vehicle with a comparable vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges less a reasonable allowance for use. A reasonable number of attempts to conform the vehicle to warranty is presumed to have occurred if the nonconformity has been the subject of at least 3 repair attempts, exclusive of the manufacturer's initial attempt, or the vehicle has been in service for at least 15 working days, exclusive of the 10 days originally afforded the manufacturer.

Affirmative defenses available to the manufacturer are: (1) the nonconformity does not impair the use, market value, or safety of the vehicle; (2) the nonconformity is the result of abuse, neglect, or unauthorized modifications of the vehicle by the consumer; or (3) the claim filed by the consumer was not in good faith.

Any action brought under this chapter must be brought within 6 months after expiration of the warranty, within 18 months of original delivery of the vehicle, or within 6 months of a final action of a certified panel.
Section 681.108, F.S., requires consumers to use a manufacturer's informal dispute settlement panel if certified by the division before seeking vehicle repurchase or replacement under this chapter. At least 1 member of such panel must be appointed by the Division of Consumer Services. Such panels are required to provide the division with a copy of each decision within 30 days of rendition. The decision is to contain the consumer's name and address, the dealership's name and address, the date the complaint was received, the relief requested, the name of each panel member, the panel's decision, and whether the manufacturer or the consumer accepted the decision. If the panel finds that a reasonable number of repair attempts have been made, the panel is required to order a refund or replacement vehicle.

The division is directed to prepare an annual report evaluating the operation of all manufacturer-sponsored settlement programs and to certify programs which comply with the provisions of Part 703 of Title 16 of the Code of Federal Regulation (Part 703). The division is authorized to subpoena documents connected therewith.

Any manufacturer establishing a settlement program must file with the division a copy of the annual audit required by Part 703 to be submitted to the FTC.

Section 681.110, F.S., empowers the Division of Consumer Services with enforcement authority.

Section 681.111, F.S., provides that a misrepresentation by a manufacturer as to the existence of an informal dispute mechanism that complies with Part 703 or this chapter is an unfair trade practice.

B. Effect of Proposed Changes:

Section 681.101, F.S., relating to legislative intent, is amended to replace reference to the express warranty issued by the manufacturer with the warranty provided for in this chapter.

Section 681.102, F.S., is amended to add the definition of "Board," "Lemon Law rights period," "nonconformity," "reasonable offset for use," and "warranty," and to delete the definition of "comparable motor vehicle," and "express warranty."

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Section 681.104, F.S., is amended to provide the manufacturer with a final, instead of an initial, repair attempt, within 14 calendar days, instead of 10 working days, of the consumer's delivery of the vehicle to a repair facility. The section is also amended to expressly provide that if a manufacturer fails to notify the consumer of a reasonably accessible repair facility or perform the repairs within the prescribed time, the manufacturer need not be allowed a final attempt to cure.

The section is amended to direct the Department of Revenue to refund to the manufacturer any sales tax refunded to the consumer, and to delete the requirement that any action brought under this chapter must be brought within 6 months of the expiration of the express warranty or within 18 months of the date of original delivery.

The section is also amended to provide that the presumption that a reasonable number of attempts to conform to warranty
have occurred where the vehicle has been out of service at least 30 calendar days instead of a total of 25 working days.

Section 681.108, F.S., is amended to require a manufacturer's dispute settlement procedure complies with Part 703 of the federal Magnuson-Moss Act in effect October 1, 1983, and to take into account, in rendering decisions, all legal and equitable factors germane to a fair and just decision.

The section is amended to require that members of dispute settlement procedures be trained in the provisions of this chapter and Part 703, and to delete references to the panel’s qualifications and duties.

Section 681.109, F.S., is created to provide who is eligible for dispute settlement by the Florida New Motor Vehicle Arbitration Board. The Division of Consumer Services of the Department of Agriculture and Consumer Services is authorized to screen all requests for arbitration before the board, and to forward to the board all disputes determined to be potentially entitled to relief.

Section 681.1095, F.S., is created to establish the Florida New Motor Vehicle Arbitration Board and to provide its functions. The Attorney General is authorized to establish as many boards as necessary to hear cases in various locations throughout the state. Each board is to consist of 3 permanent and 3 alternate members and an administrator and secretary is to be assigned to each board by the Department of Legal Affairs. One member is to be an automotive technical expert. A consumer must submit the dispute to the division before filing a civil action, and a manufacturer must submit to arbitration if the consumer so requests within 30 days of a final action by a certified procedure or within 1 year of the expiration of the Lemon Law rights period. The consumer and manufacturer must each pay a $50 filing fee, refundable if the consumer withdraws the dispute prior to hearing, and payable to the Florida New Motor Vehicle Arbitration Fund. The board must hear the dispute within 40 days and decide the dispute within 60 days after the division approves the request. If the decision is in favor of the consumer, the manufacturer must comply within 40 days.

The bill provides that a decision is final unless appealed by either party to circuit court within 30 days of notice of the decision. The appellant must send a copy of the petition to appeal to the board within 7 days of filing. If the board does not receive such copy within 40 days, the AG may impose a fine of $1,000 a day until the amount stands at twice the purchase price unless the manufacturer provides clear and convincing evidence that a delay or failure was beyond its control or was acceptable to the consumer. Proceeds are payable into the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs.

The provisions relating to compulsory arbitration are exempt from chapter 120. Appeals to circuit court are to be de novo. If the board's decision in favor of the consumer is upheld, the consumer may collect the value of the award, attorney's fees, costs, and continuing damage of $25 a day for all days beyond the 40 day period following the manufacturer's receipt of the consumer's acceptance of the board's decision where the manufacturer failed to provide free use of a loaner vehicle. If it is found that the manufacturer acted in bad faith in bringing the appeal, the court must double and may treble the total amount of the award.

Appeal by the manufacturer may be conditioned upon payment by same of the consumer's attorney's fees and security for costs and expenses resulting from the review period.
The Department of Legal Affairs is required to maintain records of each dispute submitted to the board and compile aggregate annual statistics of disputes submitted to the board and certain listed annual statistics for each manufacturer.

Section 681.110, F.S., is amended to empower the Department of Legal Affairs, instead of the Division of Consumer Services, with enforcement and rulemaking authority.

The bill amends s. 681.111, F.S., to provide any violation of the chapter, not only a misrepresentation regarding the existence of a mechanism, is an unfair or deceptive trade practice.

The bill creates s. 681.112, F.S., which allows the consumer to bring an action to recover damages caused by a violation of this chapter if commenced within 1 year of the expiration of the Lemon Law rights period or within 1 year after final action.

The bill creates section 681.113, F.S., which prohibits anything in the chapter from being construed to create any liability upon a dealer or creating a cause of action by a consumer against a dealer.

Section 681.114, F.S., is created to require a manufacturer who accepts the return of a vehicle pursuant to this chapter to notify the Department of Legal Affairs and report the VIN of the vehicle within 10 days of acceptance. Upon resale, the manufacturer or dealer is required to provide the consumer with certain conspicuous disclosures.

The bill creates s. 681.115, F.S., which voids any agreement for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in this chapter and extends such rights to a subsequent transferee.

Section 681.116, F.S., is created to provide that this chapter preempts any similar county or municipal ordinance.

The bill requires the Department of Legal Affairs to adopt rules.

The bill imposes a $2 fee on the consumer or lessee at the time of sale or lease agreement to be collected by the dealer or lessor and forwarded to the Department of Legal Affairs by the 20th of the month after the month such fees are collected. Monthly, one-fourth of the fees are to be forwarded by the department to the division.

The bill provides for a $225,000 appropriation from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and for a $75,000 appropriation to the division for FY 1988-89. The $300,000 so appropriated is to be refunded by June 30, 1990 to the General Revenue Fund from the trust fund.

The bill includes a severability clause, provides for future repeal on October 1, 1994, and sunset review prior to that date.

The act is to apply to motor vehicles purchased or leased in this state on or after January 1, 1989, and is to take effect January 1, 1989, except the provisions relating to the certification of manufacturer procedures and rulemaking shall take effect upon becoming law.
II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The provision creating the Florida New Motor Vehicle
Arbitration Board could benefit new car buyers to the extent
that they are more likely to obtain vehicle repurchase or
replacement awards from state-run arbitration or from state-
certified programs than from the current motor vehicle
manufacturer-sponsored arbitration programs. One study
indicates buy-back awards jump 52 percent when a mechanism is
converted from warranty sponsored to state-run arbitration.

The provision imposing a $2 arbitration fee upon each new car
buyer to be deposited in the Florida New Motor Vehicle
Arbitration Fund would adversely affect the estimated annual
1,274,803 new car buyers in Florida to the extent they are
subject to the fee when they buy a new car.

The provision requiring manufacturers to comply with an
arbitration decision favorable to the consumer within 40 days
or face a $1,000 per day fine could benefit consumers to the
extent that the provision provides statutory incentive for the
manufacturer to comply with the board's decision where no such
incentive existed in manufacturer-sponsored arbitration
programs. The provision could adversely affect a manufacturer
to the extent it does not comply with a board decision and
would consequently be subject to the fine.

Motor vehicle manufacturers which presently sponsor arbitration
programs in Florida could benefit to the extent that consumers
elect to use state-run arbitration instead of manufacturer-
sponsored arbitration and relieve those programs of an
indeterminable amount of their dispute load.

B. Government:

The provision creating a New Motor Vehicle Warranty Board
within the AG's Office would result in $1,900,000 in the
following non-recurring and recurring expenses:

<table>
<thead>
<tr>
<th>Year/Period</th>
<th>Wages &amp; Salaries</th>
<th>Employee Benefits</th>
<th>Travel Expenses</th>
<th>Xeroxing, Printing, Mailing &amp; Misc. Expenses</th>
<th>Rental Space Costs</th>
<th>Capital Outlay Costs</th>
<th>Total Projected Budget</th>
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<td>7/1/88-12/31/88</td>
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<td>$259,189</td>
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</table>

The provision imposing a $2 arbitration fee on all new car
buyers to be deposited in the Florida New Motor Vehicle
Arbitration Fund would generate $2,549,606 based on 1,274,803
new units annually sold or leased in Florida (1,274,803 x $2
per vehicle = $2,549,606). It is estimated that one-tenth of
that amount, $254,961, would be used in collecting fees
($2,549,606 - $254,961 = $2,294,645).

The provision directing that one-fourth of the revenue be
distributed by the Department of Legal Affairs to the Division
of Consumer Services for reviewing manufacturer procedures for
certification would benefit the division to the amount of
$573,661 ($2,294,645 divided by 4 = $573,661).
The provision imposing a $50 arbitration filing fee on both the consumer and the manufacturer would benefit the Department of Legal Affairs to the amount of $250,000 based on an estimated 2,500 cases arbitrated annually ($100 x 2,500 = $250,000). The 2,500 estimate is based upon the amount of lemon law disputes approved for state-run arbitration in Connecticut, Massachusetts, New York, and Vermont, respectively, in 1987, and a percentage of the number of new car and light truck sales in those states in 1986, as provided by the Motor Vehicle Manufacturers Association: 483/278,029; 1,104/473,389; 2,612/1,049,942; 207/47,332.

The Department of Legal Affairs, therefore, would benefit in the total amount of $1,970,000 in that it would receive $1,720,000 from the proceeds of the $2 arbitration fee after distributing one-fourth to the division, and it would receive $250,000 generated from the $50 filing fees ($1,720,000 + $250,000 = $1,970,000).

The provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumer within 40 days of notification of the consumer's acceptance would provide government with potential additional revenue to operate the board.

The provision authorizing the appropriation of $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and $75,000 to the Division of Consumer Services for FY 1988-89 to be refunded by June, 1990 from unencumbered funds in the trust fund temporarily benefits the trust fund to the extent it can use the funds for start up expenses to generate funds for repayment and the division to the extent it can use the funds to certify complying manufacturer dispute procedures.

