

1 Section 1. NEW SECTION. 322G.1 LEGISLATIVE INTENT.

2 The general assembly recognizes that a motor vehicle is a
3 major consumer acquisition and that a defective motor vehicle
4 undoubtedly creates a hardship for the consumer. The general
5 assembly further recognizes that a duly franchised motor
6 vehicle dealer is an authorized service agent of the
7 manufacturer. It is the intent of the general assembly that a
8 good faith motor vehicle warranty complaint by a consumer be
9 resolved by the manufacturer within a specified period of
10 time. It is further the intent of the general assembly to
11 provide the statutory procedures whereby a consumer may
12 receive a replacement motor vehicle, or a full refund, for a
13 motor vehicle which cannot be brought into conformity with the
14 warranty provided for in this chapter. However, this chapter
15 does not limit the rights or remedies which are otherwise
16 available to a consumer under any other law.

17 Sec. 2. NEW SECTION. 322G.2 DEFINITIONS.

18 As used in this chapter, unless the context otherwise
19 requires:

20 1. "Collateral charges" means those additional charges to
21 a consumer wholly incurred as a result of the acquisition of
22 the motor vehicle. For the purposes of this chapter,
23 collateral charges include, but are not limited to, charges
24 for manufacturer-installed or agent-installed items, earned
25 finance charges, use taxes, and title charges.

26 2. "Condition" means a general problem that may be
27 attributable to a defect in more than one part.

28 3. "Consumer" means the purchaser or lessee, other than
29 for purposes of lease or resale, of a new or previously
30 untitled motor vehicle, or any other person entitled by the
31 terms of the warranty to enforce the obligations of the
32 warranty during the duration of the lemon law rights period.

33 4. "Days" means calendar days.

34 5. "Department" means the attorney general.

35 6. "Incidental charges" means those reasonable costs

1 incurred by the consumer, including, but not limited to,
2 towing charges and the costs of obtaining alternative
3 transportation, which are the direct result of the
4 nonconformity or nonconformities which are the subject of the
5 claim. Incidental charges do not include loss of use, loss of
6 income, or personal injury claims.

7 7. "Lease price" means the aggregate of the following:

8 a. Lessor's actual purchase costs.

9 b. Collateral charges, if applicable.

10 c. Any fee paid to another to obtain the lease.

11 d. Any insurance or other costs expended by the lessor for
12 the benefit of the lessee.

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

16 f. An amount equal to five percent of the lessor's actual
17 purchase cost.

18 8. "Lemon law rights period" means the term of the
19 manufacturer's written warranty, the period ending two years
20 after the date of the original delivery of a motor vehicle to
21 a consumer, or the first twenty-four thousand miles of
22 operation attributable to a consumer, whichever expires first.

23 9. "Lessee" means any consumer who leases a motor vehicle
24 for one year or more pursuant to a written lease agreement
25 which provides that the lessee is responsible for repairs to
26 the motor vehicle.

27 10. "Lessee cost" means the aggregate of the deposit and
28 rental payments previously paid to the lessor for the leased
29 vehicle.

30 11. "Lessor" means a person who holds the title to a motor
31 vehicle leased to a lessee under a written lease agreement or
32 who holds the lessor's rights under the agreement.

33 12. "Manufacturer" means a person engaged in the business
34 of constructing or assembling new motor vehicles or installing
35 on previously assembled vehicle chassis special bodies or

1 equipment which, when installed, form an integral part of the
2 new motor vehicle, or a person engaged in the business of
3 importing new motor vehicles into the United States for the
4 purpose of selling or distributing the new motor vehicles to
5 new motor vehicle dealers.

33746 13. "Motor vehicle" means a self-propelled vehicle
7 purchased or leased in this state and primarily designed for
8 the transportation of persons or property over public streets
9 and highways, but does not include mopeds, motorcycles, living
10 facilities such as motor homes, or vehicles over ten thousand
11 pounds gross vehicle weight rating.

12 14. "Nonconformity" means a defect, malfunction, or
13 condition in a motor vehicle such that the vehicle fails to
14 conform to the warranty, but does not include a defect,
15 malfunction, or condition that results from an accident,
16 abuse, neglect, modification, or alteration of the motor
17 vehicle by persons other than the manufacturer or its
18 authorized service agent.

19 15. "Person" means person as defined in section 714.16.

20 16. "Program" means an informal dispute settlement
21 procedure established by a manufacturer which mediates and
22 arbitrates motor vehicle warranty disputes arising in this
23 state.

24 17. "Purchase price" means the cash price paid for the
25 motor vehicle appearing in the sales agreement or contract,
26 including any net allowance given for a trade-in vehicle.

27 18. "Reasonable offset for use" means the number of miles
28 attributable to a consumer up to the date of the third attempt
29 to repair the same nonconformity which is the subject of the
30 claim, or the first attempt to repair a nonconformity that is
31 likely to cause death or serious bodily injury, or the
32 twentieth cumulative day when the vehicle is out of service by
33 reason of repair of one or more nonconformities, whichever
34 occurs first, multiplied by the purchase price of the vehicle,
35 or in the event of a leased vehicle, the lessor's actual lease

1 price plus an amount equal to two percent of the purchase
2 price, and divided by one hundred twenty thousand.

3 19. "Replacement motor vehicle" means a motor vehicle
4 which is identical or reasonably equivalent to the motor
5 vehicle to be replaced, and as the motor vehicle to be
6 replaced would have existed without the nonconformity at the
7 time of original acquisition.

8 20. "Substantially impair" means to render the motor
9 vehicle unfit, unreliable, or unsafe for warranted or ordinary
10 use, or to significantly diminish the value of the motor
11 vehicle.

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

20 Sec. 3. NEW SECTION. 322G.3 DUTIES OF MANUFACTURER.

21 1. At the time of the consumer's purchase or lease of the
22 vehicle, the manufacturer shall provide to the consumer a
23 written statement that explains the consumer's rights and
24 obligations under this chapter. The written statement shall
25 be prepared by the attorney general and shall contain a
26 telephone number that the consumer can use to obtain
27 information from the attorney general regarding the rights and
28 obligations provided under this chapter.

29 2. At the time of the consumer's purchase or lease of the
30 vehicle, the manufacturer shall provide to the consumer the
31 address and phone number for the zone, district, or regional
32 office of the manufacturer for this state where a claim may be
33 filed by the consumer. This information shall be provided to
34 the consumer in a clear and conspicuous manner. Within thirty
35 days of the introduction of a new model year for each make and

1 model of motor vehicle sold in this state, the manufacturer
2 shall notify the attorney general of such introduction. The
3 manufacturer shall also inform the attorney general that a
4 copy of the owner's manual and applicable written warranties
5 shall be provided upon request and provide information as to
6 where the request should be made. The manufacturer shall
7 inform the attorney general where such a request should be
8 directed and shall provide the copy of the owner's manual and
9 applicable written warranties within five business days of a
10 request by the attorney general.

