



THE RV INITIATIVE: PREAMBLE TO SUGGESTED MOTORHOME-SPECIFIC LEMON LAW

The Recreation Vehicle (RV) Initiative was a project undertaken by members and subscribers of the International Association of Lemon Law Administrators (IALLA) to draft a motorhome-specific “lemon law.” The project began in 2007. The Association recognized that existing state lemon laws, primarily enacted to address consumer hardships resulting from nonconforming new motor vehicles, did not effectively address, or address at all, the unique problems associated with nonconforming motorhomes. Specifically, motorhomes have components not common to cars and trucks, and generally are produced as a result of manufacture and assembly by multiple manufacturers, each of which may provide separate consumer warranties.

The two-year process to draft a motorhome-specific lemon law involved a collaboration of lemon law administrators from several states, members of the Recreation Vehicle Industry Association, recreation vehicle manufacturer representatives (motorhome and chassis) and representatives from major recreation vehicle consumer organizations.

In reviewing this effort, certain precepts underlying the drafting of this motorhome-specific lemon law should be remembered:

The first relates to the substance of the draft. It represents a compromise among competing stakeholders. No individual element of this draft should be considered apart from the whole; the motorhome-specific lemon law is designed to work in its entirety. Given a free hand, each project participant likely would have produced a draft far different from the one the group produced collectively. While none of the project’s stakeholders was expected to compromise fundamental principles of vital importance, each participating representative stakeholder found it necessary to accommodate the competing needs of other interests. The final draft reflects the give-and-take of this process and should be viewed as such.

The second is that, among the states with lemon laws that cover motorhomes, several are likely to be satisfied with their existing laws. It is not the intent of the drafters to displace those laws. However, for states that are considering revising their laws to improve existing coverage or to provide coverage where none exists, this draft is provided for consideration.

Dated this 13th day of May, 2009.

Suggested Motorhome-Specific Lemon Law

Legislative Intent

The Legislature recognizes that a new motorhome is a major consumer purchase and that for many consumers it is both a means of transportation and temporary living quarters. The Legislature further recognizes that while motorhomes are primarily designed as temporary living quarters for recreational and camping use, some consumers live and travel in their motorhomes on a full-time basis. Thus, it is recognized that motorhome nonconformities, including living facility nonconformities, can create a significant hardship for the consumer. It is the intent of the Legislature to provide protection for purchasers of defective motorhomes, whether used on a full-time basis or not, by creating consumer rights and statutory procedures to expeditiously resolve disputes concerning nonconforming motorhomes. However, nothing in this chapter shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

1. Definitions

For the purposes of this section, the following terms have the following meanings:

- (a) “Authorized service agent” means any person who is authorized by the manufacturer to service the items warranted by that manufacturer.
- (b) “Collateral charges” means those additional charges to a consumer wholly incurred as a result of the acquisition of the motorhome. For the purposes of this chapter, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items or service charges, earned finance charges, sales taxes, government fees and title charges.
- (c) “Consumer” means the original purchaser of the motorhome and excluding purchases for purposes of resale or rental.
- (d) “Days” means calendar days.
- (e) “Dealer” means a motor vehicle dealer as defined in the applicable state motor vehicle statute.
- (f) “Incidental charges” means those reasonable costs to the consumer directly caused by the nonconformity of the motorhome.
- (g) “Lemon law rights period” means the period ending 24 months after the date of the original delivery to the consumer of a motorhome or the first 24,000 miles of operation, whichever occurs first.
- (h) “Living facility components” means those items designed, used or maintained primarily for the living quarters portion of the motorhome, including, but not limited to

the flooring, plumbing fixtures, appliances, water heater, fabrics, door and furniture hardware, lighting fixtures, generators, roof heating and air conditioning units, cabinets, countertops, furniture and audio-visual equipment. Living facility components do not include the Motorhome Structure as defined in paragraph (k) and the Motorhome Systems as defined in paragraph (l).

