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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - CONSUMER ENFORCEMENT OF
MOTOR VEHICLE WARRANTIES

Introduced By: Representatives Kennedy, Sullivan, Lewiss, Gallison, and E Coderre

Date Introduced: February 15, 2005

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-5.2-1 and 31-5.2-7.1 of the General Laws in Chapter 31-5.2
2 entitled "Consumer Enforcement of Motor Vehicle Warranties" are hereby amended to read as
3 follows:

4 **31-5.2-1. Definitions.** -- The following words and phrases, for the purposes of this
5 chapter, have the following meanings:

6 (1) "Consumer" means a buyer, other than for purposes of resale, of a motor vehicle, any
7 person to whom that motor vehicle is transferred for the same purposes during the duration of any
8 express or implied warranty applicable to that motor vehicle, and any other person entitled by the
9 terms of that warranty to enforce its obligations.

10 (2) "Dealer" means any person engaged in the business of selling, offering to sell,
11 soliciting, or advertising the sale of new motor vehicles.

12 (3) "Lease price" means the aggregate of:

13 (i) Lessor's actual purchase costs.

14 (ii) Collateral charges, if applicable.

15 (iii) Any fee paid to another to obtain the lease.

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

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

1 (vi) An amount equal to five percent (5%) of the lessor's actual purchase costs.

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

6 (5) "Lessee cost" means the aggregate deposit and rental payments previously paid to the
7 lessor for the leased vehicle.

8 (6) "Lessor" means a person who holds title to a motor vehicle leased to a lessee under a
9 written lease agreement or who holds the lessor's rights under such agreement.

10 (7) "Manufacturer" means any person, partnership, firm, association, corporation, or
11 trust, resident or nonresident, which is engaged in the business of manufacturing or assembling
12 new motor vehicles, or which is engaged in the business of importing new motor vehicles which
13 are manufactured or assembled outside of the United States.

14 (8) "Motor vehicle" or "vehicle" means an automobile, truck, motorcycle, or van having
15 a registered gross vehicle weight of less than ten thousand pounds (10,000 lbs.), sold, leased, or
16 replaced by a dealer or manufacturer, except that it shall not include a motorized camper as
17 defined in section 31-1-3(m).

18 (9) "Nonconformity" means any specific or generic defect or malfunction, or any
19 concurrent combination of such defects or malfunctions, that substantially impairs the use, market
20 value, or safety of a motor vehicle.

21 (10) "Term of protection" means one year or fifteen thousand (15,000) miles of use from
22 the date of original delivery of a new motor vehicle to the consumer, whichever comes first; or, in
23 the case of a replacement vehicle provided by a manufacturer to a consumer under this chapter,
24 one year or fifteen thousand (15,000) miles from the date of delivery to the consumer of that
25 replacement vehicle, whichever comes first.

26 (11) "Motor vehicle arbitration board" means the board to be established by the
27 department of attorney general as set forth in section 31-5.2-7.1, which board shall replace the
28 consumers' council automobile dispute settlement panel.

29 **31-5.2-7.1. Procedure.** -- (a) In addition to any settlement procedure provided for in
30 section 31-5.2-7, the ~~consumers' council~~ department of the attorney general shall provide an
31 independent arbitration procedure for the settlement of disputes between consumers or lessees
32 and manufacturers concerning motor vehicles which do not conform to all applicable express or
33 implied warranties. ~~The director of the consumers' council shall establish one or more automobile~~
34 ~~dispute settlement panels~~ There shall be established the motor vehicle arbitrator board which shall

1 consist of ~~three (3)~~ five (5) members. ~~appointed by the director;~~ The board shall consist of the
2 attorney general or his or her designee, who shall serve as director, a member of the general
3 public appointed by the attorney general, the director of the department of administration or his or
4 her designee, the chair of the Rhode Island motor vehicle dealers' association or his or her
5 designee, and the director of the Rhode Island department of motor vehicles or his or her
6 designee, only one of whom shall be directly involved in the manufacture, distribution, sale,
7 lease, or service of any automobile product. Members shall be persons interested in consumer
8 disputes, and shall serve without compensation ~~at the discretion of the director.~~