11 3. A manufacturer or the authorized service agent of the
12 manufacturer shall make repairs as necessary to conform the
13 vehicle to the warranty if a motor vehicle does not conform to
14 the warranty and the consumer reports the nonconformity to the
15 manufacturer or authorized service agent during the lemon law
16 rights period. Such repairs shall be made irrespective of
17 whether they can be made prior to the expiration of the lemon
18 law rights period.

19 4. A manufacturer or the authorized service agent of the
20 manufacturer, shall provide to the consumer, each time the
21 motor vehicle is returned after being examined or repaired
22 under the warranty, a fully itemized, legible statement or
23 repair order indicating any diagnosis made, and all work
24 performed on the motor vehicle including, but not limited to,
25 a general description of the problem reported by the consumer
26 or an identification of the defect or condition, parts and
27 labor, the date and the odometer reading when the motor
28 vehicle was submitted for examination or repair, and the date
29 when the repair or examination was completed.

30 5. Upon request from the consumer, the manufacturer, or
31 the authorized service agent of the manufacturer, shall
32 provide a copy of either or both of the following:

33 a. Any report or printout of any diagnostic computer
34 operation compiled by the manufacturer or authorized service
35 agent regarding an inspection or diagnosis of the motor

1 vehicle.

2 b. A copy of any technical service bulletin issued by the
3 manufacturer regarding the year and model of the motor vehicle
4 as it pertains to any material, feature, component, or the
5 performance of the motor vehicle.

6 Sec. 4. NEW SECTION. 322G.4 NONCONFORMITY OF MOTOR
7 VEHICLES.

8 1. After three attempts have been made to repair the same
9 nonconformity that substantially impairs the motor vehicle, or
10 after one attempt to repair a nonconformity that is likely to
11 cause death or serious bodily injury, the consumer may give
12 written notification, which shall be by certified or
13 registered mail or by overnight service, to the manufacturer
14 of the need to repair the nonconformity in order to allow the
15 manufacturer a final attempt to cure the nonconformity. The
16 manufacturer shall, within ten days after receipt of such
17 notification, notify and provide the consumer with the
18 opportunity to have the vehicle repaired at a reasonably
19 accessible repair facility and after delivery of the vehicle
20 to the designated repair facility by the consumer, the
21 manufacturer shall, within ten days, conform the motor vehicle
22 to the warranty. If the manufacturer fails to notify and
23 provide the consumer with the opportunity to have the vehicle
24 repaired at a reasonably accessible repair facility or perform
25 the repairs within the time periods prescribed in this
26 subsection, the requirement that the manufacturer be given a
27 final attempt to cure the nonconformity does not apply.

28 After twenty or more cumulative days when the motor vehicle
29 has been out of service by reason of repair of one or more
30 nonconformities, the consumer may give written notification to
31 the manufacturer which shall be by certified or registered
32 mail or by overnight service. Commencing upon the date such
33 notification is received, the manufacturer has ten cumulative
34 days when the vehicle has been out of service by reason of
35 repair of one or more nonconformities to conform the motor

1 vehicle to the warranty.

2 2. If the manufacturer, or its authorized service agent,
3 has not conformed the motor vehicle to the warranty by
4 repairing or correcting one or more nonconformities that
5 substantially impair the motor vehicle after a reasonable
6 number of attempts, the manufacturer shall, within forty days
7 of receipt of payment by the manufacturer of a reasonable
8 offset for use by the consumer, replace the motor vehicle with
9 a replacement motor vehicle acceptable to the consumer, or
10 repurchase the motor vehicle from the consumer or lessor and
11 refund to the consumer or lessor the full purchase or lease
12 price, less a reasonable offset for use. The replacement or
13 refund shall include payment of all collateral and reasonably
14 incurred incidental charges. The consumer has an
15 unconditional right to choose a refund rather than a
16 replacement. If the consumer elects to receive a refund, and
17 the refund exceeds the amount of the payment for a reasonable
18 offset for use, the requirement that the consumer pay the
19 reasonable offset for use in advance does not apply, and the
20 manufacturer shall deduct that amount from the refund due to
21 the consumer. If the consumer elects a replacement motor
22 vehicle, the manufacturer shall provide the consumer a
23 substitute motor vehicle to use until such time as the
24 replacement vehicle is delivered to the consumer. At the time
25 of the refund or replacement, the consumer, lienholder, or
26 lessor shall furnish to the manufacturer clear title to and
27 possession of the original motor vehicle.

28 Refunds shall be made to the consumer and lienholder of
29 record, if any, as their interests appear. If applicable,
30 refunds shall be made to the lessor and lessee as follows:
31 the lessee shall receive the lessee's cost less a reasonable
32 offset for use, and the lessor shall receive the lease price
33 less the aggregate deposit and rental payments previously paid
34 to the lessor for the leased vehicle. If it is determined
35 that the lessee is entitled to a refund pursuant to this

1 chapter, the consumer's lease agreement with the lessor is
2 terminated upon payment of the refund and no penalty for early
3 termination shall be assessed. The department of revenue and
4 finance shall refund to the manufacturer any use tax which the
5 manufacturer refunded to the consumer, lessee, or lessor under
6 this section, if the manufacturer provides to the department
7 of revenue and finance a written request for a refund and
8 evidence that the use tax was paid when the vehicle was
9 purchased and that the manufacturer refunded the use tax to
10 the consumer, lessee, or lessor.

11 3. It is presumed that a reasonable number of attempts
12 have been undertaken to conform a motor vehicle to the
13 warranty if, during the lemon law rights period, any of the
14 following occur:

15 a. The same nonconformity that substantially impairs the
16 motor vehicle has been subject to examination or repair at
17 least three times by the manufacturer or its authorized
18 service agent, plus a final attempt by the manufacturer to
19 repair the motor vehicle if undertaken as provided for in
20 subsection 1, and such nonconformity continues to exist.

21 b. A nonconformity that is likely to cause death or
22 serious bodily injury has been subject to examination or
23 repair at least one time by the manufacturer or its authorized
24 service agent, plus a final attempt by the manufacturer to
25 repair the motor vehicle if undertaken as provided for in
26 section 322G.4, subsection 1, and such nonconformity continues
27 to exist.

28 c. The motor vehicle has been out of service by reason of
29 repair by the manufacturer, or its authorized service agent,
30 of one or more nonconformities that substantially impair the
31 motor vehicle for a cumulative total of thirty or more days,
32 exclusive of down time for routine maintenance prescribed by
33 the owner's manual. The thirty-day period may be extended by
34 any period of time during which repair services are not
35 available to the consumer because of war, invasion, strike,

1 fire, flood, or natural disaster.

2 The terms of this subsection shall be extended for a period
3 of up to two years after the date of the original delivery of
4 a motor vehicle to a consumer, or the first twenty-four
5 thousand miles of operation attributable to a consumer,
6 whichever occurs first, if a nonconformity has been reported
7 but has not been cured by the manufacturer, or its authorized
8 service agent, before the expiration of the lemon law rights
9 period.

10 4. A manufacturer, or its authorized service agent shall
11 not refuse to examine or repair any nonconformity for the
12 purpose of avoiding liability under this chapter.