(i) "Manufacturer" means the first stage manufacturer, the component manufacturer and the final stage manufacturer.

1. "First stage manufacturer" means a person who manufactures or assembles incomplete new motor vehicles such as chassis, chassis cabs or vans that are directly warranted by the first stage manufacturer to the consumer and are completed by a final stage manufacturer into a motorhome.

2. "Component manufacturer" means a person who manufactures or assembles components used in the manufacture or assembly of a chassis, chassis cab or van that is completed into a motorhome and whose components are directly warranted by the component manufacturer to the consumer.

3. "Final stage manufacturer" means a person who assembles, installs or permanently affixes a body, cab or equipment to an incomplete new motor vehicle such as a chassis, chassis cab or van provided by a first stage manufacturer, to complete the vehicle into a motorhome that is directly warranted in part by the final stage manufacturer to the consumer.

(j) "Motorhome" means a new or demonstrator vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle and is designed to provide temporary living quarters for recreational, camping or travel use. The term "motorhome" does not include living facility components as defined in paragraph (h) hereof.

(k) "Motorhome Structure" means the structural and functional integrity of the roof, subfloor or walls. It shall not be considered the same nonconformity for repairs made to the roof, subfloor or walls, unless the evidence establishes that the nonconformity is the result of the same defect or condition.

(l) "Motorhome Systems" means the chassis 12 volt DC wiring systems, the living facility 110 volt AC wiring systems, the living facility 12 volt DC wiring systems, the fresh water piping systems, gray water piping systems and the sewage piping systems, but does not include fixtures, components and appliances connected to such wiring or piping systems. It shall not be considered the same nonconformity for repairs made to different (i) 12 volt DC wiring systems, (ii) 110 volt AC wiring systems, (iii) fresh water piping systems, (iv) gray water piping systems or (v) sewage piping systems, unless the evidence establishes that the nonconformity is the result of the same defect or condition.

(m) "Nonconformity" means a defect or condition that substantially impairs the use, value or safety of the motorhome to the consumer, but excludes any defect or condition that is the result of use of the vehicle for business or commercial purposes, or the result of abuse, neglect or modification or alteration of the vehicle by persons other than the manufacturer or its authorized service agent.

(n) "Purchase Price" means the actual price paid for the motorhome inclusive of the 'net trade-in allowance.' 'Net Trade-in allowance' means the gross trade-in allowance as represented on the purchase contract, less any loan obligation owed on the trade-in vehicle at the time of the trade-in. If the amount of the gross trade-in allowance as reflected on the purchase contract is 10% or greater than the amount of the wholesale trade-in value as reflected in the NADA Recreation Vehicle Appraisal Guide in effect at the time of the trade-in, then the amount of the gross trade-in allowance shall be 110% of the wholesale trade-in value as reflected in the NADA Recreation Vehicle Appraisal Guide in effect at the time of the trade-in or the actual cash value for the trade-in as designated by the selling dealer's sales records, whichever is greater. However, if the 'net trade-in allowance' as reflected in the purchase contract is a negative amount, reflecting negative equity in the trade-in vehicle, then the net trade-in allowance shall be the amount reflected in the purchase contract. The manufacturer shall be responsible for providing the applicable NADA Recreation Vehicle Appraisal Guide. The selling dealer shall produce a copy of the dealer's records that reflect its designation of the actual cash value of the trade-in vehicle at the time of the sales transaction, upon request by the manufacturer, and the manufacturer shall provide the information to the consumer and to the dispute resolution provider.

(o) "Reasonable offset for use" means the number of miles that the motorhome traveled directly attributable to use by the consumer up to the date of a settlement or an arbitration hearing, whichever occurs later, multiplied by the amount designated on the purchase contract as the "selling price," "contract price," "price of unit," "base price," or similar description, and divided by 90,000. The multiplier shall be reduced by the amount of any manufacturer or dealer to consumer rebate that was applied to the sale.

