

HOUSE BILL NO. 385
INTRODUCED BY FRITZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT MONTANA NEW MOTOR VEHICLE WARRANTY LAWS APPLY TO MOTOR VEHICLES REGISTERED IN THIS STATE IN ADDITION TO MOTOR VEHICLES SOLD IN THIS STATE; INCLUDING MOTORCYCLES AS VEHICLES COVERED BY REGISTRATION; SUBSTITUTING SELECTION OF AN ARBITRATOR FOR SELECTION OF AN ARBITRATION PANEL AND DECREASING THE NUMBER OF ARBITRATORS FROM THREE TO ONE; AND AMENDING SECTION SECTIONS 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

(b) The term does not include a truck with 10,000 pounds or more gross vehicle weight rating ~~or a motorcycle as defined in 61-1-105~~. Motor vehicle does not include components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer

or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use ~~shall~~ must be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

SECTION 2. SECTION 61-4-516, MCA, IS AMENDED TO READ:

"61-4-516. Composition of arbitration panel Selection of arbitrator. An arbitration panel hearing arbitrator for a grievance under this part must consist of three members be chosen by the department of administration. ~~One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties.~~ The department of administration ~~may~~ shall maintain a list of persons willing to serve ~~on panels from which the third member may be chosen~~ as an arbitrator."

SECTION 3. SECTION 61-4-518, MCA, IS AMENDED TO READ:

"61-4-518. Arbitration -- role of department of administration -- expert. (1) The department of administration shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of administration may, on behalf of the ~~arbitration panel~~ arbitrator, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the ~~panel~~ arbitrator, the department of administration may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the ~~panel~~ arbitrator. The expert, at the arbitrator's request, ~~may sit as a nonvoting member of the panel~~ be present whenever oral testimony is presented."

SECTION 4. SECTION 61-4-519, MCA, IS AMENDED TO READ:

"61-4-519. Action by arbitration panel arbitrator -- decision. (1) The ~~arbitration panel~~ arbitrator shall, as expeditiously as possible, but not later than 60 days after the department of administration has accepted a complaint, render a fair decision based on the information gathered and disclose ~~its~~ the arbitrator's findings and

its reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of administration shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

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