9 (b) An owner or lessee of any motor vehicle purchased or leased which fails to conform
10 to the applicable express or implied warranties may either initiate a request with the department
11 of attorney general for arbitration by the ~~consumers' council~~ motor vehicle arbitration board or
12 take part in the settlement procedure set forth in section 31-5.2-7 if in existence. The consumer or
13 lessee shall set forth, on a complaint form prescribed by the ~~director~~ department of attorney
14 general, any information he or she deems relevant to the resolution of the dispute and shall file
15 the complaint with a nonrefundable filing fee of twenty dollars (\$20.00). The ~~director~~ attorney
16 general shall decide if the complaint is eligible under chapter 5.2 of this title. Upon acceptance of
17 the complaint, the ~~director~~ attorney general shall notify the manufacturer of the filing of a request
18 for arbitration and shall obtain from the manufacturer, in writing on a form prescribed by the
19 ~~director~~ attorney general, any information the manufacturer deems relevant to the resolution of
20 the dispute. The manufacturer shall return the form, along with a non-refundable fifty dollar
21 (\$50.00) filing fee, within twenty (20) days of receipt. The ~~director~~ department of attorney
22 general shall then refer the matter to ~~a panel~~ the motor vehicle arbitration board created pursuant
23 to subsection (a) of this section.

24 (c) The ~~panel~~ motor vehicle arbitration board shall investigate, gather, and organize all
25 information necessary for a fair and timely decision in each dispute. The ~~director~~ board may issue
26 subpoenas ~~on behalf of any arbitration panel~~ to compel the attendance of witnesses and the
27 production of documents, papers, and records relevant to the dispute.

28 (d) At all arbitration proceedings before the board the parties may present oral or written
29 testimony, present witnesses and evidence relevant to the dispute, cross examine witnesses, and
30 be represented by counsel.

31 (e) The ~~consumers' council~~ motor vehicle arbitration board may forward a copy of all
32 written testimony, including all documentary evidence, to an independent technical expert, who
33 shall review the material and be able to advise and consult with the ~~arbitration panel~~ the board.
34 An expert shall sit as a non-voting member of ~~an arbitration panel~~ the board whenever oral

1 testimony is presented. The expert shall provide advice and counsel to the board as a part of its
2 deliberation process and shall aid the board in preparing its findings and facts.

3 (f) The ~~panel~~ motor vehicle arbitration board shall grant the relief specified in section
4 31-5.2-3 of this chapter and any other relief available under the applicable warranties or the
5 Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975),
6 15 U.S.C. section 2301 et seq., as in effect on October 1, 1982, to the consumer or lessee if a
7 reasonable number of attempts as provided in section 31-5.2-5(1) and (2) have been undertaken
8 to correct one or more nonconformities that substantially impair the motor vehicle. The ~~panel~~
9 motor vehicle arbitration board shall dismiss the dispute if ~~the panel~~ it finds, after considering all
10 the evidence presented, that the consumer or lessee is not entitled to relief under this chapter.

11 (g) (1) The ~~panel~~ board shall, as expeditiously as possible, but not later than ninety (90)
12 days from the date the director deems the dispute eligible for arbitration, render a fair decision
13 based on the information gathered and disclose its findings and the reasons for it to the parties
14 involved. The consumer or lessee shall accept or reject the decision within five (5) days of its
15 filing.