13 Sec. 5. NEW SECTION. 322G.5 AFFIRMATIVE DEFENSES.

14 Any of the following is an affirmative defense to a claim
15 under this chapter:

16 1. The alleged nonconformity or nonconformities do not
17 substantially impair the motor vehicle.

18 2. A nonconformity is the result of an accident, abuse,
19 neglect, or unauthorized modification or alteration of the
20 motor vehicle by a person other than the manufacturer or its
21 authorized service agent.

22 3. The claim by the consumer was not filed in good faith.

23 4. Any other defense allowed by law which may be raised
24 against the claim.

25 Sec. 6. NEW SECTION. 322G.6 INFORMAL DISPUTE SETTLEMENT
26 PROCEDURES -- OPERATIONS AND CERTIFICATION.

27 1. At the time of the consumer's purchase or lease of the
28 vehicle, a manufacturer who has established a program
29 certified pursuant to this section shall, at a minimum,
30 clearly and conspicuously disclose to the consumer in written
31 materials accompanying the vehicle how and where to file a
32 claim with the program.

33 2. A certified program shall be funded and competently
34 staffed at a level sufficient to ensure fair and expeditious
35 resolution of all disputes, and shall not charge consumers any

1 fee for use of the program. The manufacturer shall take all
2 steps necessary to ensure that a certified program and its
3 staff and decision makers are sufficiently insulated from the
4 manufacturer so that the performance of the staff and the
5 decisions of the decision makers are not influenced by the
6 manufacturer. Such steps, at a minimum, shall ensure that the
7 manufacturer does not make decisions on whether a consumer's
8 dispute proceeds to the decision maker. Staff and decision
9 makers of a certified program shall be trained in the
10 provisions of this chapter and rules adopted under this
11 chapter.

12 3. A certified program shall allow an oral presentation by
13 a party, or by a party's employee, agent, or representative.

14 Within five days following the consumer's notification to
15 the certified program of the dispute, the program shall inform
16 each party of their right to make an oral presentation.

17 Meetings of a certified program to hear and decide disputes
18 shall be open to observers, including either party to the
19 dispute, on reasonable and nondiscriminatory terms.

20 4. A certified program shall render a decision no later
21 than sixty days from the day of the consumer's notification of
22 the dispute, provided that a significant number of decisions
23 are rendered within forty days. For the purposes of this
24 section, notification is deemed to have occurred when a
25 certified program has received the consumer's name and
26 address; the current date and the date of the original
27 delivery of the motor vehicle to a consumer; the year, make,
28 model, and identification number of the motor vehicle; and a
29 description of the nonconformity. If the consumer has not
30 previously notified the manufacturer of the nonconformity, the
31 sixty-day period is extended for an additional seven days.

32 5. A certified program shall, in rendering decisions, take
33 into account the provisions of this chapter and all legal and
34 equitable factors germane to a fair and just decision. The
35 decision shall disclose to the consumer and the manufacturer

1 the reasons for the decision, and the manufacturer's required
2 actions, if applicable. If the decision is in favor of the
3 consumer, the consumer shall have up to twenty-five days from
4 the date of receipt of the certified program's decision to
5 indicate acceptance of the decision. The decision shall
6 prescribe a reasonable period of time, not to exceed thirty
7 days from the date the consumer notifies the manufacturer of
8 acceptance of the decision, within which the manufacturer must
9 fulfill the terms of the decision. If the manufacturer has
10 had a reasonable number of attempts to conform a motor vehicle
11 to the warranty as set forth in section 322G.4, subsection 3,
12 including a final attempt by the manufacturer to repair the
13 motor vehicle, if undertaken as provided for in section
14 322G.4, subsection 1, and the consumer is entitled to a
15 replacement vehicle or a refund under section 322G.4,
16 subsection 2, the decision shall be limited to relief as
17 allowed under section 322G.4, subsection 2. In an action
18 brought by a consumer under this chapter, the decision of a
19 certified program is admissible in evidence.

20 6. A certified program shall establish written procedures
21 which explain operation of the certified program. Copies of
22 the written procedures shall be made available to any person
23 upon request and shall be sent to the consumer upon
24 notification of the dispute.

25 7. A certified program shall retain all records for each
26 dispute for at least four years after the final disposition of
27 the dispute. A certified program shall have an independent
28 audit conducted annually to determine whether the manufacturer
29 and its performance and the program and its implementation are
30 in compliance with this chapter. All records for each dispute
31 shall be available for the audit. Such audit, upon
32 completion, shall be forwarded to the attorney general.

33 8. Any manufacturer licensed to sell motor vehicles in
34 this state may apply to the attorney general for certification
35 of its program. A manufacturer seeking certification of its

1 program in this state shall submit to the attorney general an
2 application for certification on a form prescribed by the
3 attorney general.

4 9. A program certified in this state or a program
5 established by a manufacturer applying for certification in
6 this state shall submit to the attorney general a copy of each
7 settlement approved by the program or decision made by the
8 decision maker within thirty days after the settlement is
9 reached or the decision is rendered. The decision or
10 settlement shall contain information prescribed by the
11 attorney general.

12 10. The attorney general shall review the operations of
13 any certified program at least once annually. The attorney
14 general shall prepare annual and periodic reports evaluating
15 the operation of certified programs serving consumers in this
16 state or programs established by motor vehicle manufacturers
17 applying for certification in this state. The reports shall
18 indicate whether certification should be granted, renewed,
19 denied, or revoked.

20 11. If a manufacturer has established a program which the
21 attorney general has certified as substantially complying with
22 the provisions of and the rules adopted under this chapter,
23 and has informed the consumer how and where to file a claim
24 with the program pursuant to subsection 1, the provisions of
25 section 322G.4, subsection 2, do not apply to any consumer who
26 has not first resorted to the program.

27 Sec. 7. NEW SECTION. 322G.7 INFORMAL DISPUTE SETTLEMENT
28 PROCEDURE -- CERTIFICATION UNIFORMITY.

29 To facilitate uniform application, interpretation, and
30 enforcement of this section and section 322G.6, and in
31 implementing rules adopted pursuant to section 322G.14, the
32 attorney general may cooperate with agencies that perform
33 similar functions in any other states that enact these or
34 similar sections. The cooperation authorized by this
35 subsection may include any of the following:

1 1. Establishing a central depository for copies of all
2 applications and accompanying materials submitted by
3 manufacturers for certification, and all reports prepared,
4 notices issued, and determinations made by the attorney
5 general under section 322G.6.

6 2. Sharing and exchanging information, documents, and
7 records pertaining to program operations.

8 3. Sharing personnel to perform joint reviews, surveys,
9 and investigations of program operations.

10 4. Preparing joint reports evaluating program operations.

11 5. Granting joint certifications and certification
12 renewals.

13 6. Issuing joint denials or revocations of certification.

14 7. Holding a joint administrative hearing.

15 8. Formulating, in accordance with chapter 17A, the
16 administrative procedures Act, rules or proposed rules on
17 matters such as guidelines, forms, statements of policy,
18 interpretative opinions, and any other information necessary
19 to implement section 322G.6.