III. COMMENTS:

An identical bill, HB 854, has been filed in the House.

IV. AMENDMENTS:

None.
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</tbody>
</table>

The provision imposing a $2 arbitration fee on all new car buyers to be deposited in the Florida New Motor Vehicle Arbitration Fund would generate $2,549,606 based on 1,274,803 new units annually sold or leased in Florida (1,274,803 x $2 per vehicle = $2,549,606). It is estimated that one-tenth of that amount, $254,961, would be used in collecting fees ($2,549,606 - $254,961 = $2,294,645).

The provision directing that one-fourth of the revenue be distributed by the Department of Legal Affairs to the Division of Consumer Services for reviewing manufacturer procedures for certification would benefit the division to the amount of $573,661 ($2,294,645 divided by 4 = $573,661).
The provision imposing a $50 arbitration filing fee on both the consumer and the manufacturer would benefit the Department of Legal Affairs to the amount of $250,000 based on an estimated 2,500 cases arbitrated annually ($100 x 2,500 = $250,000). The 2,500 estimate is based upon the amount of lemon law disputes approved for state-run arbitration in Connecticut, Massachusetts, New York, and Vermont, respectively, in 1987, and a percentage of the number of new car and light truck sales in those states in 1986, as provided by the Motor Vehicle Manufacturers Association: 483/278,029; 1,104/473,389; 2,612/1,049,942; 207/47,332.

The Department of Legal Affairs, therefore, would benefit in the total amount of $1,970,000 in that it would receive $1,720,000 from the proceeds of the $2 arbitration fee after distributing one-fourth to the division, and it would receive $250,000 generated from the $50 filing fees ($1,720,000 + $250,000 = $1,970,000).

The provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumer within 40 days of notification of the consumer's acceptance would provide government with potential additional revenue to operate the board.

The provision authorizing the appropriation of $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and $75,000 to the Division of Consumer Services for FY 1988-89 to be refunded by June, 1990 from unencumbered funds in the trust fund temporarily benefits the trust fund to the extent it can use the funds for start up expenses to generate funds for repayment and the division to the extent it can use the funds to certify complying manufacturer dispute procedures.

III. COMMENTS:

An identical bill, HB 854, has been filed in the House.

IV. AMENDMENTS:

None.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST                      STAFF DIRECTOR                      REFERENCE                      ACTION
1. Balzer                     Buck                           1. ECCA                         Fav/CS
2. Eccles                     Smith                          2. AP                           Fav/CS

SUBJECT: BILL NO. AND SPONSOR:
New Motor Vehicle Warranty
Enforcement Act                                         BILL NO. AND SPONSOR:
CS/CS/SB 556 by Committees on
Appropriations, ECCA, and
Senator Margolis

I. SUMMARY:

A. Present Situation:

Chapter 681, Florida Statutes, is the "New Motor Vehicle
Warranty Enforcement Act."

Section 681.101, F.S., provides the legislative intent of the
chapter.

Section 681.102, F.S., provides among others, definitions of
"motor vehicle," "manufacturer," "purchase price," and
"replacement motor vehicle."

Section 681.103, F.S., requires the manufacturer to make
repairs as are necessary to conform the vehicle to the express
warranty, regardless of whether such repairs are made after the
expiration of the warranty or one year following original
delivery, whichever is less, if the consumer reported the
nonconformity to the manufacturer during the warranty or one
year period.

Sections 681.104, F.S., requires the consumer to notify the
manufacturer of the need for repair and the manufacturer to
notify the consumer within 5 days of a reasonable accessible
repair facility and inform the consumer if it has established
an informal dispute settlement program that complies with Title
16, Code of Federal Regulations, Part 703 and this chapter.
The manufacturer has 10 days after delivery of the vehicle to
the facility to conform the vehicle.

If the manufacturer or its agent cannot conform the vehicle
after a reasonable number of repair attempts, it must either
replace the vehicle with a comparable vehicle or repurchase the
vehicle and refund the purchase price, including collateral and
incidental charges less a reasonable allowance for use. A
reasonable number of attempts to conform the vehicle to
warranty is presumed to have occurred if the nonconformity has
been the subject of at least 3 repair attempts, exclusive of
the manufacturer's initial attempt, or the vehicle has been in­
service for at least 15 working days, exclusive of the 10 days
originally afforded the manufacturer.

Affirmative defenses available to the manufacturer are: (1)
the nonconformity does not impair the use, market value, or
safety of the vehicle; (2) the nonconformity is the result of
abuse, neglect, or unauthorized modifications of the vehicle by
the consumer; or (3) the claim filed by the consumer was not in
good faith.

Any action brought under this chapter must be brought within 6
months after expiration of the warranty, within 18 months of
original delivery of the vehicle, or within 6 months of a
final action of a certified panel.
Section 681.108, F.S., requires consumers to use a manufacturer's informal dispute settlement panel if certified by the division before seeking vehicle repurchase or replacement under this chapter. At least 1 member of such panel must be appointed by the Division of Consumer Services. Such panels are required to provide the division with a copy of each decision within 30 days of rendition. The decision is to contain the consumer's name and address, the dealership's name and address, the date the complaint was received, the relief requested, the name of each panel member, the panel's decision, and whether the manufacturer or the consumer accepted the decision. If the panel finds that a reasonable number of repair attempts have been made, the panel is required to order a refund or replacement vehicle.

The division is directed to prepare an annual report evaluating the operation of all manufacturer-sponsored settlement programs and to certify programs which comply with the provisions of Part 703 of Title 16 of the Code of Federal Regulation (Part 703). The division is authorized to subpoena documents connected therewith.

Any manufacturer establishing a settlement program must file with the division a copy of the annual audit required by Part 703 to be submitted to the FTC.

Section 681.110, F.S., empowers the Division of Consumer Services with enforcement authority.

Section 681.111, F.S., provides that a misrepresentation by a manufacturer as to the existence of an informal dispute mechanism that complies with Part 703 or this chapter is an unfair trade practice.

B. Effect of Proposed Changes:

Section 681.101, F.S., relating to legislative intent, is amended to replace reference to the express warranty issued by the manufacturer with the warranty provided for in this chapter.

Section 681.102, F.S., is amended to add the definition of "Board," "Lemon Law rights period," "nonconformity," "reasonable offset for use," and "warranty," and to delete the definition of "comparable motor vehicle," and "express warranty."

Section 681.103, F.S., is amended to require a manufacturer to inform the consumer in writing at the time of acquisition how to file a claim and to provide the consumer each time his vehicle is returned for examination or repair under the warranty with an itemized repair order.

Section 681.104, F.S., is amended to provide the manufacturer with a final, instead of an initial, repair attempt, within 14 calendar days, instead of 10 working days, of the consumer's delivery of the vehicle to a repair facility. The section is also amended to expressly provide that if a manufacturer fails to notify the consumer of a reasonably accessible repair facility or perform the repairs within the prescribed time, the manufacturer need not be allowed a final attempt to cure.

The section is amended to direct the Department of Revenue to refund to the manufacturer any sales tax refunded to the consumer, and to delete the requirement that any action brought under this chapter must be brought within 6 months of the expiration of the express warranty or within 18 months of the date of original delivery.

The section is also amended to provide that the presumption that a reasonable number of attempts to conform to warranty
have occurred where the vehicle has been out of service at least 30 calendar days instead of a total of 25 working days.

Section 681.108, F.S., is amended to require a manufacturer's dispute settlement procedure complies with Part 703 of the federal Magnuson-Moss Act in effect October 1, 1983, and to take into account, in rendering decisions, all legal and equitable factors germane to a fair and just decision.

The section is amended to require that members of dispute settlement procedures be trained in the provisions of this chapter and Part 703, and to delete references to the panel's qualifications and duties.

Section 681.109, F.S., is created to provide who is eligible for dispute settlement by the Florida New Motor Vehicle Arbitration Board. The Division of Consumer Services of the Department of Agriculture and Consumer Services is authorized to screen all requests for arbitration before the board, and to forward to the board all disputes determined to be potentially entitled to relief.

Section 681.1095, F.S., is created to establish the Florida New Motor Vehicle Arbitration Board and to provide its functions. The Attorney General is authorized to establish as many boards as necessary to hear cases in various locations throughout the state. Each board is to consist of 3 permanent and 3 alternate members and an administrator and secretary is to be assigned to each board by the Department of Legal Affairs. One member is to be an automotive technical expert. A consumer must submit the dispute to the division before filing a civil action, and a manufacturer must submit to arbitration if the consumer so requests within 30 days of a final action by a certified procedure or within 1 year of the expiration of the Lemon Law rights period. The consumer and manufacturer must each pay a $50 filing fee, refundable if the consumer withdraws the dispute prior to hearing, and payable to the Florida New Motor Vehicle Arbitration Fund. The board must hear the dispute within 40 days and decide the dispute within 60 days after the division approves the request. If the decision is in favor of the consumer, the manufacturer must comply with the terms within 40 days.

The bill provides that a decision is final unless appealed by either party to circuit court within 30 days of notice of the decision. The appellant must send a copy of the petition to appeal to the board within 7 days of filing. If the board does not receive such copy within 40 days, the AG may impose a fine of $1,000 a day until the amount stands at twice the purchase price unless the manufacturer provides clear and convincing evidence that a delay or failure was beyond its control or was acceptable to the consumer. Proceeds are payable into the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs.

The provisions relating to compulsory arbitration are exempt from chapter 120. Appeals to circuit court are to be de novo.

If the board's decision in favor of the consumer is upheld, the consumer may collect the value of the award, attorney's fees, costs, and continuing damage of $25 a day for all days beyond the 40 day period following the manufacturer's receipt of the consumer's acceptance of the board's decision where the manufacturer failed to provide free use of a loaner vehicle. If it is found that the manufacturer acted in bad faith in bringing the appeal, the court must double and may treble the total amount of the award.

Appeal by the manufacturer may be conditioned upon payment by same of the consumer's attorney's fees and security for costs and expenses resulting from the review period.
The Department of Legal Affairs is required to maintain records of each dispute submitted to the board and compile aggregate annual statistics of disputes submitted to the board and certain listed annual statistics for each manufacturer.

Section 681.110, F.S., is amended to empower the Department of Legal Affairs, instead of the Division of Consumer Services, with enforcement and rulemaking authority.

The bill amends s. 681.111, F.S., to provide any violation of the chapter, not only a misrepresentation regarding the existence of a mechanism, is an unfair or deceptive trade practice.

The bill creates s. 681.112, F.S., which allows the consumer to bring an action to recover damages caused by a violation of this chapter if commenced within 1 year of the expiration of the Lemon Law rights period or within 1 year after final action.

The bill creates section 681.113, F.S., which prohibits anything in the chapter from being construed to create any liability upon a dealer or creating a cause of action by a consumer against a dealer.

Section 681.114, F.S., is created to require a manufacturer who accepts the return of a vehicle pursuant to this chapter to notify the Department of Legal Affairs and report the VIN of the vehicle within 10 days of acceptance. Upon resale, the manufacturer or dealer is required to provide the consumer with certain conspicuous disclosures regarding the vehicle nonconformity, and is required to warrant to correct such nonconformity for a term of one year or 12,000 miles, whichever occurs first. The Department of Legal Affairs shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

The bill creates s. 681.115, F.S., which voids any agreement for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in this chapter and extends such rights to a subsequent transferee.

Section 681.116, F.S., is created to provide that this chapter preempts any similar county or municipal ordinance.

The bill requires the Department of Legal Affairs to adopt rules.

The bill imposes a $2 fee to be collected by a dealer or lessor from the consumer at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. Such fees shall be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the division to carry out the provisions of ss. 681.108 and 681.109. The Department of Legal Affairs shall contract with the division for payment of services performed by the division pursuant to ss. 681.108 and 681.109.