(p) "Replacement living facility component" means a component which is identical or reasonably equivalent to the component to be replaced, as the component to be replaced existed at the time of acquisition of the motorhome.

(q) "Replacement motorhome" means a motorhome which is identical or reasonably equivalent to the motorhome to be replaced, as the motorhome to be replaced existed at the time of acquisition. "Reasonably equivalent to the motorhome to be replaced" means the retail price of the replacement vehicle shall not exceed one hundred five percent of the purchase price of the motorhome to be replaced.

(r) "Warranty" means any written warranty or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale of a motorhome to a consumer that affirms or promises that the materials used or

workmanship performed in manufacturing or assembling the motorhome is free of defects or will meet a specified level of performance.

2. Duties of the Manufacturer

(a) If a motorhome does not conform to the warranty and the consumer first reports the problem to the manufacturer or its authorized service agent during the lemon law rights period, the manufacturer or its authorized service agent shall make such repairs as are necessary to conform the vehicle to the warranty, irrespective of whether such repairs are made after the expiration of the Lemon law rights period. Such repairs shall be at no cost to the consumer if made during the term of the manufacturer's written express warranty. Nothing in this paragraph shall be construed to grant an extension of the Lemon law rights period or to expand the time within which a consumer must file a claim under this chapter.

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

(c) The final stage manufacturer shall clearly and conspicuously disclose to the consumer in the warranty or the owner's manual the provisions of section 3, including the address to which the written notification required by section 3 is to be sent.

(d) The final stage manufacturer shall, at the time of acquisition of a motorhome, inform the consumer clearly and conspicuously in writing how and where to file a claim for informal dispute resolution as established in section 7.

3. Notice to the Manufacturer

(a) After one unsuccessful attempt has been made to repair a nonconformity in the motorhome, motorhome structure, motorhome systems or living facility components that is likely to cause death or serious bodily injury or after three unsuccessful attempts have been made to repair the same nonconformity that is not likely to cause death or serious bodily injury, and the nonconformity continues to exist, the consumer shall give written notification of the need to repair the nonconformity to the final stage manufacturer at the address provided by the manufacturer pursuant to paragraph 2(c) by certified, registered or express mail. Upon receipt of the notification, the final stage manufacturer shall coordinate a final attempt to cure the nonconformity with any other potentially involved manufacturers. The final stage manufacturer shall have 15 days, commencing upon receipt of the notification, to establish the date, time and location of the final repair attempt and to so inform the consumer. The date of the final repair attempt shall be

within 15 days of the consumer's receipt of the manufacturer's response and the location of the designated repair facility shall be reasonably accessible to the consumer, unless the consumer otherwise agrees in writing. The final repair attempt shall be completed within 30 days, commencing upon delivery of the vehicle to the designated repair facility by the consumer. This time period may be extended if the consumer agrees in writing. If the final stage manufacturer fails to respond to the consumer's written notification or if the final repair attempt is not completed within the time periods prescribed in this paragraph, the requirement of a final attempt to cure the nonconformity shall not apply.

(b) If a motorhome is out of service for repair of one or more nonconformities to the motorhome, motorhome structure or motorhome systems for a cumulative total of 15 or more days, the consumer shall so notify the final stage manufacturer in writing at the address provided by the manufacturer pursuant to paragraph 2(c) by certified, registered or express mail to allow the manufacturer, or its authorized service agent, an opportunity to coordinate and perform an inspection or repair of the nonconformities. The final stage manufacturer shall have 10 days, commencing upon receipt of the notification, to determine whether the motorhome will be inspected or repaired and to notify the consumer of the location of a reasonably accessible repair facility for the inspection or repair. In the event the consumer fails to notify the final stage manufacturer prior to the motorhome being out of service for repair for 45 days, the days out of service shall stop accruing at 45 days and not resume until the date the final stage manufacturer receives the notification.

(c) The consumer shall be required to directly notify the final stage manufacturer pursuant to section 3 only if the manufacturer has clearly and conspicuously disclosed to the consumer in the warranty or the owner's manual the provisions of this section.