16 (2) If the decision is favorable to the consumer or lessee, the manufacturer ~~must~~ shall
17 within thirty (30) days after the rendering of the decision, either comply with the terms of the
18 decision if the consumer or lessee elects to accept the decision or appeal the finding to superior
19 court. No appeal by a manufacturer shall be heard unless the petition for such appeal is filed with
20 the clerk of the superior court within thirty (30) days of issuance of the finding of the motor
21 vehicle arbitration board and is accompanied by a bond in a principal sum equal to the money
22 award made by the state-certified arbitrator plus two thousand five-hundred dollars (\$2,500) for
23 anticipated attorneys' fees, secured by cash or its equivalent, payable to the consumer. The
24 liability of the surety of any bond filed pursuant to this section shall be limited to the
25 indemnification of the consumer in the action. Such bond shall not limit or impair any right of
26 recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in
27 determining the amount of recovery to which the consumer shall be entitled. In the event that any
28 motor vehicle arbitration board decision, resulting in an award of a refund or replacement, is
29 upheld by the court, recovery by the consumer shall include continuing damages in the amount of
30 twenty-five dollars (\$25.00) per day for each day, subsequent to the day the motor vehicle was
31 returned to the manufacturer pursuant to subsection (3), that said vehicle was out of use as a
32 direct result of any nonconformity not issuing from owner negligence, accident, vandalism or any
33 attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its
34 agent or authorized dealer; provided, however, that the manufacturer did not make a comparable

1 vehicle available to the consumer free of charge. In addition to any other recovery, any prevailing
2 consumer shall be awarded reasonable attorneys' fees and costs. If the court finds that the
3 manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the
4 court shall double the amount of the total award made to the consumer. The ~~consumers' council~~
5 motor vehicle arbitration board shall contact the consumer or lessee, within ten (10) working days
6 after the date for performance, to determine whether performance has occurred.

7 (h) The ~~director~~ motor vehicle arbitration board shall maintain the records of each
8 dispute as deemed necessary, including an index of disputes by brand name and model. The
9 ~~director~~ motor vehicle arbitration board shall, at intervals of no more than six (6) months, compile
10 and maintain statistics indicating the record of manufacturer compliance with arbitration
11 decisions and the number of refunds or replacement awarded. The summary shall be a public
12 record.

13 (i) The ~~consumers' council~~ motor vehicle arbitration board automobile dispute settlement
14 procedure shall be prominently posted in the place of business of each new car dealer or lessor
15 licensed by the department of administration to engage in the sale or lease of that manufacturer's
16 new motor vehicles. The display of this public notice shall be a condition of licensure under the
17 general laws. The ~~director~~ board shall determine the size, type face, form and wording of the sign
18 required by this section, which shall include the telephone number and the address to which
19 requests for the ~~consumers' council's~~ motor vehicle arbitration board arbitration services may be
20 sent.

21 (j) The ~~director~~ motor vehicle arbitration board shall adopt regulations, in accordance
22 with the provisions of the general laws to carry out the purposes of this section. Written copies of
23 the regulations and appropriate arbitration hearing procedures shall be provided to any person
24 upon request.

25 SECTION 2. Chapter 31-5.2 of the General Laws entitled "Consumer Enforcement of
26 Motor Vehicle Warranties" is hereby amended by adding thereto the following section:

27 **31-5.2-14. Consumers' council automobile dispute settlement panel - Motor vehicle**
28 **arbitration board.** – Whenever the term "consumer's council automobile dispute settlement
29 panel," for the purpose of providing an independent arbitration procedure for the settlement of
30 disputes between consumers or lessees and manufactures concerning motor vehicles which do not
31 conform to all applicable express or implied warranties is used, the term shall mean the motor
32 vehicle arbitration board established by the department of attorney general pursuant to section 31-
33 5.2-7.1.

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SECTION 3. This act shall take effect September 30, 2005.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO MOTOR AND OTHER VEHICLES - CONSUMER ENFORCEMENT OF
MOTOR VEHICLE WARRANTIES

1 This act would establish a motor vehicle arbitration board in the department of attorney
2 general for the purpose of arbitrating "lemon law" complaints by purchasers or lessees of motor
3 vehicles.

4 This board would replace the consumers' council dispute settlement panel heretofore
5 established for such purpose.

6 This act would take effect on September 30, 2005.

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