The bill provides for a $225,000 appropriation from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund, and for a $75,000 general revenue appropriation to the Division of Consumer Services for FY 1988-89. The $300,000 so appropriated is to be refunded by June 30, 1990 to the General Revenue Fund from the trust fund. Additionally, the amount of $700,000 from the Motor Vehicle Warranty Trust Fund and 13 positions are
appropriated to the Department of Legal Affairs for implementation of this bill.

The bill includes a severability clause, provides for future repeal on October 1, 1994, and sunset review prior to that date.

The act is to apply to motor vehicles purchased or leased in this state on or after January 1, 1989, and is to take effect January 1, 1989, except the provisions relating to the certification of manufacturer procedures and rulemaking shall take effect upon becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The provision creating the Florida New Motor Vehicle Arbitration Board could benefit new car buyers to the extent that they are more likely to obtain vehicle repurchase or replacement awards from state-run arbitration or from state-certified programs than from the current motor vehicle manufacturer-sponsored arbitration programs. One study indicates buy-back awards jump 52 percent when a mechanism is converted from warranty sponsored to state-run arbitration.

The provision imposing a $2 arbitration fee upon each new car buyer to be deposited in the Florida New Motor Vehicle Arbitration Fund would adversely affect the estimated annual 1,274,803 new car buyers in Florida to the extent they are subject to the fee when they buy a new car.

The provision requiring manufacturers to comply with an arbitration decision favorable to the consumer within 40 days or face a $1,000 per day fine could benefit consumers to the extent that the provision provides statutory incentive for the manufacturer to comply with the board's decision where no such incentive existed in manufacturer-sponsored arbitration programs. The provision could adversely affect a manufacturer to the extent it does not comply with a board decision and would consequently be subject to the fine.

Motor vehicle manufacturers which presently sponsor arbitration programs in Florida could benefit to the extent that consumers elect to use state-run arbitration instead of manufacturer-sponsored arbitration and relieve those programs of an indeterminable amount of their dispute load.

B. Government:

The provision imposing a $2 arbitration fee on all new car buyers to be deposited in the Florida New Motor Vehicle Arbitration Fund would generate $2,549,606 based on 1,274,803 new units annually sold or leased in Florida (1,274,803 x $2 per vehicle = $2,549,606). It is estimated that one-tenth of that amount, $254,961, would be used in collecting fees by the Department of Revenue. The remaining amount of $2,294,645 would be distributed to the Department of Legal Affairs, of which an amount of up to one-fourth is to be distributed to the Division of Consumer Services for reviewing manufacturer procedures for certification resulting in up to $573,661 for the division.

The provision imposing a $50 arbitration filing fee on both the consumer and the manufacturer generates for the Department of Legal Affairs the amount of $250,000 based on an estimated 2,500 cases arbitrated annually ($100 x 2,500 = $250,000). The 2,500 estimate is based upon the amount of lemon law disputes approved for state-run arbitration in Connecticut, Massachusetts, New York, and Vermont, respectively, in 1987, and a percentage of the number of new car and light truck sales.
in those states in 1986, as provided by the Motor Vehicle Manufacturers Association.

The provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumer within 40 days of notification of the consumer's acceptance would provide government with potential additional revenue to operate the board.

Section 17 appropriates $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and $75,000 from the General Revenue Fund to the Division of Consumer Services for Fiscal Year 1988-89 as start-up costs, to be repaid to the General Revenue Fund by June 30, 1990, from unencumbered funds in the trust fund.

The amount of $700,000 from the Motor Vehicle Warranty Trust Fund and 13 positions are appropriated to the Department of Legal Affairs to carry out the provisions of this bill. The department projects expenditures of $525,000 for Fiscal Year 1988-89 and $1,900,000 for Fiscal Year 1989-90. These projections are based upon anticipated receipts rather than any actual workload calculation.

III. COMMENTS:

This bill does not establish positions or authorize any expenditure level for the Division of Consumer Services from the trust fund herein created. This authorization would need to further be addressed.

A similar bill, CS/HB 854, is under consideration in the House.

This act shall take effect January 1, 1989, except for sections 5, 15, and 21, which will take effect upon becoming a law.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 681, Florida Statutes, is the "New Motor Vehicle Warranty Enforcement Act"; known as the Lemon Law. Chapter 681 requires motor vehicle manufacturers to make repairs as are necessary to conform a vehicle to the express warranty issued by the manufacturer and establishes procedures to be followed by both consumers and manufacturers in new vehicle warranty enforcement.

The chapter requires the consumer to notify the manufacturer of the need for repairs. Upon receipt of such notice, the manufacturer must notify the consumer within five days of a reasonably accessible repair facility and inform the consumer if it has established an informal dispute settlement program.

The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle. If the manufacturer or its agent (a duly licensed franchised motor vehicle dealer) cannot conform the vehicle after a reasonable number of repair attempts, the manufacturer must either replace the vehicle with a comparable vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges, less a reasonable allowance for use. A reasonable number of attempts to conform the vehicle to warranty is presumed to have occurred if the nonconformity has been the subject of at least three repair attempts, exclusive of the manufacturer's initial attempt, or if the vehicle has been out of service due to such conformity for at least 15 working days, exclusive of the 10 days originally afforded the manufacturer.

Affirmative defenses which may be used as a result of claims filed under the chapter are specified. These are: (1) if the nonconformity does not impair the use, market value, or safety of the vehicle; (2) if the nonconformity is the result of abuse, neglect, or unauthorized modifications of the vehicle by the
consumer; or (3) if the claim filed by the consumer was not in good faith.

Any action brought under this chapter must be brought within six months after expiration of the warranty, within 18 months of original delivery of the vehicle, or within six months of a final action of a certified dispute settlement panel. Consumers are required to use a manufacturer's informal dispute settlement panel if certified by the Division of Consumer Services of the Department of Agriculture and Consumer Services before seeking vehicle repurchase or replacement.

The function of a manufacturer's informal dispute settlement panel is specified. The panel is to determine whether the motor vehicle does or does not conform to all applicable express warranties which affect the use, market value, or safety of the vehicle to the consumer. If the vehicle is found to be in nonconformity, the panel is to determine whether a reasonable number of attempts to have the vehicle repaired have been made. If the panel finds that a reasonable number of repair attempts have been made and the vehicle does not conform, the panel must find that the consumer is entitled to a refund or replacement.

At least one member of a manufacturer's informal dispute settlement panel must be appointed by the Division of Consumer Services. Such panels are required to provide the Division with a copy of each decision within 30 days of rendition.

The Division of Consumer Services is required to prepare an annual report evaluating the operation of manufacturer-sponsored, informal dispute settlement programs and to certify those complying with the provisions of Title 16, Code of Federal Regulations, Part 703.

The Division is authorized to subpoena witnesses and documents in connection with its evaluation of the dispute settlement programs.

Any manufacturer establishing a settlement program must file with the Division a copy of the annual audit required by Part 703 to be submitted to the Federal Trade Commission (FTC). Chapter 681 deems misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that complies with Part 703 or the chapter as an unfair or deceptive trade practice.

The Division is given the power to enforce the New Motor Vehicle Warranty Act and is authorized to impose civil penalties against a manufacturer, not to exceed $1,000 for each count or separate offense.

B. EFFECT OF PROPOSED CHANGES:

HB 854 amends Chapter 681 to create The Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs. In so doing it establishes procedures for the resolution of consumer complaints by a state agency when a timely decision is not
rendered by a manufacturer's internal dispute panel or when the owner of a defective vehicle is not satisfied with the decision reached after negotiations in a manufacturer-sponsored internal dispute proceeding.

Where a manufacturer has no certified informal dispute settlement procedure, the bill allows consumers to apply directly to the Division of Consumer Services to have the dispute submitted to the Board for arbitration.

The bill provides for the screening of requests for arbitration by the Division of Consumer Services. The Division is directed to forward to the board all disputes that the Division determines are potentially entitled to relief under the chapter. The bill provides procedures for reconsideration by the Division of dispute requests rejected as ineligible for arbitration and provides that a consumer may file a lawsuit to enforce the remedies if a dispute is rejected for arbitration.

The bill authorizes the establishment of regional boards to hear cases in various locations throughout the state in order that any consumer whose dispute is approved for arbitration by the Division may attend an arbitration hearing at a reasonably convenient location.

The bill provides for appointment of board members by the Attorney General for initial terms of one year. Thereafter, membership terms shall be for two years. The bill provides for the membership of each board to consist of three members, including an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer.

The bill transfers responsibility for enforcement of Chapter 631 from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

The Department of Legal Affairs is authorized to investigate disputes and subpoena records and witnesses at the request of the Board. The bill provides procedures for conduct of the arbitration hearings. The Board is authorized to inspect the vehicle if the Board deems such inspection appropriate of upon request of the parties.

The Board is directed to grant relief if a reasonable number of attempts have been undertaken to correct a nonconformity.

The bill provides timelines for the hearing of a dispute and issuance of the Board's decision.

The bill requires compliance by the manufacturer within 40 calendar days if the decision is in favor of the consumer. Compliance is specified to occur on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award.
The bill provides that a decision of the Board is final unless appealed and provides procedures for the appeal of any decision made by an arbitration board. The bill requires that a petition be filed within 30 calendar days with notice to the Board within seven calendar days of the filing of the petition. The bill provides that an appeal shall be de novo and that the appealing party must state the action requested and the grounds relied upon.

If the judicial finding upholds the decision of the Board in favor of the consumer, the bill allows recovery by the consumer of the pecuniary value of the award, attorney's fees and all cost and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision.

The bill authorizes the imposition of a fine up to $1,000 per day until the amount stands at twice the purchase price of the motor vehicle if the manufacturer has neither complied with nor appealed a decision of the Board.

The bill authorizes the doubling and tripling of awards if a court determines that a manufacturer acted in bad faith in bringing an appeal or brought the appeal solely for the purpose of harassment.

The bill provides for a $50 fee to be paid by both the consumer and manufacturer for disputes arbitrated by the Board and provides for the refund of such fees if a dispute is withdrawn prior to the hearing. The bill provides that all fees shall be paid to the Florida New Motor Vehicle Arbitration Fund.

The bill adds definitions for "warranty", "nonconformity", "Lemon Law rights period", and "reasonable offset for use".

The bill directs the Department of Revenue to refund to the manufacturer, any sales tax which the manufacturer refunded to the consumer upon request and documentation by the manufacturer that a refund of the sales tax was made to the consumer.

The bill requires a manufacturer to provide an itemized repair statement each time a consumer returns his vehicle for examination or repair under the warranty.

The bill defines the "Lemon Law rights period" to be the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation.

The Department of Legal Affairs is required to maintain records of each dispute submitted to the board and is directed to compile aggregate annual statistics for all disputes submitted to and decided by the board as well as annual statistics for each manufacturer relative to the incidence of replacement requests and other statistics related to warranty enforcement and arbitration.
The bill clarifies dealer liability to extend only to written express warranties made by a dealer apart from the manufacturer's warranties and declares that a dealer may not be made a party defendant in any action related to Chapter 631 except as it relates to dealer liability as provided in the bill. The bill prohibits a manufacturer from charging back or requiring reimbursement by the dealer for any costs incurred by the manufacturer arising out of this chapter.

The bill requires a disclosure statement be provided to the buyer of a motor vehicle which has been returned to the manufacturer prior to the wholesale or retail trade of such a vehicle and upon transfer of title.

The bill declares void any agreement entered into by a consumer for the purchase of a motor vehicle that waives, limits, or disclaims the rights as set forth in Chapter 681 and clarifies that consumer rights provided by the chapter are extended to a subsequent transferee of motor vehicles covered by the chapter. The bill declares the preemptive status of Chapter 681 over any county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

The bill provides that a $2 fee shall be collected by a dealer or lessor from the consumer or lessor at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. The bill provides for the deposit of the fees by the Department of Legal Affairs monthly into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs is directed to distribute one-fourth of the fees received to the Division of Consumer Services for the Division's execution of duties under the chapter.