4. Reasonable Number of Attempts

(a) It shall be presumed that a reasonable number of attempts have been made to conform a motorhome to the warranty if, during the lemon law rights period, one or more of the following occurs:

1. A nonconformity in the motorhome, motorhome structure, motorhome systems or living facility components that is likely to cause death or serious bodily injury has been subjected to at least one repair attempt by a manufacturer or its authorized service agent, plus a final repair attempt if undertaken as provided for in section 3(a), and such nonconformity continues to exist; or

2. The same nonconformity in the motorhome, motorhome structure, motorhome systems or living facility components has been subject to repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the nonconformity if undertaken as provided for in section 3(a), and such nonconformity continues to exist; or

3. The motorhome has been out of service by reason of repair of one or more nonconformities to the motorhome, motorhome structure or motorhome systems for a cumulative total of 60 or more days, exclusive of days for non-warranty repairs and performance of routine maintenance prescribed by the owner's manual, and provided the manufacturer has had at least one opportunity to inspect or repair the motorhome after receipt of notification from the consumer as provided in section 3(b). The 60-day period shall be extended only if repairs cannot be performed due to war, invasion, strike, fire, flood, natural disasters or terrorist attacks.

5. Remedies

(a) Motorhome, Motorhome Structure and Motorhome Systems. If the manufacturer or its authorized service agent fails to conform the motorhome, motorhome structure or motorhome systems to the warranty after a reasonable number of attempts, the manufacturer shall, within 40 days, either replace the motorhome with a replacement motorhome as defined in section 1(q) and in accordance with subparagraph 1, or provide a refund to the consumer in accordance with subparagraph 2. The consumer has an unconditional right to choose a refund rather than a replacement motorhome.

1. The replacement motorhome shall be accompanied by all written warranties that normally accompany that manufacturer's motorhome model. The manufacturer shall pay to the consumer all reasonably incurred incidental charges and shall pay to or on behalf of the consumer all charges the consumer will incur as a result of the replacement transaction. The consumer shall pay to the manufacturer the reasonable offset for use and shall deliver the motorhome being replaced to the manufacturer or its designated representative and provide clear title to the motorhome, or the means by which clear title may be obtained.

2. The refund shall include the purchase price paid by the consumer, including the net trade-in allowance and all reasonably incurred collateral and incidental charges, less the reasonable offset for use. Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear. Upon receipt of the refund, the consumer shall deliver possession of and the titleholder shall deliver clear title to the motorhome to the manufacturer or its designated representative. The appropriate government agency shall refund to the manufacturer any sales tax which the manufacturer refunded to the consumer or lienholder under this section, if the manufacturer provides to the agency a written request for a refund and evidence that the sales tax was paid when the vehicle was purchased and that the manufacturer refunded the sales tax to the consumer or lienholder.

(b) Living facility components. If the manufacturer or its authorized service agent fails to conform a living facility component of the motorhome to the warranty after a reasonable number of attempts, the manufacturer shall, within 40 days, replace the living facility component with a replacement living facility component as defined in section 1(p).

1. The replacement living facility component shall be accompanied by all written warranties that normally accompany that manufacturer's component. If installation is required, such installation shall be performed by the manufacturer or its authorized service agent at no additional cost to the consumer and the manufacturer or authorized service agent shall represent in writing that the replacement living facility component is functioning as designed prior to delivery of the motorhome to the consumer.

2. In the event the arbitrator finds the manufacturer did not use reasonable efforts to remedy one or more living facility component nonconformities and that as a result, the motorhome was incapable of being used for its intended purpose, the arbitrator has the discretion to award the consumer additional damages totaling up to \$2,000.00.

6. Affirmative Defenses

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

- (a) The alleged nonconformity does not substantially impair the use, value or safety of the motorhome to the consumer;
- (b) The nonconformity is the result of commercial or business use, or an accident, abuse, neglect or unauthorized modifications or alterations of the motorhome by persons other than the manufacturer or its authorized service agent.

