

HOUSE BILL NO. 571

INTRODUCED BY PARKER, GALLIK, HARRIS, KEANE, B. RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS FOUND IN TITLE 30, CHAPTER 14, PARTS 1 AND 2, MCA, AND TELEMARKETING LAWS FOUND IN TITLE 30, CHAPTER 14, PART 14, MCA, BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; ~~CLARIFYING THE FACTORS TO BE USED IN DETERMINING IF A METHOD, ACT, OR PRACTICE IS UNLAWFUL IN THE CONDUCT OF TRADE OR COMMERCE;~~ REQUIRING COURTS TO AWARD ATTORNEY FEES TO COUNTY ATTORNEYS, THE DEPARTMENT OF JUSTICE, OR INDIVIDUALS FOR SUCCESSFULLY BRINGING AN ACTION FOR UNFAIR TRADE PRACTICES; PROVIDING FOR ATTORNEY FEES IN ACTIONS BROUGHT IN BAD FAITH RELATING TO UNFAIR TRADE PRACTICES; INCREASING THE CIVIL PENALTY FOR THE WILLFUL USE OF AN UNLAWFUL METHOD, ACT, OR PRACTICE FROM \$1,000 TO \$5,000; INCREASING THE PENALTY FOR VIOLATING A DEPARTMENT ORDER PERTAINING TO A CONSUMER PROTECTION VIOLATION FROM \$1,000 TO \$5,000; ~~PROVIDING THAT IT IS AN ABUSIVE TELEMARKETING ACT OR PRACTICE TO CALL ANY PERSON IN THIS STATE WHOSE NAME IS IN THE DO-NOT-CALL FILE MAINTAINED BY THE TELEPHONE PREFERENCE SERVICE OF THE DIRECT MARKETING ASSOCIATION;~~ TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 30-14-102, ~~30-14-103~~, 30-14-121, 30-14-131, 30-14-133, 30-14-142, 30-14-201, 30-14-202, 30-14-220, 30-14-1403, 30-14-1407, ~~30-14-1412~~, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-526, AND 61-4-532, MCA."

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

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~administration~~ justice created in ~~2-15-1004~~ 2-15-2001.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever ~~situate~~ situated.

(3) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser ~~has no~~ does not have control.

(5) "Person" means a natural ~~persons~~ person, ~~corporations~~ corporation, ~~trusts~~ trust, ~~partnerships~~ partnership, incorporated or unincorporated ~~associations~~ association, and ~~any~~ or other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any ~~services~~ service and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

~~Section 2.~~ Section 30-14-103, MCA, is amended to read:

~~"30-14-103. Unlawful practices -- determining factors. (1) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.~~

~~(2) In determining whether a method of competition is unfair or whether an act or practice is unfair or deceptive, the following factors may be considered:~~

~~(a) whether the method, act, or practice offends public policy as established by statute, regulation, common law, or other established concept of fairness; or~~

~~(b) whether the method, act, or practice causes substantial injury to consumers, competitors, or other businesses."~~

Section 2. Section 30-14-121, MCA, is amended to read:

"30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department ~~such~~ assistance ~~as~~ that the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney ~~or the attorney general~~, on request of the department or a another county attorney, may initiate all procedures and prosecute actions in the same manner

as provided for the department. If an action is prosecuted by the county attorney alone ~~or the attorney general on request of the county attorney~~, the ~~person prosecuting~~ county attorney shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney ~~or attorney general~~ shall ~~make a report thereon~~ on the action to the department within 30 days of the final disposition of the matter."

Section 3. Section 30-14-131, MCA, is amended to read:

"30-14-131. Restoration -- attorney fees. (1) The court may make ~~such additional~~ orders or judgments ~~as may be~~ that are necessary to restore to any person any ~~moneys~~ money or property, real or personal, ~~which that~~ may have been acquired from the person by means of any practice in this part declared to be unlawful, ~~including~~ The court may order the appointment of a receiver or the revocation of a license or certificate authorizing ~~that a~~ person to engage in business in this state, or both.

(2) The court shall award the department or a county attorney reasonable attorney fees for bringing a successful action under this part."

Section 4. Section 30-14-133, MCA, is amended to read:

"30-14-133. Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence.

(1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and ~~thereby~~ suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual action, but not a class action, ~~under the rules of civil procedure~~ to recover actual damages or \$200, whichever is greater. The action must be filed in the district court of the county in which the seller or lessor resides or has his a principal place of business or is doing business ~~to recover actual damages or \$200, whichever is greater.~~ The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ equitable relief ~~as that~~ it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section~~, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ the judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, if the court determines that the plaintiff suffered actual damages as a result of an unlawful method, act, or practice, the court ~~may shall~~ award the ~~prevailing party~~ plaintiff

reasonable attorney fees incurred in prosecuting ~~or defending~~ the action.

(4) If the court determines that an action filed pursuant to this section was brought in bad faith, the court may award the prevailing party reasonable attorney fees incurred in defending the action.

~~(4)~~(5) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ is prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103."

Section 5. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than \$10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued; ~~and in~~ in those cases, the department acting in the name of the state may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than ~~\$1,000~~ \$5,000 for each violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than \$5,000, imprisoned for not more than 1 year, or both, ~~in the discretion of the court.~~ ~~Nothing in this~~ This subsection limits does not limit any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103."

Section 6. Section 30-14-201, MCA, is amended to read:

"30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part ~~shall~~ must be ~~literally~~ liberally construed so that its beneficial purposes may be ~~suberved~~ accomplished."