The bill provides a specific appropriation from the General Revenue Fund to total $300,000, of which $75,000 is specifically appropriated to the Division of Consumer Services for the FY 1988-89. The bill requires reimbursement of the General Revenue Fund in the amount of $300,000 from unencumbered funds in the Motor Vehicle Warranty Trust Fund by June 30, 1990.

The bill provides a severability clause for the chapter and provides for the future review and repeal of Chapter 681 on October 1, 1994.

The bill applies the provisions of this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

The bill provides an effective date for the act of January 1, 1989, except for sections 5 (informal dispute settlement) and 15 (adoption of rules by the Department of Legal Affairs) which shall take effect upon becoming law.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. amends s. 681.101 F.S., relative to legislative intent to clarify that a duly franchised motor
vehicle dealer is an authorized service agent of the manufacturer.

Section 2. amends s. 681.102, F.S., relative to definitions; adding definitions for "Board", "Division", "Lemon Law rights period", "Nonconformity", "Reasonable offset for use", and "Warranty".

Section 3. amends s. 681.103, F.S., relative to the duty of a manufacturer to conform a motor vehicle; deleting the requirement that a manufacturer conform a vehicle to all applicable express warranties; requiring that a motor vehicle be conformed to warranties as defined in the bill; requiring an itemized statement be provided to the consumer each time his motor vehicle is examined or repaired under the warranty.

Section 4. amends s. 681.104, F.S., relative to nonconformity of motor vehicles; detailing the procedure to be followed by both the consumer and manufacturer in reporting a nonconformity and the time frame within which the manufacturer must correct the nonconformity; authorizing the return to the manufacturer by the Department of Revenue of any sales tax monies which the manufacturer refunded to the consumer; modifying the conditions under which a reasonable number of attempts to correct a nonconformity shall be presumed to have occurred; clarifying affirmative defenses to claims under this chapter.

Section 5. amends s. 681.108, F.S., relative to the informal dispute settlement procedure; specifying factors to be considered by informal dispute settlement panels when rendering decisions; requiring the training of informal dispute settlement panel members; deleting language directing an informal dispute settlement panel to make certain determinations relative to conformity and nonconformity of a motor vehicle.

Section 6. creating s. 681.109, F.S., providing arbitration eligibility criteria; providing for the submission of disputes to the Board if a timely decision has not be obtained through a manufacturer's certified informal dispute settlement procedure or if a consumer is not satisfied with the decision reached through such a procedure; allowing a consumer to apply directly to the Board for arbitration if a manufacturer does not have a certified informal dispute settlement procedure; providing for the screening of all requests for arbitration by the Division of Consumer Services; requiring the Division to forward to the Board all disputes that the Division determines are potentially entitled to relief; establishing criteria for rejection and reconsideration by the Division of requests for arbitration.
Section 7. creating s. 681.1095, F.S., establishing the Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs; providing for appointment of members by the Attorney General; providing for initial and subsequent terms of membership; authorizing the establishment of boards in numbers and locations as necessary to carry out the provisions of the chapter; providing for three-member boards with alternate members; providing that one member of each board shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer; requiring that disputes be submitted to the Division before any civil action is filed; requiring manufacturers to submit to arbitration by the Board; requiring a $50 arbitration filing fee to be paid by both consumers and manufacturers; providing for the refund of such fees under certain conditions; providing for the deposit of such fees in the Florida New Motor Vehicle Arbitration Fund; authorizing the Department of Legal Affairs to investigate disputes, subpoena records and witnesses; allowing oral and written testimony, examination and cross-examination of witnesses; providing for the examination of the vehicle; directing the Board to grant relief if a reasonable number of attempts have been made to correct a nonconformity; specifying timeframes for the hearing of and deciding of a dispute by the Board; requiring compliance by the manufacturer if the decision is in favor of the consumer; providing for the appeal of Board decisions; requiring that appeals be de novo; authorizing the imposition of a fine up to $1,000 per day upon the manufacturer until the amount stands at twice the purchase price of the motor vehicle for delays or failure to comply with a Board decision; providing for deposit of fine revenues in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs; providing for the recovery by the consumer of certain costs if a Board decision is upheld by a court; authorizing the recovery of the pecuniary award, attorney's fees, continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following receipt of the manufacturer of the Board's decision; providing for double and triple awards under certain conditions; providing conditions for appellate review; requiring the Department of Legal Affairs to maintain records pertaining to disputes submitted to the Board; requiring the compilation of aggregate annual statistics pertaining to disputes; specifying the statistics to be compiled.

Section 8. amends s. 681.110, F.S., relative to compliance and disciplinary action; transferring responsibility
Section 9. amends s. 681.111, F.S., relative to unfair or deceptive trade practice; broadens the action by a manufacturer which shall be considered an unfair or deceptive trade practice to include any violation of Chapter 681.

Section 10. creates s. 681.112, F.S., relative to consumer remedies; authorizing the filing of an action to recover damages caused by a violation of the chapter; requiring awards to consumers who prevail; specifying the award of pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief; requiring that an action brought under this chapter must be commenced within one year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute settlement procedure or submits a dispute to the Division or Board, within one year after the final action of the procedure, Division, or Board.

Section 11. creates s. 681.113, F.S., relative to dealer liability; clarifying that motor vehicle dealers as defined in s. 320.60(11)(a), F.S., are not liable under Chapter 681 except for written express warranties made by the dealer apart from the manufacturer's warranties; providing that a dealer may not be made a party defendant in any action under this chapter, except as provided in this section; prohibiting a manufacturer from charging back or requiring reimbursement by the dealer for any costs incurred by the manufacturer arising out of this chapter unless evidence can be provided that the dealer made repairs in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. creates s. 681.114, F.S., relative to resale of returned vehicles; providing for the notification by the manufacturer to the Department of Legal Affairs of any motor vehicle accepted for return with the identification number of such vehicles; requiring the manufacturer or dealer to give the buyer a disclosure statement upon wholesale or retail resale or transfer of title of such returned vehicles; specifying the contents of the disclosure statement; requiring the disclosure statement to be displayed on the motor vehicle's certificate of title.

Section 13. creates s. 681.115, F.S., relative to agreements; declaring that any agreements entered into by consumers for the purchase of a motor vehicle which waive, limit, or disclaim the rights set forth in this chapter are void as contrary to public policy;
extending the rights under this chapter to a subsequent transferee of such a motor vehicle.

Section 14. creates s. 681.116, F.S., relative to preemption; preempting any county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

Section 15. requires the Department of Legal Affairs to adopt rules to implement this chapter.

Section 16. requires a $2 fee to be collected by a dealer or lessor upon the consummation of the sale or lease of a motor vehicle; requiring the collection of such fees by the Department of Legal Affairs and deposit monthly into the Motor Vehicle Warranty Trust Fund; requiring the distribution of one-fourth of the fees to the Division of Consumer Affairs.

Section 17. appropriates the sum of $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and the sum of $75,000 from the General Revenue Fund to the Division of Consumer Services for the fiscal year 1988-1989; requires the total sum of $300,000 be refunded by June 30, 1990, to the General Revenue Fund form unencumbered funds in the Motor Vehicle Warranty Trust Fund.

Section 18. provides a severability clause.

Section 19. provides for the future review and repeal of Chapter 681 on October 1, 1994.

Section 20. applies this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. provides an effective date of January 1, 1989 for the act, except for sections 5 and 15 which shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

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<td>101,630</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
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2. Recurring or Annualized Continuation Effects:

Department of Legal Affairs $418,329 $1,735,989
Division of Consumer Services 561,410 589,481 618,955

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

A provision in HB 854 imposes a $2 arbitration fee on all new car buyers and lessees to be deposited in the Motor Vehicle Warranty Trust Fund. Based on a sales and lease volume of 1.27 million vehicles annually it has been estimated that the fee would generate approximately $2.5 million. It is estimated that one-tenth of that amount or $255,000, would be used in collecting the fee.

Another provision in the bill directs that one-fourth of the fee revenue be distributed by the Department of Legal Affairs to the Division of Consumer Services for funding its activities under this bill which include screening requests for arbitration and monitoring manufacturer-sponsored informal dispute settlement programs. It has been estimated that the Division would receive approximately $553,000 annually as a result or $46,080 monthly as the bill requires distribution on a monthly basis.

The bill's provision imposing a $50 arbitration filing fee on both the consumer and the manufacturer has been projected to generate approximately $250,000 which would accrue to the Department of Legal Affairs. The projection is based on an estimated 2,500 cases arbitrated annually at $100 in fees per case. There would be some fluctuation in the revenue generated from this fee since the bill allows refund of the fee to both the consumer and manufacturer if the consumer withdraws a dispute prior to hearing.

The Department of Legal Affairs would benefit in the amount of $1,970,000 deposited in the Motor Vehicle Warranty Trust Fund in that it would receive approximately $1.72 million from the proceeds of the $2 arbitration fee after distributing one-fourth to the Division and it would receive $250,000 from the $50 filing fees.

The bill's provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumer within 40 days of notification of the consumer's acceptance would provide government with potential additional revenue to operate the board. These monies would be deposited into the Motor Vehicle Warranty Trust Fund.
The bill appropriates $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and a sum of $75,000 from the General Revenue Fund to the Division of Consumer Services for the Fiscal Year 1988-1989. The bill further provides that the total sum of $300,000 appropriated from the General Revenue Fund shall be refunded by June 30, 1989 from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Automobile manufacturers will incur costs for the repair or replacement of certain motor vehicles as provided by this bill. Manufacturers could incur costs also due to fines assessed up to $1,000 for each offense in violations of the chapter. The bill allows the imposition of fines up to twice the amount of the purchase price of a motor vehicle if a manufacturer does not comply with an arbitration board decision.

   The bill requires a $50 arbitration fee to be paid by both consumers and automobile manufacturers. This fee is refundable to both parties if the consumer withdraws the dispute prior to hearing.

   A manufacturer could incur costs for court-awarded damages as authorized by the bill, including the pecuniary value of the award, attorney's fees, and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision. The bill authorizes double and triple awards against the manufacturer under certain conditions.
2. **Direct Private Sector Benefits:**

Consumers would be benefitted favorably by the repair or replacement of new motor vehicles and could recover certain expenses resulting from litigation as provided by the bill.

3. **Effects on Competition, Private Enterprise, and Employment Markets:**

D. **FISCAL COMMENTS:**

III. **LONG RANGE CONSEQUENCES:**

IV. **COMMENTS:**

Since 1982, 46 states have enacted "lemon laws" to protect consumers from defective new motor vehicles. The thrust of the regulation in a number of these states, Florida included, has been upon the settlement of disputes through manufacturer-sponsored, informal dispute settlement programs. Six states have subsequently added or substituted government-run arbitration programs. These are Connecticut, Massachusetts, New York, Texas, Vermont and Washington.

V. **AMENDMENTS:**

VI. **SIGNATURES:**

**SUBSTANTIVE COMMITTEE:**
Prepared by: Edith Dunlap

Staff Director: Cliff Nilson

**FINANCE & TAXATION:**
Prepared by: 

Staff Director: 

**APPROPRIATIONS:**
Prepared by: 

Staff Director: 
HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 854

RELATING TO: New Motor Vehicle Warranties/Lemon Law

SPONSOR(S): Committee on Regulatory Reform and Reps. Drage, Tobin, Grindle and Friedman

EFFECTIVE DATE: October 1, 1988

COMPANION BILL(S): CS/HB 556

OTHER COMMITTEES OF REFERENCE: (1) Finance and Taxation
(2) Appropriations

I. SUMMARY:

A. PRESENT SITUATION:

Chapter 681, Florida Statutes, is the "New Motor Vehicle Warranty Enforcement Act", known as the Lemon Law. Chapter 681 requires motor vehicle manufacturers to make repairs as are necessary to conform a vehicle to the express warranty issued by the manufacturer and establishes procedures to be followed by both consumers and manufacturers in new vehicle warranty enforcement.