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

7. Motorhome Informal Dispute Resolution Establishment

(a) The Department of Consumer Affairs or other appropriate state agency ("Department") shall contract with a private provider of alternative dispute resolution services (dispute resolution provider) to provide mediation and arbitration for the resolution of disputes between consumers and manufacturers arising under this chapter. The dispute resolution provider shall not be affiliated with any motorhome or motor vehicle manufacturer, distributor, importer or dealer. The dispute resolution provider, its officers, employees, mediators, arbitrators, legal counsel or consultants shall not be directly or indirectly involved in the manufacture, distribution, sale or warranty service of any motorhome or new motor vehicle.

(b) The dispute resolution provider must be competently and adequately funded and staffed at a level sufficient to ensure the provision of fair and expeditious dispute resolution services. The dispute resolution provider shall be funded through fees assessed motorhome manufacturers and deposited in a fund or account specifically for the purpose of the administration of mediation and arbitration services under this chapter, from which payment to the dispute resolution provider shall be made. The dispute resolution provider shall offer mediation and arbitration proceedings that are fair, informal and simplified so as to enable consumers and manufacturers to participate without requiring legal representation.

- (c) The dispute resolution provider must ensure that the mediators and arbitrators are sufficiently trained in the program rules and procedures and in the provisions of this chapter.
- (d) Mediators and arbitrators must complete any training required by the Department prior to serving in that capacity for the dispute resolution provider.
- (e) Mediators must comply with the ethical standards applicable to court-appointed mediators and any standards established by the Department.
- (f) Arbitrators must be attorneys and must comply with the ethical standards applicable to court-appointed arbitrators and any additional ethical requirements of the Department.
- (g) The Department and the dispute resolution provider shall monitor the performance of the mediators and arbitrators to ensure that they are performing competently and impartially and are complying with the provisions of this chapter, any rules promulgated thereunder by the Department, and the procedures established by the dispute resolution provider. The Department and dispute resolution provider staff may attend and observe any mediation conference or arbitration hearing.
- (h) All mediation and arbitration of an eligible consumer claim must be completed within 90 days of the filing of the claim by the consumer. Failure to complete all proceedings within the prescribed period will not invalidate any settlement agreement or arbitration decision. The dispute resolution provider shall gather all documents from the parties that are necessary to a full consideration of the dispute, including, but not limited to, a statement of the respective complaints, positions and desired resolution by the consumer and manufacturer. Parties to such disputes shall assist the dispute resolution provider with the gathering of documents when requested or when required by the Department's or the dispute resolution provider's rules and procedures. Copies of documents submitted to the dispute resolution provider shall be provided to all parties involved in the dispute, the assigned mediator, and the assigned arbitrator.
- (i) Mediation conferences shall be attended in person by the parties unless all parties agree in writing to mediate by telephone conference call. Arbitration proceedings shall be attended in person. In-person mediation conferences and arbitration proceedings must be held at locations within the state that are reasonably convenient for the consumer.
- (j) The dispute resolution provider shall maintain records of each dispute, including the recordings of arbitration hearings. Such records shall be maintained within the state in a manner separate from other unrelated records of the dispute resolution provider. All records maintained by the dispute resolution provider under this chapter shall be public records and shall be available for inspection by the Department upon reasonable notice. The dispute resolution provider shall retain all records for each dispute for at least 5 years after the final disposition of the dispute. For purposes of this paragraph, "final disposition" includes any appeal or enforcement action. The dispute resolution provider

shall furnish the Department with copies of all settlement agreements and arbitration decisions within 10 days after the date of such settlements and decisions.

(k) The dispute resolution provider shall provide the Department with regular reports at such intervals and containing such information as the Department shall by rule prescribe.

(l) The dispute resolution provider, mediators and arbitrators are exempt from civil liability arising from any act or omission in connection with any mediation or arbitration conducted under this chapter.