20 Sec. 8. NEW SECTION. 322G.8 CONSUMER REMEDIES.

21 1. If a consumer resorts to a manufacturer's certified
22 program and a decision is not rendered within the time periods
23 allowed in this chapter, or a manufacturer has no certified
24 program and the consumer has notified the manufacturer
25 pursuant to section 322G.4, subsection 1, the consumer may
26 file an action in district court under this chapter within one
27 year from the expiration of the lemon law rights period or an
28 extension of the period pursuant to section 322G.4, subsection
29 3.

30 2. If a consumer resorts to a manufacturer's certified
31 program and is not satisfied with the performance of the
32 manufacturer as ordered in the decision, or the manufacturer
33 does not perform as directed by the decision within the time
34 period specified in the decision, the consumer may file an
35 action in district court under this chapter within six months

1 after the date prescribed in the decision by which the
2 manufacturer must fulfill the terms of the decision. If the
3 consumer declines to accept the decision of the manufacturer's
4 certified program, the consumer may appeal the decision
5 pursuant to subsection 4. For purposes of this subsection,
6 "not satisfied with the performance of the decision" means,
7 following the consumer's acceptance of the decision, the
8 consumer indicates that the manufacturer failed to comply with
9 the terms of the decision within the time specified in the
10 decision or failed to cure the nonconformity within the time
11 specified in the decision if further repairs were ordered.

12 3. In an action under either subsection 1 or 2, the court
13 shall award a consumer who prevails the amount of any
14 pecuniary loss, including relief the consumer is entitled to
15 under section 322G.4, subsection 2, reasonable attorney's
16 fees, and costs. In addition, if the court affirms the
17 decision of the certified program, the court may award any
18 additional amounts allowed under section 322G.8, subsection 7.

19 4. A certified program's decision is final unless appealed
20 by either party. A petition to the district court to appeal a
21 decision must be made within fifty days after receipt of the
22 decision or within twenty-five days from the date the consumer
23 indicates acceptance of the decision to the manufacturer,
24 whichever occurs first. Within seven days after the petition
25 has been filed, the appealing party must send, by certified,
26 registered, or express mail, a copy of the petition to the
27 attorney general. If the attorney general receives no notice
28 of the petition within sixty days after the manufacturer's
29 receipt of a decision in favor of the consumer, and the
30 consumer has indicated acceptance of the decision within the
31 twenty-five days of receipt of the decision, but the
32 manufacturer has neither complied with, nor petitioned to
33 appeal the decision, the attorney general may apply to the
34 court to impose a fine up to one thousand dollars per day
35 against the manufacturer until the amount stands at twice the

1 purchase price of the motor vehicle, unless the manufacturer
2 provides clear and convincing evidence that the delay or
3 failure was beyond its control or was acceptable to the
4 consumer as evidenced by a written statement signed by the
5 consumer. If the manufacturer fails to provide such evidence
6 or fails to pay the fine, the attorney general shall initiate
7 proceedings against the manufacturer for failure to pay the
8 fine. The proceeds from the fine imposed shall be placed in
9 the attorney general's motor vehicle fraud and odometer law
10 enforcement fund for implementation and enforcement of this
11 chapter.

12 5. If the manufacturer fails to comply with a decision
13 which has been timely accepted by the consumer or fails to
14 file a timely petition for appeal, the court shall affirm the
15 board's decision upon application by the consumer.

16 6. An appeal of a decision by a certified program to the
17 court by a consumer or a manufacturer shall be tried de novo,
18 and may be based upon stipulated facts. In a written petition
19 to appeal a decision by the board, the appealing party must
20 state the action requested and the grounds relied upon for
21 appeal.

22 7. If a decision of the certified program in favor of the
23 consumer is affirmed or upheld by the court, recovery by the
24 consumer shall include the pecuniary value of the award,
25 including relief the consumer is entitled to under section
26 322G.4, subsection 2, attorney's fees incurred in obtaining
27 confirmation of the award, and all costs and continuing
28 damages in an amount of twenty-five dollars per day for all
29 days beyond the twenty-five-day period following the
30 manufacturer's receipt of the consumer's acceptance of the
31 certified program's decision. If a court determines that a
32 manufacturer filed a petition for appeal to be tried de novo
33 in bad faith or brought such an appeal solely for the purpose
34 of harassment, the court shall double, and may triple, the
35 amount of the total award, after consideration of all

1 circumstances.

2 8. Appellate review of a court decision in favor of the
3 consumer may be conditioned upon payment by the manufacturer
4 of the consumer's attorney's fees and giving security for
5 costs and expenses resulting from the review period.

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

8 Sec. 9. NEW SECTION. 322G.9 COMPLIANCE AND DISCIPLINARY
9 ACTION.

10 The attorney general may enforce and ensure compliance with
11 the provisions of this chapter and rules adopted pursuant to
12 section 322G.14, may issue subpoenas requiring the attendance
13 of witnesses and the production of evidence, and may petition
14 any court having jurisdiction to compel compliance with the
15 subpoenas. The attorney general may levy and collect an
16 administrative fine in an amount not to exceed one thousand
17 dollars for each violation against any manufacturer found to
18 be in violation of this chapter or rules adopted pursuant to
19 section 322G.14. A manufacturer may request a hearing
20 pursuant to chapter 17A, the administrative procedures Act, if
21 the manufacturer contests the fine levied against it. The
22 proceeds from any fine levied and collected pursuant to this
23 section shall be placed in the attorney general's motor
24 vehicle fraud and odometer law enforcement fund for
25 implementation and enforcement of this chapter.

26 Sec. 10. NEW SECTION. 322G.10 UNFAIR OR DECEPTIVE TRADE
27 PRACTICE.

28 A violation by a manufacturer of this chapter is an unfair
29 or deceptive trade practice in violation of section 714.16,
30 subsection 2, paragraph "a".

31 Sec. 11. NEW SECTION. 322G.11 DEALER LIABILITY.

32 This chapter does not impose any liability on a franchised
33 motor vehicle dealer or create a cause of action by a consumer
34 against a dealer. A dealer shall not be made a party
35 defendant in any action involving or relating to this chapter,

1 except as provided in this section. The manufacturer shall
2 not charge back or require reimbursement by the dealer for any
3 costs, including but not limited to any refunds or vehicle
4 replacements, incurred by the manufacturer pursuant to this
5 chapter, in the absence of a finding by a court that the
6 related repairs had been carried out by the dealer in a manner
7 substantially inconsistent with the manufacturer's published
8 instructions. A manufacturer who is found by a court to have
9 improperly charged back a dealer because of a violation of
10 this section is liable to the injured dealer for full
11 reimbursement plus reasonable costs and any attorney's fees.