The chapter requires the consumer to notify the manufacturer of the need for repairs. Upon receipt of such notice, the manufacturer must notify the consumer within five days of a reasonably accessible repair facility and inform the consumer if it has established an informal dispute settlement program.

The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle. If the manufacturer or its agent (a duly licensed franchised motor vehicle dealer) cannot conform the vehicle after a reasonable number of repair attempts, the manufacturer must either replace the vehicle with a comparable vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges, less a reasonable allowance for use.

Consumers are required to use a manufacturer's informal dispute settlement panel if certified by the Division of Consumer Services of the Department of Agriculture and Consumer Services before seeking vehicle repurchase or replacement.

Any manufacturer establishing a settlement program must file with the Division a copy of the annual audit required by Part 703 to be submitted to the Federal Trade Commission (FTC). Chapter 681 deems misrepresentation by a manufacturer as to the existence of
an informal dispute settlement mechanism that complies with Part 703 or the chapter as an unfair or deceptive trade practice.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 854 amends Chapter 681 to create The Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs. In so doing it establishes procedures for the resolution of consumer complaints by a state agency when a timely decision is not rendered by a manufacturer's internal dispute panel or when the owner of a defective vehicle is not satisfied with the decision reached after negotiations in a manufacturer-sponsored internal dispute proceeding.

Where a manufacturer has no certified informal dispute settlement procedure, the bill allows consumers to apply directly to the Division of Consumer Services to have the dispute submitted to the Board for arbitration.

The bill provides for the screening of requests for arbitration by the Division of Consumer Services. The Division is directed to forward to the board all disputes that the Division determines are potentially entitled to relief under the chapter. The bill provides procedures for reconsideration by the Division of dispute requests rejected as ineligible for arbitration and provides that a consumer may file a lawsuit to enforce the remedies if a dispute is rejected for arbitration.

The bill authorizes the establishment of regional boards to hear cases in various locations throughout the state. The bill provides for appointment of board members by the Attorney General. The bill transfers responsibility for enforcement of Chapter 631 from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

The bill provides that a decision of the Board is final unless appealed and provides procedures for the appeal of any decision made by an arbitration board.

If the judicial finding upholds the decision of the Board in favor of the consumer, the bill allows recovery by the consumer of the pecuniary value of the award, attorney's fees and all cost and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision.

The bill authorizes the imposition of a fine up to $1,000 per day until the amount stands at twice the purchase price of the motor vehicle if the manufacturer has neither complied with nor appealed a decision of the Board.

The bill authorizes the doubling and tripling of awards if a court determines that a manufacturer acted in bad faith in bringing an appeal or brought the appeal solely for the purpose of harassment.
The bill provides for a $50 fee to be paid by both the consumer and manufacturer for disputes arbitrated by the Board and provides for the refund of such fees if a dispute is withdrawn prior to the hearing. The bill provides that all fees shall be paid to the Florida New Motor Vehicle Arbitration Fund.

The bill directs the Department of Revenue to refund to the manufacturer, any sales tax which the manufacturer refunded to the consumer upon request and documentation by the manufacturer that a refund of the sales tax was made to the consumer.

The bill defines the "Lemon Law rights period" to be the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation.

The bill clarifies dealer liability to extend only to written express warranties made by a dealer apart from the manufacturer's warranties.

The bill requires a disclosure statement be provided to the buyer of a motor vehicle which has been returned to the manufacturer prior to the wholesale or retail trade of such a vehicle and upon transfer of title. The bill clarifies that consumer rights provided by the chapter are extended to a subsequent transferee of motor vehicles covered by the chapter.

The bill declares the preemptive status of Chapter 681 over any county or municipal ordinance regarding consumer warranty rights.

The bill provides that a $2 fee shall be collected by a dealer or lessor from the consumer or lessor at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. The bill provides for the deposit of the fees by the Department of Legal Affairs monthly into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs is directed to distribute one-fourth of the fees received to the Division of Consumer Services for the Division's execution of duties under the chapter.

The bill applies the provisions of this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. amends s. 681.101 F.S., relative to legislative intent to clarify that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer.

Section 2. amends s. 681.102, F.S., relative to definitions; adding definitions for "Board", "Division", "Lemon Law rights period", "Nonconformity", "Reasonable offset for use", and "Warranty".

Section 3. amends s. 681.103, F.S., relative to the duty of a
manufacturer to conform a motor vehicle; deleting the
requirement that a manufacturer conform a vehicle to
all applicable express warranties; requiring that a
motor vehicle be conformed to warranties as defined
in the bill; requiring an itemized statement be
provided to the consumer each time his motor vehicle
is examined or repaired under the warranty.

Section 4. amends s. 681.104, F.S., relative to nonconformity
of motor vehicles; detailing the procedure to
be followed by both the consumer and manufacturer in
reporting a nonconformity and the time frame within
which the manufacturer must correct the
nonconformity; authorizing the return to the
manufacturer by the Department of Revenue of any
sales tax monies which the manufacturer refunded to
the consumer; modifying the conditions under which a
reasonable number of attempts to correct a
nonconformity shall be presumed to have occurred;
clarifying affirmative defenses to claims under this
chapter.

Section 5. amends s. 681.108, F.S., relative to the informal
dispute settlement procedure; specifying factors to
be considered by informal dispute settlement panels
when rendering decisions; requiring the training of
informal dispute settlement panel members; deleting
language directing an informal dispute settlement
panel to make certain determinations relative to
conformity and nonconformity of a motor vehicle.

Section 6. creating s. 681.109, F.S., providing arbitration
eligibility criteria; providing for the submission of
disputes to the Board if a timely decision has not be
obtained through a manufacturer's certified informal
dispute settlement procedure or if a consumer is not
satisfied with the decision reached through such a
procedure; allowing a consumer to apply directly to
the Board for arbitration if a manufacturer does not
have a certified informal dispute settlement
procedure; providing for the screening of all
requests for arbitration by the Division of Consumer
Services; requiring the Division to forward to the
Board all disputes that the Division determines are
potentially entitled to relief; establishing criteria
for rejection and reconsideration by the Division of
requests for arbitration.

Section 7. creating s. 681.1095, F.S., establishing the Florida
New Motor Vehicle Arbitration Board within the
Department of Legal Affairs; providing for
appointment of members by the Attorney General;
providing for initial and subsequent terms of
membership; authorizing the establishment of boards
in numbers and locations as necessary to carry out
the provisions of the chapter; providing for
three-member boards with alternate members; providing that one member of each board shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer; requiring that disputes be submitted to the Division and to the Board before any civil action is filed; requiring manufacturers to submit to arbitration by the Board; requiring a $50 arbitration filing fee to be paid by both consumers and manufacturers; providing for the refund of such fees under certain conditions; providing for the deposit of such fees in the Florida New Motor Vehicle Arbitration Fund; authorizing the Department of Legal Affairs to investigate disputes, subpoena records and witnesses; allowing oral and written testimony, examination and cross-examination of witnesses; providing for the examination of the vehicle; directing the Board to grant relief if a reasonable number of attempts have been made to correct a nonconformity; specifying timeframes for the hearing of and deciding of a dispute by the Board; requiring compliance by the manufacturer if the decision is in favor of the consumer; providing for the appeal of Board decisions; requiring that appeals be de novo; authorizing the imposition of a fine up to $1,000 per day upon the manufacturer until the amount stands at twice the purchase price of the motor vehicle for delays or failure to comply with a Board decision; providing for deposit of fine revenues in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs; providing for the recovery by the consumer of certain costs if a Board decision is upheld by a court; authorizing the recovery of the pecuniary award, attorney's fees, continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following receipt of the manufacturer of the Board's decision; providing for double and triple awards under certain conditions; providing conditions for appellate review; requiring the Department of Legal Affairs to maintain records pertaining to disputes submitted to the Board; requiring the compilation of aggregate annual statistics pertaining to disputes; specifying the statistics to be compiled.

Section 8. amends s. 681.110, F.S., relative to compliance and disciplinary action; transferring responsibility for enforcement of Chapter 681 from the Division of Consumer Services to the Department of Legal Affairs.

Section 9. amends s. 681.111, F.S., relative to unfair or deceptive trade practice; broadens the action by a manufacturer which shall be considered an unfair or deceptive trade practice to include any violation of Chapter 681.
Section 10. creates s. 681.112, F.S., relative to consumer remedies; authorizing the filing of an action to recover damages caused by a violation of the chapter; requiring awards to consumers who prevail; specifying the award of pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief; requiring that an action brought under this chapter must be commenced within one year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute settlement procedure or submits a dispute to the Division or Board, within one year after the final action of the procedure, Division, or Board.

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Section 12. creates s. 681.114, F.S., relative to resale of returned vehicles; providing for the notification by the manufacturer to the Department of Legal Affairs of any motor vehicle accepted for return with the identification number of such vehicles; requiring the manufacturer or dealer to give the buyer a disclosure statement upon wholesale or retail resale or transfer of title of such returned vehicles; requiring a warranty of the manufacturer to correct a non-conformity on such vehicle for a term of one year or 12,000 miles, whichever occurs first.

Section 13. creates s. 681.115, F.S., relative to agreements; declaring that any agreements entered into by consumers for the purchase of a motor vehicle which waive, limit, or disclaim the rights set forth in this chapter are void as contrary to public policy; extending the rights under this chapter to a subsequent transferee of such a motor vehicle.

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Section 15. requires the Department of Legal Affairs to adopt
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Section 16. requires a $2 fee to be collected by a dealer or lessor upon the consummation of the sale or lease of a motor vehicle; requiring the collection of such fees by the Department of Legal Affairs and deposit monthly into the Motor Vehicle Warranty Trust Fund; requiring the distribution of one-fourth of the fees to the Division of Consumer Affairs.

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Section 18. provides a severability clause.

Section 19. provides for the future review and repeal of Chapter 681 on October 1, 1994.

Section 20. applies this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

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II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

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3. **Long Run Effects Other Than Normal Growth:**

None.

4. **Appropriations Consequences:**

A provision in HB 854 imposes a $2 arbitration fee on all new car buyers and lessees to be deposited in the Motor Vehicle Warranty Trust Fund. Based on a sales and lease volume of 1.27 million vehicles annually it has been estimated that the fee would generate approximately $2.5 million. It is estimated that one-tenth of that amount or $255,000, would be used in collecting the fee.

Another provision in the bill directs that one-fourth of the fee revenue be distributed by the Department of Legal Affairs to the Division of Consumer Services for funding its activities under this bill which include screening requests for arbitration and monitoring manufacturer-sponsored informal dispute settlement programs. It has been estimated that the Division would receive approximately $553,000 annually as a result or $46,080 monthly as the bill requires distribution on a monthly basis.

The bill's provision imposing a $50 arbitration filing fee on both the consumer and the manufacturer has been projected to generate approximately $250,000 which would accrue to the Department of Legal Affairs. The projection is based on an estimated 2,500 cases arbitrated annually at $100 in fees per case. There would be some fluctuation in the revenue generated from this fee since the bill allows refund of the fee to both the consumer and manufacturer if the consumer withdraws a dispute prior to hearing.

The Department of Legal Affairs would benefit in the amount of $1,970,000 deposited in the Motor Vehicle Warranty Trust Fund in that it would receive approximately $1.72 million from the proceeds of the $2 arbitration fee after distributing one-fourth to the Division and it would receive $250,000 from the $50 filing fees.

The bill's provision imposing a $1,000 per day fine on a manufacturer which fails to comply with a board decision favorable to and accepted by the consumer within 40 days of notification of the consumer's acceptance would provide government with potential additional revenue to operate the board. These monies would be deposited into the Motor Vehicle Warranty Trust Fund.