Section 7. Section 30-14-202, MCA, is amended to read:

"30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include a product or service of a public utility.

(2) "Business" includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes but is not limited to the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes;

(k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of ~~administration~~ justice provided for in ~~2-15-1004~~ 2-15-2001.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also

any person who performs work upon, renovates, alters, or improves any personal property belonging to another person."

Section 8. Section 30-14-220, MCA, is amended to read:

"30-14-220. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the ~~director of the~~ department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

- (a) make its own investigation;
- (b) within 60 days of the finding of probable cause make a written report of its investigation; and
- (c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on ~~it~~ the complaint.

(c) The person ~~so~~ complained against may appear at the place and time ~~so~~ fixed and show cause why an order should not be entered by the department requiring ~~such~~ the person to stop the violation of the law charged in the complaint.

(d) Any person may ~~make application~~ apply and upon good cause shown ~~may~~ be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding ~~shall~~ must be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring ~~such~~ the person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a

report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue ~~such~~ writs ~~as~~ that are ancillary to its jurisdiction or that are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall ~~thereupon~~ issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section ~~shall~~ must be given precedence over other civil cases pending in the district court and ~~shall~~ must be ~~in every way~~ expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the ~~state~~ department a penalty of not more than ~~\$1,000~~ \$5,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part."

Section 9. Section 30-14-1403, MCA, is amended to read:

"30-14-1403. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of ~~administration~~ justice created in ~~2-15-1004~~ 2-15-2001.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to

provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer."

Section 10. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, ~~the attorney general,~~ and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in ~~30-14-1405~~ 30-14-1406. Any excess civil fines, costs, or fees must be ~~deposited in~~ transferred to the general fund.

~~(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used~~

to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in 30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund:

~~(4)~~(3) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced."

~~Section 12.~~ Section 30-14-1412, MCA, is amended to read:

~~"30-14-1412. Abusive acts and practices.~~ (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

~~(a) use threatening, intimidating, or profane or obscene language;~~

~~(b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;~~

~~(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;~~

~~(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location;~~

~~(e) engage in any other conduct that would be considered abusive to any reasonable consumer; or~~

~~(f) call a person in this state who has had the person's name placed in the do-not-call file maintained by the telephone preference service sponsored by the direct marketing association or its successor organization, unless the seller or telemarketer has an established business relationship with the person at the time the call is made; or~~

~~(f)(g) intentionally block a person using caller identification or "*69" from accessing the seller's or telemarketer's phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity's personnel can be contacted.~~

~~(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section."~~

Section 11. Section 30-14-1413, MCA, is amended to read:

"30-14-1413. Civil remedies -- venue -- burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages,

attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, ~~the attorney general~~, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception."

Section 12. Section 61-4-507, MCA, is amended to read:

"61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of administration to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations CFR, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction."

Section 13. Section 61-4-511, MCA, is amended to read:

"61-4-511. Manufacturer's dispute settlement procedure -- certification -- prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of ~~Title 16, Code of Federal Regulations, part 703~~ (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department of administration. The department of administration shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2). ~~The department of administration shall report to the department of justice all manufacturer's~~

~~procedures certified.~~ The department of ~~administration~~ may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or the consumer's representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1)."

Section 14. Section 61-4-512, MCA, is amended to read:

"61-4-512. Annual audit -- revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department of ~~administration~~ a copy of the annual audit required under ~~Title 16, Code of Federal Regulations, part 703~~ (16 CFR, part 703), as those provisions read on October 1, 1983, along with any additional information that the department of ~~administration~~ may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department of ~~administration~~ may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. ~~The department of administration shall notify the department of justice of any revocation or suspension of a certification.~~ The department of ~~administration~~ may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

Section 15. Section 61-4-515, MCA, is amended to read:

"61-4-515. Arbitration procedure. (1) The department of ~~administration~~ shall provide an independent

forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an arbitration panel only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure that has been certified by the department of administration under 61-4-511."

Section 16. Section 61-4-516, MCA, is amended to read:

"61-4-516. Composition of arbitration panel. An arbitration panel hearing a grievance under this part must consist of three members. 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 maintain a list of persons willing to serve on panels from which the third member may be chosen."

Section 17. Section 61-4-517, MCA, is amended to read:

"61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department of administration. The consumer shall file, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute and shall return the form, along with a \$50 filing fee, within 5 days after receiving it. The complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department of administration shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department of administration determines that a complaint does not allege a warranty violation, it shall refund the filing fee.

(3) Upon acceptance of a complaint, the department of administration shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute. The manufacturer shall return the form within 15 days of receipt, with a filing fee of \$250.

(4) Fees collected under this section must be deposited in a special revenue fund for the use of the department of administration in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department of ~~administration~~ arbitration procedures are used."

Section 18. 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, 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, 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. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented."

Section 19. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by arbitration panel -- decision. (1) The arbitration panel 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 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."

Section 20. Section 61-4-520, MCA, is amended to read:

"61-4-520. Nonconforming procedure -- arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, ~~Code of Federal Regulations~~ CFR, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department of administration panel. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department of administration arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute."

Section 21. Section 61-4-526, MCA, is amended to read:

"61-4-526. Records of disputes. The department of administration shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department of administration shall, at intervals of ~~no~~ not more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. The statistical summary must be considered by the department of administration in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2."

Section 22. Section 61-4-532, MCA, is amended to read:

"61-4-532. Rulemaking. The department of administration may adopt rules to implement the provisions of this part."

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