12 Sec. 12. NEW SECTION. 322G.12 RESALE OF RETURNED
13 VEHICLES.

3424 14 A manufacturer who accepts the return of a motor vehicle
15 pursuant to a settlement, determination, or decision under
16 this chapter shall notify the state department of
17 transportation and report the vehicle identification number of
18 that motor vehicle within ten days after the acceptance. The
19 state department of transportation shall note the fact that
20 the motor vehicle was returned pursuant to this chapter on the
21 title for the motor vehicle. A person shall not knowingly
22 lease; or sell, either at wholesale or retail; or transfer a
23 title to a motor vehicle returned by reason of a settlement,
24 determination, or decision pursuant to this chapter or a
25 similar statute of any other state unless the nature of the
26 nonconformity is clearly and conspicuously disclosed to the
27 prospective transferee, lessee, or buyer. The attorney
28 general shall prescribe by rule the form, content, and
29 procedure pertaining to such a disclosure statement,
30 recognizing the need of manufacturers to implement a uniform
31 disclosure form. The manufacturer shall make a reasonable
32 effort to ensure that such disclosure is made to the first
33 subsequent retail buyer or lessee. For purposes of this
34 subsection, "settlement" includes an agreement entered into
35 between the manufacturer and the consumer that occurs after

1 the dispute has been submitted to a manufacturer-established
2 program, but does not include agreements reached in informal
3 proceedings prior to the first written or oral presentation to
4 the certified program by either party.

5 Sec. 13. NEW SECTION. 322G.13 CERTAIN AGREEMENTS VOID.

6 Any agreement entered into by a consumer that waives,
7 limits, or disclaims the rights set forth in this chapter is
8 void as contrary to public policy.

9 Sec. 14. NEW SECTION. 322G.14 RULEMAKING AUTHORITY.

10 1. The attorney general shall adopt rules as necessary to
11 implement this chapter.

12 2. In prescribing rules and forms under this chapter, the
13 attorney general may cooperate with agencies that perform
14 similar functions in other states with a view to effectuating
15 the policy of this chapter to achieve maximum uniformity in
16 the form and content of certification, regulation, and
17 procedural evaluation of manufacturer-established programs,
18 required recordkeeping, required reporting wherever
19 practicable, and required notices to consumers.

20 Sec. 15. NEW SECTION. 322G.15 FUNDING.

21 The attorney general may use any funds deposited in the
22 motor vehicle fraud and odometer law enforcement fund to
23 implement the provisions of this chapter.

24 Sec. 16. NEW SECTION. 322G.16 EFFECTIVE DATES.

25 This Act applies to motor vehicles originally purchased or
26 leased in this state by consumers on or after July 1, 1991.
27 Section 14, which concerns rulemaking, shall take effect upon
28 enactment.

29 Sec. 17. Chapter 322E, Code 1991, is repealed.

30

EXPLANATION

31 This bill establishes a new chapter 322G which provides
32 remedies for a consumer who purchases a motor vehicle which
33 the manufacturer or the manufacturer's authorized agent is
34 unable to repair so that it meets the express warranties of
35 the manufacturer.

1 Section 1 states the legislative intent of the chapter.
2 Section 2 defines terms used in the chapter.
3 Section 3 enumerates certain duties of the manufacturer or
4 the manufacturer's authorized agent related to the repair of a
5 new motor vehicle to conform it to any warranty. The section
6 also requires the manufacturer or authorized agent to provide
7 certain information to the consumer including a statement of
8 rights and obligations contained in this chapter to be
9 provided at the time of purchase of the motor vehicle, a
10 repair statement each time the vehicle is examined or repaired
11 while under warranty, and any technical bulletins requested
12 concerning the specific vehicle model.
13 Section 4 provides that after notice by the consumer to the
14 manufacturer after three attempts to repair the motor vehicle,
15 or one attempt if the nonconformity is likely to cause death
16 or serious injury, the consumer must allow the manufacturer
17 one final attempt to repair the vehicle so that it conforms to
18 the applicable warranty. The manufacturer has ten days after
19 delivery of the vehicle to repair the nonconformity.
20 Section 5 establishes affirmative defenses for the
21 manufacturer relating to a claim brought by a consumer
22 pursuant to this chapter. These defenses include that the
23 alleged nonconformity or nonconformities do not substantially
24 impair the motor vehicle, and that a nonconformity is the
25 result of an accident, abuse, neglect, or unauthorized
26 modifications or alterations of the motor vehicle by persons
27 other than the manufacturer or its authorized service agent.
28 Section 6 provides that a manufacturer may establish a
29 program to be certified by the attorney general for dispute
30 resolution. If the manufacturer establishes such a program,
31 the bill requires that it must be insulated from the
32 manufacturer so that any decisions are not influenced by the
33 manufacturer.
34 Section 7 authorizes the attorney general to cooperate with
35 other agencies in other states which perform similar functions

1 to facilitate the uniform application of this and similar
2 statutes.

3 Section 8 establishes consumer remedies and reserves a
4 right of appeal regarding a decision of a certified program to
5 either party.

6 Section 9 authorizes the attorney general to enforce
7 compliance with the statutory requirements of the new chapter.
8 The attorney general is authorized to levy an administrative
9 fine of up to \$1,000 for each violation.

10 Section 10 provides that a violation of the provisions of
11 this chapter is an unfair or deceptive trade practice.

12 Section 11 provides that no liability is imposed on a
13 franchised motor vehicle dealer under this chapter.

14 Section 12 provides that a manufacturer must disclose to a
15 prospective transferee, lessee, or buyer the nature of any
16 nonconformity of the vehicle before it may transfer title of a
17 vehicle returned to the manufacturer by reason of a
18 settlement, determination, or decision pursuant to this new
19 chapter or a similar statute of another state.

20 Section 13 provides that an agreement to waive or limit the
21 rights set forth in this chapter is void.

22 Section 14 authorizes the attorney general to adopt rules
23 to implement this chapter.

24 Section 15 provides that the attorney general may use funds
25 deposited in the motor vehicle fraud and odometer law
26 enforcement fund to implement this chapter.

27 Section 16 provides that this new chapter applies to motor
28 vehicles originally purchased or leased by consumers in this
29 state on or after July 1, 1991.

30 Section 17 repeals chapter 322E relating to new motor
31 vehicle repair or replacement.

32

33

34

35

HOUSE FILE 566

S-3369

- 1 Amend House File 566, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 18, by striking lines 20 through 24 and
- 4 inserting the following:
- 5 "Sec. ____ . NEW SECTION. 322G.15 EFFECTIVE
- 6 DATES."
- 7 2. Renumber as necessary.

By COMMITTEE ON COMMERCE
PATRICK DELUHERY, Chairperson

S-3369 FILED APRIL 9, 1991

Adopted 4/16/91 (p. 1279)

HOUSE FILE 566

S-3424

- 1 Amend House File 566, as amended and passed by the
- 2 House, as follows:
- 3 1. Page 17, line 14, by striking the word "A" and
- 4 inserting the following: "Subsequent to December 31,
- 5 1991, a".