The bill appropriates $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and a sum of $75,000 from the General Revenue Fund to the Division of Consumer Services for the Fiscal Year 1988-1989. The bill further provides that the total sum of $300,000 appropriated from the
General Revenue Fund shall be refunded by June 30, 1989 from unencumbered funds in the Motor Vehicle Warranty Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Automobile manufacturers will incur costs for the repair or replacement of certain motor vehicles as provided by this bill. Manufacturers could incur costs also due to fines assessed up to $1,000 for each offense in violations of the chapter. The bill allows the imposition of fines up to twice the amount of the purchase price of a motor vehicle if a manufacturer does not comply with an arbitration board decision.

   The bill requires a $50 arbitration fee to be paid by both consumers and automobile manufacturers. This fee is refundable to both parties if the consumer withdraws the dispute prior to hearing.

   A manufacturer could incur costs for court-awarded damages as authorized by the bill, including the pecuniary value of the award, attorney's fees, and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision. The bill authorizes double and triple awards against the manufacturer under certain conditions.

2. Direct Private Sector Benefits:

   Consumers would be benefited favorably by the repair or replacement of new motor vehicles and could recover certain expenses resulting from litigation as provided by the bill.

3. Effects on Competition, Private Enterprise, and Employment Markets:
D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

The bill should result in greater consumer satisfaction in the resolution of defective motor vehicle complaints. A state-sponsored arbitration board will afford consumers an opportunity to employ the services of a government-sponsored dispute settlement entity not available heretofore.

IV. COMMENTS:

Since 1982, 46 states have enacted "lemon laws" to protect consumers from defective new motor vehicles. The thrust of the regulation in a number of these states, Florida included, has been upon the settlement of disputes through manufacturer-sponsored, informal dispute settlement programs. Six states have subsequently added or substituted government-run arbitration programs. These are Connecticut, Massachusetts, New York, Texas, Vermont and Washington.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: 
Edith Dumap ________________________ Staff Director: 
Cliff Nilson

FINANCE & TAXATION:
Prepared by: 
Staff Director:

APPROPRIATIONS:
Prepared by: 
Staff Director:
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 681, Florida Statutes, is the "New Motor Vehicle Warranty Enforcement Act", known as the Lemon Law. Chapter 681 requires motor vehicle manufacturers to make repairs as are necessary to conform a vehicle to the express warranty issued by the manufacturer and establishes procedures to be followed by both consumers and manufacturers in new vehicle warranty enforcement.

The chapter requires the consumer to notify the manufacturer of the need for repairs. Upon receipt of such notice, the manufacturer must notify the consumer within five days of a reasonably accessible repair facility and inform the consumer if it has established an informal dispute settlement program.

The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle. If the manufacturer or its agent (a duly licensed franchised motor vehicle dealer) cannot conform the vehicle after a reasonable number of repair attempts, the manufacturer must either replace the vehicle with a comparable vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges, less a reasonable allowance for use.

Consumers are required to use a manufacturer's informal dispute settlement panel if certified by the Division of Consumer Services of the Department of Agriculture and Consumer Services before seeking vehicle repurchase or replacement.

Any manufacturer establishing a settlement program must file with the Division a copy of the annual audit required by Part 703 to be submitted to the Federal Trade Commission (FTC). Chapter 681 deems misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that complies with Part 703 or the chapter as an unfair or deceptive trade practice.
B. EFFECT OF PROPOSED CHANGES:

CS/HB 854 as amended by the Committee on Appropriations addresses Chapter 681 to create The Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs. In so doing it establishes procedures for the resolution of consumer complaints by a state agency when a timely decision is not rendered by a manufacturer's internal dispute panel or when the owner of a defective vehicle is not satisfied with the decision reached after negotiations in a manufacturer-sponsored internal dispute proceeding.

Section 681.108, F.S. is amended to require a manufacturer's dispute settlement procedure complies with Part 703 of the federal Magnuson-Moss Act in effect October 1, 1983, and to take into account in rendering decisions all legal and equitable factors germane to a fair and just decision.

Where a manufacturer has no certified informal dispute settlement procedure, the bill allows consumers to apply directly to the Division of Consumer Services to have the dispute submitted to the Board for arbitration.

The bill provides for the screening of requests for arbitration by the Division of Consumer Services. The Division is directed to forward to the Board all disputes that the Division determines are potentially entitled to relief under the chapter. The bill provides procedures for reconsideration by the Division of dispute requests rejected as ineligible for arbitration and provides that a consumer may file a lawsuit to enforce the remedies if a dispute is rejected for arbitration.

The bill authorizes the establishment of regional boards to hear cases in various locations throughout the state. The bill provides for appointment of board members by the Attorney General. The bill transfers responsibility for enforcement of Chapter 631 from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

The bill provides that a decision of the Board is final unless appealed and provides procedures for the appeal of any decision made by an arbitration board.

If the judicial finding upholds the decision of the Board in favor of the consumer, the bill allows recovery by the consumer of the pecuniary value of the award, attorney's fees and all cost and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer's receipt of the board's decision.

The bill authorizes the imposition of a fine up to $1,000 per day until the amount stands at twice the purchase price of the motor vehicle if the manufacturer has neither complied with nor appealed a decision of the Board.

The provisions relating to compulsory arbitration are exempt from chapter 120. Appeals to circuit court are to be de novo.

The bill authorizes the doubling and tripling of awards if a court determines that a manufacturer acted in bad faith in bringing an appeal or brought the appeal solely for the purpose of harassment.

The bill provides for a $50 fee to be paid by both the consumer and manufacturer for disputes arbitrated by the Board and provides for the refund of such fees if
a dispute is withdrawn prior to the hearing. The bill provides that all fees shall be paid to the Florida New Motor Vehicle Arbitration Fund.

The bill directs the Department of Revenue to refund to the manufacturer any sales tax on the purchase price, less any reasonable offset for use, which the manufacturer refunded to the consumer upon request and documentation by the manufacturer that a refund of the sales tax was made to the consumer.

The bill defines the "Lemon Law rights period" to be the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation.

The bill clarifies dealer liability to extend only to written express warranties made by a dealer apart from the manufacturer's warranties.

The bill requires a disclosure statement be provided to the buyer of a motor vehicle which has been returned to the manufacturer prior to the wholesale or retail trade of such a vehicle and upon transfer of title. The bill clarifies that consumer rights provided by the chapter are extended to a subsequent transferee of motor vehicles covered by the chapter. The Department of Legal Affairs shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

The bill declares the preemptive status of Chapter 681 over any county or municipal ordinance regarding consumer warranty rights.

The bill provides that a $2 fee shall be collected by a dealer or lessor from the consumer or lessor at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. The bill provides for the transfer by the Department of Revenue to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly an amount not exceeding one-forth of the fees received to the division to carry out the provisions of ss. 681.108 and 681.109.

The bill provides for a $225,000 appropriation from the General Revenue Fund to the Motor Vehicle Trust Fund, and for a $75,000 general revenue appropriation to the Division of Consumer Services for FY 1988-89. This $300,000 is to be refunded to the General Revenue Fund from the trust fund by June 30, 1990. Additionally, the amount of $700,000 is appropriated from the Motor Vehicle Warranty Trust Fund for 13 positions within the Department of Legal Affairs to implement the provisions of the bill.

The bill includes a severability clause, providing for future review and repeal on October 1, 1994.

The bill applies the provisions of this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT: FY 88-89 FY 89-90 FY 90-91

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

1323
See Fiscal Comments

2. **Recurring or Annualized Continuation Effects:**

**EXPENDITURES:**

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3. **Long Run Effects Other Than Normal Growth:**

None

4. **Appropriations Consequences:**

**EXPENDITURES:**

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**REVENUES:**

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1374
(1): Transfer from Department of Legal Affairs

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Purchasers and lessees of motor vehicles will incur a new $2 fee upon the purchase or lease of a motor vehicle.

Automobile manufacturers will incur costs for the repair or replacement of certain motor vehicles as provided by the bill.

A $50 arbitration fee is required to be paid by both consumers and motor vehicle manufacturers. This fee is refundable to both parties if the consumer withdraws the complaint prior to the hearing.

A manufacturer could incur costs for court-awarded damages as authorized by the bill.

2. Direct Private Sector Benefits:

Consumers may benefit by the repair or replacement of new motor vehicles and could recover certain expenses resulting from litigation.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

The new Motor Vehicle Warranty Enforcement Act contains specific total amounts appropriated for startup cost to implement the provisions of this bill. Cost of the program as shown above are estimates for future years. Beginning with the 1989 session, the legislature would determine the required funding to continue the program.

III. LONG RANGE CONSEQUENCES:

The bill should result in greater consumer satisfaction in the resolution of defective motor vehicle complaints. A state-sponsored arbitration board will afford consumers an opportunity to employ the services of a government-sponsored dispute settlement entity not available heretofore.
IV. **COMMENTS:**

Since 1982, 46 states have enacted "lemon laws" to protect consumers from defective new motor vehicles. The thrust of the regulation in a number of these states, Florida included, has been upon the settlement of disputes through manufacturer-sponsored, informal dispute settlement programs. Six states have subsequently added or substituted government-run arbitration programs. These are Connecticut, Massachusetts, New York, Texas, Vermont and Washington.

V. **AMENDMENTS:**

VI. **SIGNATURES:**

Prepared by:

[Signature]
John R. Johnston

Staff Director:

[Signature]
Dr. James A. Zingale
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 681, Florida Statutes, is the "New Motor Vehicle Warranty Enforcement Act", known as the Lemon Law. Chapter 681 requires motor vehicle manufacturers to make repairs as are necessary to conform a vehicle to the express warranty issued by the manufacturer and establishes procedures to be followed by both consumers and manufacturers in new vehicle warranty enforcement.

The chapter requires the consumer to notify the manufacturer of the need for repairs. Upon receipt of such notice, the manufacturer must notify the consumer within five days of a reasonably accessible repair facility and inform the consumer if it has established an informal dispute settlement program.

The manufacturer has 10 days after delivery of the vehicle to the facility to conform the vehicle. If the manufacturer or its agent(a duly licensed franchised motor vehicle dealer) cannot conform the vehicle after a reasonable number of repair attempts, the manufacturer must either replace the vehicle with a comparable vehicle or repurchase the vehicle and refund the purchase price, including collateral and incidental charges, less a reasonable allowance for use.

Consumers are required to use a manufacturer's informal dispute settlement panel if certified by the Division of Consumer
Services of the Department of Agriculture and Consumer Services before seeking vehicle repurchase or replacement.

Any manufacturer establishing a settlement program must file with the Division a copy of the annual audit required by Part 703 to be submitted to the Federal Trade Commission (FTC). Chapter 681 deems misrepresentation by a manufacturer as to the existence of an informal dispute settlement mechanism that complies with Part 703 or the chapter as an unfair or deceptive trade practice.

B. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 854 amends Chapter 681 to create The Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs. In so doing it establishes procedures for the resolution of consumer complaints by a state agency when a timely decision is not rendered by a manufacturer's internal dispute panel or when the owner of a defective vehicle is not satisfied with the decision reached after negotiations in a manufacturer-sponsored internal dispute proceeding.

Where a manufacturer has no certified informal dispute settlement procedure, the bill allows consumers to apply directly to the Division of Consumer Services to have the dispute submitted to the Board for arbitration.

The bill provides for the screening of requests for arbitration by the Division of Consumer Services. The Division is directed to forward to the board all disputes that the Division determines are potentially entitled to relief under the chapter. The bill provides procedures for reconsideration by the Division of dispute requests rejected as ineligible for arbitration and provides that a consumer may file a lawsuit to enforce the remedies if a dispute is rejected for arbitration.

The bill authorizes the establishment of regional boards to hear cases in various locations throughout the state. The bill provides for appointment of board members by the Attorney General. The bill transfers responsibility for enforcement of Chapter 631 from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

The bill provides that a decision of the Board is final unless appealed and provides procedures for the appeal of any decision made by an arbitration board.

If the judicial finding upholds the decision of the Board in favor of the consumer, the bill allows recovery by the consumer of the pecuniary value of the award, attorney’s fees and all cost and continuing damages in the amount of $25 per day for all days beyond the 40 calendar day period following the manufacturer’s receipt of the board’s decision.
The bill authorizes the imposition of a fine up to $1,000 per day until the amount stands at twice the purchase price of the motor vehicle if the manufacturer has neither complied with nor appealed a decision of the Board.

The bill authorizes the doubling and tripling of awards if a court determines that a manufacturer acted in bad faith in bringing an appeal or brought the appeal solely for the purpose of harassment.

The bill provides for a $50 fee to be paid by both the consumer and manufacturer for disputes arbitrated by the Board and provides for the refund of such fees if a dispute is withdrawn prior to the hearing. The bill provides that all such fees shall be paid to the Florida New Motor Vehicle Arbitration Fund.

The bill directs the Department of Revenue to refund to the manufacturer, any sales tax which the manufacturer refunded to the consumer upon request and documentation by the manufacturer that a refund of the sales tax was made to the consumer.

The bill defines the "Lemon Law rights period" to be the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation.

The bill clarifies dealer liability to extend only to written express warranties made by a dealer apart from the manufacturer's warranties.

The bill requires a disclosure statement be provided to the buyer of a motor vehicle which has been returned to the manufacturer prior to the wholesale or retail trade of such a vehicle and upon transfer of title. The bill clarifies that consumer rights provided by the chapter are extended to a subsequent transferee of motor vehicles covered by the chapter.

The bill declares the preemptive status of Chapter 681 over any county or municipal ordinance regarding consumer warranty rights.

The bill provides that a $2 fee shall be collected by a dealer or lessor from the consumer or lessor at the consummation of the sale of a motor vehicle or at the time a lease agreement for a motor vehicle is entered into. The bill provides for the deposit of such fees by the Department of Legal Affairs monthly into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs is directed to distribute one-fourth of the fees received to the Division of Consumer Services for the Division's execution of duties under the chapter.

The bill applies the provisions of this act to motor vehicles purchased or leased in this state on or after January 1, 1989.
C. SECTION-BY-SECTION ANALYSIS:

Section 1. amends s. 681.101 F.S., relative to legislative intent to clarify that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer.

Section 2. amends s. 681.102, F.S., relative to definitions; adding definitions for "Board", "Division", "Lemon Law rights period", "Nonconformity", "Reasonable offset for use", and "Warranty".

Section 3. amends s. 681.103, F.S., relative to the duty of a manufacturer to conform a motor vehicle; deleting the requirement that a manufacturer conform a vehicle to all applicable express warranties; requiring that a motor vehicle be conformed to warranties as defined in the bill; requiring an itemized statement be provided to the consumer each time his motor vehicle is examined or repaired under the warranty.

Section 4. amends s. 681.104, F.S., relative to nonconformity of motor vehicles; detailing the procedure to be followed by both the consumer and manufacturer in reporting a nonconformity and the time frame within which the manufacturer must correct the nonconformity; authorizing the return to the manufacturer by the Department of Revenue of any sales tax monies which the manufacturer refunded to the consumer; modifying the conditions under which a reasonable number of attempts to correct a nonconformity shall be presumed to have occurred; clarifying affirmative defenses to claims under this chapter.

Section 5. amends s. 681.108, F.S., relative to the informal dispute settlement procedure; specifying factors to be considered by informal dispute settlement panels when rendering decisions; requiring the training of informal dispute settlement panel members; deleting language directing an informal dispute settlement panel to make certain determinations relative to conformity and nonconformity of a motor vehicle.

Section 6. creating s. 681.109, F.S., providing arbitration eligibility criteria; providing for the submission of disputes to the Board if a timely decision has not been obtained through a manufacturer's certified informal dispute settlement procedure or if a consumer is not satisfied with the decision reached through such a procedure; allowing a consumer to apply directly to the Board for arbitration if a manufacturer does not have a certified informal dispute settlement
procedure; providing for the screening of all requests for arbitration by the Division of Consumer Services; requiring the Division to forward to the Board all disputes that the Division determines are potentially entitled to relief; establishing criteria for rejection and reconsideration by the Division of requests for arbitration.

Section 7. creating s. 681.1095, F.S., establishing the Florida New Motor Vehicle Arbitration Board within the Department of Legal Affairs; providing for appointment of members by the Attorney General; providing for initial and subsequent terms of membership; authorizing the establishment of boards in numbers and locations as necessary to carry out the provisions of the chapter; providing for three-member boards with alternate members; providing that one member of each board shall be an automotive technical expert who is not employed by a manufacturer, a franchised motor vehicle dealer, or the consumer; requiring that disputes be submitted to the Division and to the Board before any civil action is filed; requiring manufacturers to submit to arbitration by the Board; requiring a $50 arbitration filing fee to be paid by both consumers and manufacturers; providing for the refund of such fees under certain conditions; providing for the deposit of such fees in the Florida New Motor Vehicle Arbitration Fund; authorizing the Department of Legal Affairs to investigate disputes, subpoena records and witnesses; allowing oral and written testimony, examination and cross-examination of witnesses; providing for the examination of the vehicle; directing the Board to grant relief if a reasonable number of attempts have been made to correct a nonconformity; specifying timeframes for the hearing of and deciding of a dispute by the Board; requiring compliance by the manufacturer if the decision is in favor of the consumer; providing for the appeal of Board decisions; requiring that appeals be de novo; authorizing the imposition of a fine up to $1,000 per day upon the manufacturer until the amount stands at twice the purchase price of the motor vehicle for delays or failure to comply with a Board decision; providing for deposit of fine revenues in the Motor Vehicle Warranty Trust Fund in the Department of Legal Affairs; providing for the recovery by the consumer of certain costs if a Board decision is upheld by a court; authorizing the recovery of the pecuniary award, attorney's fees, continuing damages in the amount of $25 per day for all 'days beyond the 40 calendar day period following receipt of the manufacturer of the Board's decision; providing for double and triple awards under certain conditions;
providing conditions for appellate review; requiring the Department of Legal Affairs to maintain records pertaining to disputes submitted to the Board; requiring the compilation of aggregate annual statistics pertaining to disputes; specifying the statistics to be compiled.

Section 8. amends s. 681.110, F.S., relative to compliance and disciplinary action; transferring responsibility for enforcement of Chapter 681 from the Division of Consumer Services to the Department of Legal Affairs.

Section 9. amends s. 681.111, F.S., relative to unfair or deceptive trade practice; broadens the action by a manufacturer which shall be considered an unfair or deceptive trade practice to include any violation of Chapter 681.

Section 10. creates s. 681.112, F.S., relative to consumer remedies; authorizing the filing of an action to recover damages caused by a violation of the chapter; requiring awards to consumers who prevail; specifying the award of pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief; requiring that an action brought under this chapter must be commenced within one year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute settlement procedure or submits a dispute to the Division or Board, within one year after the final action of the procedure, Division, or Board.

Section 11. creates s. 681.113, F.S., relative to dealer liability; clarifying that motor vehicle dealers as defined in s. 320.60(11)(a), F.S., are not liable under Chapter 681 except for written express warranties made by the dealer apart from the manufacturer's warranties; providing that a dealer may not be made a party defendant in any action under this chapter, except as provided in this section; prohibiting a manufacturer from charging back or requiring reimbursement by the dealer for any costs incurred by the manufacturer arising out of this chapter unless evidence can be provided that the dealer made repairs in a manner substantially inconsistent with the manufacturer's published instructions.

Section 12. creates s. 681.114, F.S., relative to resale of returned vehicles; providing for the notification by the manufacturer to the Department of Legal Affairs of any motor vehicle accepted for return with the identification number of such vehicles; requiring the manufacturer or dealer to give the buyer a disclosure
statement upon wholesale or retail resale or transfer of title of such returned vehicles; requiring a warranty of the manufacturer to correct a non-conformity on such vehicle for a term of one year or 12,000 miles, whichever occurs first; requiring the Department to prescribe by rule the form, content, and procedure relating to the disclosure statement.

Section 13. creates s. 681.115, F.S., relative to agreements; declaring that any agreements entered into by consumers for the purchase of a motor vehicle which waive, limit, or disclaim the rights set forth in this chapter are void as contrary to public policy; extending the rights under this chapter to a subsequent transferee of such a motor vehicle.

Section 14. creates s. 681.116, F.S., relative to preemption; preempting any county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.

Section 15. requires the Department of Legal Affairs to adopt rules to implement this chapter.

Section 16. requires a $2 fee to be collected by a dealer or lessor upon the consummation of the sale or lease of a motor vehicle; providing for the remitting of such fees to the county tax collector or private tag agency acting as agent for the Department of Revenue; providing for the transfer of such fees, less the cost of administration, to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund; requiring the distribution of one-fourth of the fees to the Division of Consumer Affairs; requiring the Department of Legal Affairs to contract with the Division of Consumer Services for payment of services performed by the division pursuant to ss. 681.108 and 681.109, F.S.

Section 17. appropriates the sum of $225,000 from the General Revenue Fund to the Motor Vehicle Warranty Trust Fund and the sum of $75,000 from the General Revenue Fund to the Division of Consumer Services for the fiscal year 1988-1989; requires the total sum of $300,000 be refunded by June 30, 1990, to the General Revenue Fund from unencumbered funds in the Motor Vehicle Warranty Trust Fund; appropriating $700,000 from the Motor Vehicle Warranty Trust Fund and authorizing an additional 13 positions to the Department of Legal Affairs for implementation of the Act.

Section 18. provides a severability clause.
Section 19. provides for the future review and repeal of Chapter 681 on October 1, 1994.

Section 20. applies this act to motor vehicles purchased or leased in this state on or after January 1, 1989.

Section 21. provides an effective date of January 1, 1989, for the act, except for sections 5 and 15 which shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT: FY 88-89 FY 89-90 FY 90-91

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   See Fiscal Comments

2. Recurring or Annualized Continuation Effects:

   EXPENDITURES:

   Department of Legal Affairs
   Lump Sum (13 FTE)
   General Revenue Fund $225,000 $225,000
   Motor Vehicle Warranty T.F. 700,000 1,125,000 1,900,000
   Sub-total 925,000 1,350,000 1,900,000

   Department of Revenue
   Administrative Cost 250,000 250,000 250,000

   Department of Agriculture &
   Consumer Services
   Lump sum (2 FTE)
   General Revenue Fund 75,000 0 0
   General Inspection Trust Fund 0 575,000 575,000

3. Long Run Effects Other Than Normal Growth:

   None

4. Appropriations Consequences:

   EXPENDITURES:

   Department of Legal Affairs
   General Revenue Fund 225,000 225,000 0
   Motor Vehicle Warranty Trust Fund 700,000 1,125,000 1,900,000
   Sub-total 925,000 1,350,000 1,900,000

   Department of Agriculture &
   Consumer Services
   General Revenue Fund 75,000 75,000 0
   General Inspection Trust Fund 0 573,661 573,661
   Sub-total 75,000 648,661 573,661

076 STANDARD FORM 5/88
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REVENUES:

| Department of Legal Affairs               | 1,140,000             | 2,600,000                   | 2,600,000                     |
|                                          | Florida New Motor Vehicle Arbitration Fund | 250,000 | 250,000 | 250,000 |
| Department of Agriculture & Consumer Services | General Inspection Trust Fund (1) | 260,000 | 600,000 | 600,000 |

(1): Transfer from Department of Legal Affairs

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Purchasers and lessees of motor vehicles will incur a new $2 fee upon the purchase or lease of a motor vehicle.

   Automobile manufacturers will incur costs for the repair or replacement of certain motor vehicles as provided by the bill.

   A $50 arbitration fee is required to be paid by both consumers and motor vehicle manufacturers. This fee is refundable to both parties if the consumer withdraws the complaint prior to the hearing.

   A manufacturer could incur costs for court-awarded damages as authorized by the bill.