By RICHARD VARN

S-3424 FILED APRIL 15, 1991

Adopted 4/16/91 (p. 1280)

SENATE AMENDMENT TO HOUSE FILE 566

H-3705

- 1 Amend House File 566, as amended and passed by the
- 2 House, as follows:
- 3 1. Page 17, line 14, by striking the word "A" and
- 4 inserting the following: "Subsequent to December 31,
- 5 1991, a".
- 6 2. Page 18, by striking lines 20 through 24 and
- 7 inserting the following:
- 8 "Sec. ____ . NEW SECTION. 322G.15 EFFECTIVE
- 9 DATES."
- 10 3. By renumbering, relettering, or redesignating
- 11 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-3705 FILED APRIL 18, 1991

House amended 4/22/91 (p. 1421)

HOUSE FILE 566

AN ACT

RELATING TO DEFECTIVE MOTOR VEHICLES AND PROVIDING STATUTORY PROCEDURES UNDER WHICH A CONSUMER MAY RECEIVE A REPLACEMENT MOTOR VEHICLE, OR A FULL REFUND, FOR A MOTOR VEHICLE WHICH CANNOT BE BROUGHT INTO CONFORMITY WITH THE WARRANTY, PROVIDING CERTAIN REMEDIES, PROVIDING AN ADMINISTRATIVE FINE, MAKING A PENALTY APPLICABLE, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 322G.1 LEGISLATIVE INTENT.

The general assembly recognizes that a motor vehicle is a major consumer acquisition and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The general assembly further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the general assembly that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the general assembly 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 warranty provided for in this chapter. However, this chapter does not limit the rights or remedies which are otherwise available to a consumer under any other law.

Sec. 2. NEW SECTION. 322G.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter,

collateral charges include, but are not limited to, charges for manufacturer-installed or agent-installed items, earned finance charges, use taxes, and title charges.

2. "Condition" means a general problem that may be attributable to a defect in more than one part.

3. "Consumer" means the purchaser or lessee, other than for purposes of lease or resale, of a new or previously untitled motor vehicle, or any other person entitled by the terms of the warranty to enforce the obligations of the warranty during the duration of the lemon law rights period.

4. "Days" means calendar days.

5. "Department" means the attorney general.

6. "Incidental charges" means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining alternative transportation, which are the direct result of the nonconformity or nonconformities which are the subject of the claim. Incidental charges do not include loss of use, loss of income, or personal injury claims.

7. "Lease price" means the aggregate of the following:

- a. Lessor's actual purchase costs.
- b. Collateral charges, if applicable.
- c. 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.

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

f. An amount equal to five percent of the lessor's actual purchase cost.

8. "Lemon law rights period" means the term of the manufacturer's written warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever expires first.

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

10. "Lessee cost" means the aggregate of the deposit and rental payments previously paid to the lessor for the leased vehicle.

11. "Lessor" means a person who holds the title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor's rights under the agreement.

12. "Manufacturer" means a person engaged in the business of constructing or assembling new motor vehicles or installing on previously assembled vehicle chassis special bodies or equipment which, when installed, form an integral part of the new motor vehicle, or a person engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing the new motor vehicles to new motor vehicle dealers.

13. "Motor vehicle" means a self-propelled vehicle purchased or leased in this state and primarily designed for the transportation of persons or property over public streets and highways, but does not include mopeds, motorcycles, motor homes, or vehicles over ten thousand pounds gross vehicle weight rating.

14. "Nonconformity" means a defect, malfunction, or condition in a motor vehicle such that the vehicle fails to conform to the warranty, but does not include a defect, malfunction, 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.

15. "Person" means person as defined in section 714.15.

16. "Program" means an informal dispute settlement procedure established by a manufacturer which mediates and arbitrates motor vehicle warranty disputes arising in this state.

17. "Purchase price" means the cash price paid for the motor vehicle appearing in the sales agreement or contract, including any net allowance given for a trade-in vehicle.

18. "Reasonable offset for use" means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative 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, or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent of the purchase price, and divided by one hundred twenty thousand.

19. "Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of original acquisition.

20. "Substantially impair" means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the motor vehicle.

21. "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 or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

Sec. 3. NEW SECTION. 322G.3 DUTIES OF MANUFACTURER.

1. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall provide to the consumer a written statement that explains the consumer's rights and

obligations under this chapter. The written statement shall be prepared by the attorney general and shall contain a telephone number that the consumer can use to obtain information from the attorney general regarding the rights and obligations provided under this chapter.

2. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall provide to the consumer the address and phone number for the zone, district, or regional office of the manufacturer for this state where a claim may be filed by the consumer. This information shall be provided to the consumer in a clear and conspicuous manner. Within thirty days of the introduction of a new model year for each make and model of motor vehicle sold in this state, the manufacturer shall notify the attorney general of such introduction. The manufacturer shall also inform the attorney general that a copy of the owner's manual and applicable written warranties shall be provided upon request and provide information as to where the request should be made. The manufacturer shall inform the attorney general where such a request should be directed and shall provide the copy of the owner's manual and applicable written warranties within five business days of a request by the attorney general.

3. A manufacturer or the authorized service agent of the manufacturer shall make repairs as necessary to conform the vehicle to the warranty if a motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer or authorized service agent during the lemon law rights period. Such repairs shall be made irrespective of whether they can be made prior to the expiration of the lemon law rights period.

4. A manufacturer or the authorized service agent of the manufacturer, shall provide to the consumer, each time the motor vehicle is returned after 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 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.

5. Upon request from the consumer, the manufacturer, or the authorized service agent of the manufacturer, shall provide a copy of either or both of the following:

- a. Any report or printout of any diagnostic computer operation compiled by the manufacturer or authorized service agent regarding an inspection or diagnosis of the motor vehicle.
- b. A copy of any technical service bulletin issued by the manufacturer regarding the year and model of the motor vehicle as it pertains to any material, feature, component, or the performance of the motor vehicle.

Sec. 4. NEW SECTION. 322G.4 NONCONFORMITY OF MOTOR VEHICLES.

1. After three attempts have been made to repair the same nonconformity that substantially impairs the motor vehicle, or after one attempt to repair a nonconformity that is likely to cause death or serious bodily injury, the consumer may give written notification, which shall be by certified or registered mail or by overnight service, to the manufacturer of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall, within ten days after receipt of such notification, notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility and after delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within ten days, conform the motor vehicle to the warranty. If the manufacturer fails to notify and provide the consumer with the opportunity to have the vehicle

repaired at 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 does not apply.

After twenty or more cumulative days when the motor vehicle has been out of service by reason of repair of one or more nonconformities, the consumer may give written notification to the manufacturer which shall be by certified or registered mail or by overnight service. Commencing upon the date such notification is received, the manufacturer has ten cumulative days when the vehicle has been out of service by reason of repair of one or more nonconformities to conform the motor vehicle to the warranty.

2. If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer, or repurchase the motor vehicle from the consumer or lessor and refund to the consumer or lessor the full purchase or lease price, less a reasonable offset for use. The replacement or refund shall include payment of all collateral and reasonably incurred incidental charges. The consumer has an unconditional right to choose a refund rather than a replacement. If the consumer elects to receive a refund, and the refund exceeds the amount of the payment for a reasonable offset for use, the requirement that the consumer pay the reasonable offset for use in advance does not apply, and the manufacturer shall deduct that amount from the refund due to the consumer. If the consumer elects a replacement motor vehicle, the manufacturer shall provide the consumer a substitute motor vehicle to use until such time as the

replacement vehicle is delivered to the consumer. At the time of the refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the original motor vehicle.