2. Direct Private Sector Benefits:

   Consumers may benefit by the repair or replacement of new motor vehicles and could recover certain expenses resulting from litigation.
3. **Effects on Competition, Private Enterprise, and Employment Markets:**

None

D. **FISCAL COMMENTS:**

The new Motor Vehicle Warranty Enforcement Act contains specific total amounts appropriated for startup cost to implement the provisions of this bill. Cost of the program as shown above are estimates for future years. Beginning with the 1989 session, the legislature would determine the required funding to continue the program.

III. **LONG RANGE CONSEQUENCES:**

The bill should result in greater consumer satisfaction in the resolution of defective motor vehicle complaints. A state-sponsored arbitration board will afford consumers an opportunity to employ the services of a government-sponsored dispute settlement entity not available heretofore.

IV. **COMMENTS:**

Since 1982, 46 states have enacted "lemon laws" to protect consumers from defective new motor vehicles. The thrust of the regulation in a number of these states, Florida included, has been upon the settlement of disputes through manufacturer-sponsored, informal dispute settlement programs. Six states have subsequently added or substituted government-run arbitration programs. These are Connecticut, Massachusetts, New York, Texas, Vermont and Washington.

V. **SIGNATURES:**

**SUBSTANTIVE COMMITTEE:**
Prepared by:

Edith Dunlap

Staff Director:

Cliff Nilson

**FINANCE & TAXATION:**
Prepared by:

Linda Lettera

Staff Director:

Henry C. Cain

**APPROPRIATIONS:**
Prepared by:

John R. Johnston

Staff Director:

Dr. James A. Zingale
COMMITTEE APPEARANCE RECORD
(Submit to Committee Chairman or Secretary)

4/14/88
(date)

SB 556
(Bill No.)

Name PHILIP NOWICKI

Address Kosar Center

Representing The Attorney General's Office

Lobbyist (Registered with Senate) Yes No

Speaking: For Against Information

Subject New Car Tagger Law

If state employee Time: from to

(State employees are required to file the first copy of this form with Committee Chairman unless appearance is requested by chairman as a witness or for informational purposes.)
Florida Senate
Repair/Replace Bill

March 20, 1987

This proposed amended lemon law would create a state-run arbitration board in Florida and prohibit manufacturers' boards that fail to interpret and enforce the law. Ford Motor Company opposes this bill.

Section 681.101 Legislative intent. The vehicle dealer is not an agent of the manufacturer. The fact that Florida, along with other states, has found it necessary to enact franchise laws governing the relationship between dealers and manufacturers indicates that the state views dealers as independent business entities. All characterizations of the dealer as the manufacturer's agent should be deleted.

Section 681.102 (1). Delete the reference to arbitration service fees. This bill would establish a tax on every new vehicle sold to fund the arbitration system. Since the system will be funded, it is inappropriate to provide for double recovery of the fees.

Section 681.102 (4). Delete everything after "resides" in line 30. This measure applies to vehicles sold in Florida; it cannot have extra-territorial application.

Section 681.102 (5). If an offer of reasonable alternative transportation is made by a manufacturer or authorized dealer and the offer is refused by the consumer, the manufacturer and authorized dealer should have no liability to the consumer for alternative transportation under this section.

Section 681.102 (6). Delete in its entirety. A lease transaction is fundamentally different from a purchase transaction. The consumer has opted to pay for the use of a vehicle, not for purchase and ownership. A lease transaction, therefore, should not be covered by this provision. If leases are to be covered, the sole remedy for a nonconforming leased vehicle should be replacement. To provide repurchase would enrich unjustly both the lessor and the lessee and would not reflect the basis of their original bargain.
Section 681.102 (7). This provision should be clarified to assure that it applies to leases in the traditional sense and that it does not cover inadvertently rental vehicles. A minimum length of time on covered leases should be included, i.e., at least 90 days. Further, "consumer" is defined as "purchaser". The use of "consumer" in connection with leasing creates internal inconsistency.

Section 681.102 (8). Delete in its entirety. If leases are covered, the only appropriate relief is replacement. Lessee costs are not material when replacement is the remedy.

Section 681.102 (10). The definition of "motor vehicle" should not be so broad as to include heavy trucks, motorhomes, and tractors; nor should it be read to apply to vehicles other than those sold and registered in Florida.

Section 681.102 (11). Delete "new" in line 21. Delete "by the consumer" in line 22. Repairs resulting from modification by anyone other than the manufacturer or its authorized dealer as directed by the manufacturer should be the responsibility of the party actually making the charges, not the responsibility of the manufacturer.

Section 681.102 (14). Delete in its entirety. Determination of a "serious safety defect" is the responsibility of the manufacturer as required under federal consumer protection statutes and certain federal agencies. This determination should be made by experts. Determination of this nature is inappropriate in the absence of proper training and technical skills.

Section 681.102 (15). Warranties are an important aspect of competition in the automobile industry. Manufacturers provide warranty coverage of varying types and lengths. Therefore, reference should be to the "applicable written warranty of the manufacturer, including terms and conditions precedent to enforcement of obligations". The definition of "warranty" should not include a reference to "implied warranty".

Section 681.102 (16). As stated above, warranties are an element of competition. Terms of coverage should refer to the manufacturer's warranty, subject to a reasonable limitation, e.g., 12/12. The time during which the statutory presumption is available should be limited to a reasonable period (e.g., 12/12).

Section 681.104 (2). At the time of purchase only the dealer is capable of providing notice to the consumer. Manufacturers cannot be certain when a vehicle is produced where it eventually will be sold. Further, the notice should be limited and concise. To avoid possible misinformation and delay, the statute should specify the contents of the notice. It is unclear whether the Attorney General or the manufacturer is responsible for establishing the toll-free
number consumers may call to begin arbitration under this chapter. The manufacturer should not be responsible for maintaining a toll-free line. [(It appears that a word was omitted in the definition—"or the first (?) miles of operation, whichever comes first").]

Section 681.104 (3). Delete everything after "period" in line 17. For repairs to be made after notice is given, the consumer must make the vehicle available for repairs. The mere giving of notice without the opportunity for repair should not trigger the statutory provisions. Further, the relationship between the manufacturer and the dealer is governed by the agreement between the parties and, to the extent applicable, by state franchise law. The relationship regarding warranties is also covered therein and is addressed inappropriately here.

Section 681.104 (5). The word "manufacturer" should be deleted from line 1. Manufacturers do not actually repair vehicles; dealers do. The manufacturer should not be held accountable for a dealer's failure to provide a repair order. The section requires the dealer to notify the manufacturer after the second repair attempt. A serious problem for the manufacturer occurs when a customer goes to more than one dealer for warranty repairs. Neither the dealer nor the manufacturer can be assured of knowing when the "second" repair is performed. There is no sanction provided if the dealer does not fulfill this obligation. In cases in which the dealer does not notify the manufacturer, the manufacturer should not be held liable. Delete "returned to the consumer" on line 11 and replace with "made available to the consumer". If the consumer is notified that the vehicle has been repaired, the time limit should stop.

Section 681.104 (6). Delete in its entirety. Dealers sell cars to consumers and are responsible for all aspects of the sales transaction. Manufacturers are not, and should not be, a party to this transaction. Making the manufacturer a party creates serious risks for the manufacturer in a transaction in which it does not participate and over which it has no control.

Section 681.104 (7). This provision should recognize and address the difference between sales and lease transactions. A refund may be appropriate in the context of a purchase but is inappropriate in the context of a lease. This measure should be rewritten to address those differences. Delete "within 40 calendar days" on line 23. The provision is not and should not be self-executing. The consumer must establish several items, including the required days/time out of service and reasonable number of repair attempts, and the manufacturer should have the opportunity to refute these claims. A mere request is therefore insufficient to establish the manufacturer's obligation to act.
The manufacturer should not be required to refund to the customer "collateral charges" such as dealer-installed items for which the manufacturer has received no consideration. Further, items from which the consumer has derived benefit, or for which he may seek refund, such as service contracts, insurance and finance charges, should not be covered. This section unjustly provides the purchaser with 12,000 miles of cost-free driving at the manufacturer's expense. The consumer has received the benefit of this use and should be required to pay for it. In addition, this section purports to regulate the manufacturer/dealer relationship. Laws already existing in Florida regulate the franchise relationship. A provision that dealers may not be held liable for any costs is not reasonable in light of the fact that dealers profit from the installation of sunroofs, oversize tires and wheels, service contracts, rustproofing, and countless other options. Manufacturers receive no part of the monies paid for these items.

Section 681.104 (8). Insert "It shall be presumed that" on line 12 before "A". This section should establish a presumption (which may be refuted by the manufacturer) that a vehicle is incapable of being conformed to the manufacturer's warranty. Delete (a) in its entirety. See explanation above at 681.102(14). Delete "examination or" on lines 18-19. Unless a vehicle has been established as not conforming, a mere examination in instances in which no problem has been found should not constitute a repair attempt. This provision creates a situation in which consumers may obtain new cars unjustifiably by alleging a nonformity that does not exist.

Section 681.104 (11)(b). Delete "by the consumer" on line 7. See discussion above.

Section 681.108 (1). The manufacturer's informal dispute resolution mechanism established pursuant to federal law should be permitted to operate as a federal program. Any mechanism that complies with 16 C.F.R. 703 should not be required to comply with a state law.

Section 681.108 (2)(3)(4)(7)(8). The arbitration board is established more as a court of law than an informal dispute resolution mechanism.

- The members of the board are mandated to apply state law.
- Oaths are administered.
- Prehearing conferences are available and evidence is to be gathered.
- The parties may present oral and written testimony, present witnesses, cross-examine witnesses.
- The parties may be represented by counsel.
- The board may subpoena witnesses and the production of documents.
This provision improperly establishes a judicial function in the executive branch, infringes on the manufacturer's right to trial by jury and presents serious questions of legality under state and federal law. This issue is being litigated currently in two states.

Section 681.108 (9). The consumer should be required to give notice in writing directly to the manufacturer before submitting a dispute to any board.

Section 681.108 (10). Arbitration must be binding on both parties or voluntary for both parties. Making arbitration available at the request of only one party raises serious questions of legality. These issues are the subject of current litigation. If the arbitration is available and binding on both parties, the parties must be afforded full *de novo* review.

Section 681.108 (13). Arbitration must be binding on both parties or on neither party. To compel arbitration and then permit only one party to elect not to accept a decision is unfair.

Section 681.108 (15). An open-ended fine of $1,000 per day is unduly punitive. By creating such a severely punitive measure, this provision would create an unjustifiable hardship on manufacturers in an otherwise private dispute. This measure would not be available if the manufacturer chose to bring suit to resolve the dispute.

Section 681.108 (16). Each of the parties should have the right to *de novo* review of any arbitration decision. The standards for appeal of the board's decision by the manufacturer are so burdensome that the manufacturer effectively has no right of appeal. Manufacturers have no interest in litigating matters appropriately resolved. Where there is no effective right of appeal, there is no assurance of fairness on the part of the board. The measure established for appeal, in conjunction with the penalties set forth in Section (17), deprives the manufacturer of its constitutionally-protected right to a trial by jury and right to appeal.

Section 681.108 (18). Delete in its entirety. This provision burdens substantially the constitutionally-protected access of private litigants to the state court system.

Section 681.112 (1). Delete everything after "appropriate" in line 20. This provision creates an unjustifiable penalty on appeals by the manufacturer and effectively denies the manufacturer of constitutionally-protected rights.

Section 681.113 (1). It is unfair to require a disclosure upon the sale of a vehicle that has been repaired satisfactorily prior to resale. Further, this section fails to provide any means whereby a repaired vehicle can be sold.

[Signature]
Lassie M. Wildern
Senior Attorney
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 556

Several changes were made to the bill including:

-- a clarification of the provision requiring the consumer to first submit the dispute to the division, and if deemed eligible, to the board, before filing a civil action on a matter subject to s. 561.104; and

-- a clarification that an appeal of a board decision to the circuit court must be trial de novo.

Committee on Economic, Community and Consumer Affairs

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)