Refunds shall be made to the consumer and lienholder of record, if any, as their interests appear. If applicable, refunds shall be made to the lessor and lessee as follows: the lessee shall receive the lessee's cost less a reasonable offset for use, and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. If it is determined that the lessee is entitled to a refund pursuant to this chapter, the consumer's lease agreement with the lessor is terminated upon payment of the refund and no penalty for early termination shall be assessed. The department of revenue and finance shall refund to the manufacturer any use tax which the manufacturer refunded to the consumer, lessee, or lessor under this section, if the manufacturer provides to the department of revenue and finance a written request for a refund and evidence that the use tax was paid when the vehicle was purchased and that the manufacturer refunded the use tax to the consumer, lessee, or lessor.

3. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the lemon law rights period, any of the following occur:

a. The same nonconformity that substantially impairs the motor vehicle has been subject to examination or repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

b. A nonconformity that is likely to cause death or serious bodily injury has been subject to examination or repair at least one time by the manufacturer or its authorized

service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in section 322G.4, subsection 1, and such nonconformity continues to exist.

c. The motor vehicle has been out of service by reason of repair by the manufacturer, or its authorized service agent, of one or more nonconformities that substantially impair the motor vehicle for a cumulative total of thirty or more days, exclusive of down time for routine maintenance prescribed by the owner's manual. The thirty-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.

The terms of this subsection shall be extended for a period of up to two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever occurs first, if a nonconformity has been reported but has not been cured by the manufacturer, or its authorized service agent, before the expiration of the lemon law rights period.

4. A manufacturer, or its authorized service agent shall not refuse to examine or repair any nonconformity for the purpose of avoiding liability under this chapter.

Sec. 5. NEW SECTION. 322G.5 AFFIRMATIVE DEFENSES.

Any of the following is an affirmative defense to a claim under this chapter:

1. The alleged nonconformity or nonconformities do not substantially impair the motor vehicle.
2. A nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than the manufacturer or its authorized service agent.
3. The claim by the consumer was not filed in good faith.

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

Sec. 6. NEW SECTION. 322G.6 INFORMAL DISPUTE SETTLEMENT PROCEDURES -- OPERATIONS AND CERTIFICATION.

1. At the time of the consumer's purchase or lease of the vehicle, a manufacturer who has established a program certified pursuant to this section shall, at a minimum, clearly and conspicuously disclose to the consumer in written materials accompanying the vehicle how and where to file a claim with the program.

2. A certified program shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the program. The manufacturer shall take all steps necessary to ensure that a certified program and its staff and decision makers are sufficiently insulated from the manufacturer so that the performance of the staff and the decisions of the decision makers are not influenced by the manufacturer. Such steps, at a minimum, shall ensure that the manufacturer does not make decisions on whether a consumer's dispute proceeds to the decision maker. Staff and decision makers of a certified program shall be trained in the provisions of this chapter and rules adopted under this chapter.

3. A certified program shall allow an oral presentation by a party, or by a party's employee, agent, or representative.

Within five days following the consumer's notification to the certified program of the dispute, the program shall inform each party of their right to make an oral presentation.

Meetings of a certified program to hear and decide disputes shall be open to observers, including either party to the dispute, on reasonable and nondiscriminatory terms.

4. A certified program shall render a decision no later than sixty days from the day of the consumer's notification of the dispute, provided that a significant number of decisions

are rendered within forty days. For the purposes of this section, notification is deemed to have occurred when a certified program has received the consumer's name and address; the current date and the date of the original delivery of the motor vehicle to a consumer; the year, make, model, and identification number of the motor vehicle; and a description of the nonconformity. If the consumer has not previously notified the manufacturer of the nonconformity, the sixty-day period is extended for an additional seven days.

5. A certified program shall, in rendering decisions, take into account the provisions of this chapter and all legal and equitable factors germane to a fair and just decision. The decision shall disclose to the consumer and the manufacturer the reasons for the decision, and the manufacturer's required actions, if applicable. If the decision is in favor of the consumer, the consumer shall have up to twenty-five days from the date of receipt of the certified program's decision to indicate acceptance of the decision. The decision shall prescribe a reasonable period of time, not to exceed thirty days from the date the consumer notifies the manufacturer of acceptance of the decision, within which the manufacturer must fulfill the terms of the decision. If the manufacturer has had a reasonable number of attempts to conform a motor vehicle to the warranty as set forth in section 322G.4, subsection 3, including a final attempt by the manufacturer to repair the motor vehicle, if undertaken as provided for in section 322G.4, subsection 1, and the consumer is entitled to a replacement vehicle or a refund under section 322G.4, subsection 2, the decision shall be limited to relief as allowed under section 322G.4, subsection 2. In an action brought by a consumer under this chapter, the decision of a certified program is admissible in evidence.

6. A certified program shall establish written procedures which explain operation of the certified program. Copies of the written procedures shall be made available to any person

upon request and shall be sent to the consumer upon notification of the dispute.

7. A certified program shall retain all records for each dispute for at least four years after the final disposition of the dispute. A certified program shall have an independent audit conducted annually to determine whether the manufacturer and its performance and the program and its implementation are in compliance with this chapter. All records for each dispute shall be available for the audit. Such audit, upon completion, shall be forwarded to the attorney general.

8. Any manufacturer licensed to sell motor vehicles in this state may apply to the attorney general for certification of its program. A manufacturer seeking certification of its program in this state shall submit to the attorney general an application for certification on a form prescribed by the attorney general.

9. A program certified in this state or a program established by a manufacturer applying for certification in this state shall submit to the attorney general a copy of each settlement approved by the program or decision made by the decision maker within thirty days after the settlement is reached or the decision is rendered. The decision or settlement shall contain information prescribed by the attorney general.

10. The attorney general shall review the operations of any certified program at least once annually. The attorney general shall prepare annual and periodic reports evaluating the operation of certified programs serving consumers in this state or programs established by motor vehicle manufacturers applying for certification in this state. The reports shall indicate whether certification should be granted, renewed, denied, or revoked.

11. If a manufacturer has established a program which the attorney general has certified as substantially complying with the provisions of and the rules adopted under this chapter,

and has informed the consumer how and where to file a claim with the program pursuant to subsection 1, the provisions of section 322G.4, subsection 2, do not apply to any consumer who has not first resorted to the program.

Sec. 7. NEW SECTION. 322G.7 INFORMAL DISPUTE SETTLEMENT PROCEDURE -- CERTIFICATION UNIFORMITY.

To facilitate uniform application, interpretation, and enforcement of this section and section 322G.6, and in implementing rules adopted pursuant to section 322G.14, the attorney general may cooperate with agencies that perform similar functions in any other states that enact these or similar sections. The cooperation authorized by this subsection may include any of the following:

1. Establishing a central depository for copies of all applications and accompanying materials submitted by manufacturers for certification, and all reports prepared, notices issued, and determinations made by the attorney general under section 322G.6.
2. Sharing and exchanging information, documents, and records pertaining to program operations.
3. Sharing personnel to perform joint reviews, surveys, and investigations of program operations.
4. Preparing joint reports evaluating program operations.
5. Granting joint certifications and certification renewals.
6. Issuing joint denials or revocations of certification.
7. Holding a joint administrative hearing.
8. Formulating, in accordance with chapter 17A, the administrative procedures Act, rules or proposed rules on matters such as guidelines, forms, statements of policy, interpretative opinions, and any other information necessary to implement section 322G.6.

Sec. 8. NEW SECTION. 322G.8 CONSUMER REMEDIES.

1. If a consumer resorts to a manufacturer's certified program and a decision is not rendered within the time periods

allowed in this chapter, or a manufacturer has no certified program and the consumer has notified the manufacturer pursuant to section 322G.4, subsection 1, the consumer may file an action in district court under this chapter within one year from the expiration of the lemon law rights period or an extension of the period pursuant to section 322G.4, subsection 3.

2. If a consumer resorts to a manufacturer's certified program and is not satisfied with the performance of the manufacturer as ordered in the decision, or the manufacturer does not perform as directed by the decision within the time period specified in the decision, the consumer may file an action in district court under this chapter within six months after the date prescribed in the decision by which the manufacturer must fulfill the terms of the decision. If the consumer declines to accept the decision of the manufacturer's certified program, the consumer may appeal the decision pursuant to subsection 4. For purposes of this subsection, "not satisfied with the performance of the decision" means, following the consumer's acceptance of the decision, the consumer indicates that the manufacturer failed to comply with the terms of the decision within the time specified in the decision or failed to cure the nonconformity within the time specified in the decision if further repairs were ordered.

3. In an action under either subsection 1 or 2, the court shall award a consumer who prevails the amount of any pecuniary loss, including relief the consumer is entitled to under section 322G.4, subsection 2, reasonable attorney's fees, and costs. In addition, if the court affirms the decision of the certified program, the court may award any additional amounts allowed under section 322G.8, subsection 7.

4. A certified program's decision is final unless appealed by either party. A petition to the district court to appeal a decision must be made within fifty days after receipt of the decision or within twenty-five days from the date the consumer

indicates acceptance of the decision to the manufacturer, whichever occurs first. Within seven days after the petition has been filed, the appealing party must send, by certified, registered, or express mail, a copy of the petition to the attorney general. If the attorney general receives no notice of the petition within sixty days after the manufacturer's receipt of a decision in favor of the consumer, and the consumer has indicated acceptance of the decision within the twenty-five days of receipt of the decision, but the manufacturer has neither complied with, nor petitioned to appeal the decision, the attorney general may apply to the court to impose a fine up to one thousand dollars 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 attorney general shall initiate proceedings against the manufacturer for failure to pay the fine. The proceeds from the fine imposed shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

5. If the manufacturer fails to comply with a decision which has been timely accepted by the consumer or fails to file a timely petition for appeal, the court shall affirm the board's decision upon application by the consumer.

6. An appeal of a decision by a certified program to the court by a consumer or a manufacturer shall be tried de novo, and may be based upon stipulated facts. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

7. If a decision of the certified program in favor of the consumer is affirmed or upheld by the court, recovery by the consumer shall include the pecuniary value of the award, including relief the consumer is entitled to under section 322G.4, subsection 2, attorney's fees incurred in obtaining confirmation of the award, and all costs and continuing damages in an amount of twenty-five dollars per day for all days beyond the twenty-five-day period following the manufacturer's receipt of the consumer's acceptance of the certified program's decision. If a court determines that a manufacturer filed a petition for appeal to be tried de novo in bad faith or brought such an appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award, after consideration of all circumstances.

8. Appellate review of a court decision in favor of the consumer 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.

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

Sec. 9. NEW SECTION. 322G.9 COMPLIANCE AND DISCIPLINARY ACTION.

The attorney general may enforce and ensure compliance with the provisions of this chapter and rules adopted pursuant to section 322G.14, may issue subpoenas requiring the attendance of witnesses and the production of evidence, and may petition any court having jurisdiction to compel compliance with the subpoenas. The attorney general may levy and collect an administrative fine in an amount not to exceed one thousand dollars for each violation against any manufacturer found to be in violation of this chapter or rules adopted pursuant to section 322G.14. A manufacturer may request a hearing pursuant to chapter 17A, the administrative procedures Act, if the manufacturer contests the fine levied against it. The

proceeds from any fine levied and collected pursuant to this section shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

Sec. 10. NEW SECTION. 322G.10 UNFAIR OR DECEPTIVE TRADE PRACTICE.

A violation by a manufacturer of this chapter is an unfair or deceptive trade practice in violation of section 714.16, subsection 2, paragraph "a".

Sec. 11. NEW SECTION. 322G.11 DEALER LIABILITY.

This chapter does not impose any liability on a franchised motor vehicle dealer or create a cause of action by a consumer against a dealer. A dealer shall 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 pursuant to this chapter, in the absence of a finding by a court that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions. A manufacturer who is found by a court to have improperly charged back a dealer because of a violation of this section is liable to the injured dealer for full reimbursement plus reasonable costs and any attorney's fees.

Sec. 12. NEW SECTION. 322G.12 RESALE OF RETURNED VEHICLES.

Subsequent to December 31, 1991, a manufacturer who accepts the return of a motor vehicle pursuant to a settlement, determination, or decision under this chapter shall notify the state department of transportation and report the vehicle identification number of that motor vehicle within ten days after the acceptance. The state department of transportation shall note the fact that the motor vehicle was returned pursuant to this chapter on the title for the motor vehicle.

A person shall not knowingly lease; or sell, either at wholesale or retail; or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or a similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The attorney general shall prescribe by rule the form, content, and procedure pertaining to such a disclosure statement, recognizing the need of manufacturers to implement a uniform disclosure form. The manufacturer shall make a reasonable effort to ensure that such disclosure is made to the first subsequent retail buyer or lessee. For purposes of this subsection, "settlement" includes an agreement entered into between the manufacturer and the consumer that occurs after the dispute has been submitted to a manufacturer-established program, but does not include agreements reached in informal proceedings prior to the first written or oral presentation to the certified program by either party.

Sec. 13. NEW SECTION. 322G.13 CERTAIN AGREEMENTS VOID.

Any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy.

Sec. 14. NEW SECTION. 322G.14 RULEMAKING AUTHORITY.

1. The attorney general shall adopt rules as necessary to implement this chapter.
2. In prescribing rules and forms under this chapter, the attorney general may cooperate with agencies that perform similar functions in other states with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of certification, regulation, and procedural evaluation of manufacturer-established programs, required recordkeeping, required reporting wherever practicable, and required notices to consumers.

Sec. 15. NEW SECTION. 322G.15 EFFECTIVE DATES.

This Act applies to motor vehicles originally purchased or leased in this state by consumers on or after July 1, 1991. Section 14, which concerns rulemaking, shall take effect upon enactment.

Sec. 16. Chapter 322E, Code 1991, is repealed.

ROBERT C. ARNOULD
Speaker of the House

JOE J. WELSH
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 566, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 9, 1991

TERRY E. BRANSTAD
Governor