(m) The Department shall adopt rules to implement the provisions of this section.

(n) The Department shall have the authority to enforce compliance with this section and section 8 by the dispute resolution provider.

8. Motorhome Informal Dispute Resolution Procedures

(a) Before filing a civil action to recover the remedies provided in section 5, the consumer must first submit the dispute to mediation and, if applicable, arbitration, by the dispute resolution provider, provided the consumer was informed how and where to file in writing at the time of vehicle acquisition as required in section 2(d). Such consumer is not required to participate in a manufacturer's FTC 703 compliant procedure, other state-certified procedure, or any other dispute resolution procedure mandated by the manufacturer.

(b) Manufacturers shall submit to the mediation and, if applicable, arbitration by the dispute resolution provider if application is filed by a consumer and the application is deemed eligible.

(c) A consumer must file the required application for mediation and arbitration with the dispute resolution provider or Department no later than 90 days after the expiration of the Lemon law rights period. The claim is considered filed when the application is date-stamped as received by the dispute resolution provider or Department.

(d) The consumer's application for mediation and arbitration must be on a form and filed in a manner prescribed by the Department. The dispute resolution provider or Department shall screen all applications to determine eligibility.

1. The consumer and the manufacturer shall be notified in writing by the dispute resolution provider or the Department if an application is rejected. Such notification of rejection shall include a brief explanation as to the reason for the rejection.

2. If the dispute resolution provider or Department rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the dispute

resolution provider or Department, any determination made to reject a dispute is admissible in evidence.

3. If eligibility is determined by the Department, and the claim is determined eligible, the Department shall forward the application to the dispute resolution provider and shall so notify the consumer and manufacturer in writing. If eligibility is determined by the dispute resolution provider, and the claim is determined eligible, the dispute resolution provider shall notify the consumer and the manufacturer in writing. Notification to the manufacturer shall include a copy of the consumer's application and all supporting documentation.

(e) Mediation shall be mandatory for both the consumer and manufacturer, unless the dispute is settled prior to the scheduled mediation conference. Except as provided in paragraph 7(g), the mediation conference shall be confidential and inadmissible in any subsequent adversarial proceedings. Participation shall be limited to the parties directly involved in the dispute and their attorneys, if any. All parties shall be represented by persons with settlement authority.

(f) The notification referenced in paragraph (d)3 shall include a statement that a mediation conference will be scheduled, shall identify the assigned mediator and provide information regarding the dispute resolution provider's procedures. The dispute resolution provider shall obtain from each manufacturer a written response to the allegations contained in the consumer's application, along with copies of any documents in support of such response. The written response shall be on a form and submitted in the manner prescribed by the dispute resolution provider or Department.

(g) The mediator shall be selected and assigned by the dispute resolution provider. The parties may factually object to a mediator based upon the mediator's past or present relationship with a party or a party's attorney, direct or indirect, whether financial, professional, social, or of any other kind. The dispute resolution provider shall consider any such objection, determine its validity, and notify the parties of any determination. If the objection is determined valid, another mediator shall be assigned to the case.

1. At the mediation conference, the mediator shall assist the parties' efforts to reach a mutually acceptable settlement of their dispute; however, the mediator shall not impose any settlement upon the parties.

2. Upon conclusion of the mediation conference, the mediator shall notify the dispute resolution provider that the case has settled or remains at an impasse.

3. If the mediation conference ends in an impasse, it shall proceed to arbitration. The dispute resolution provider shall immediately notify the parties in writing that the dispute will proceed to arbitration and shall identify the assigned arbitrator.

(h) If the parties enter into a settlement at any time after the dispute has been submitted to the dispute resolution provider, such settlement must be reduced to legible writing, signed by the consumer and all involved manufacturers, and filed with the dispute

resolution provider. All settlements must contain, at a minimum, the following information:

1. Name and address of the consumer.
2. Name and address of each involved manufacturer.
3. Year, make, model, and vehicle identification number of the subject motorhome.
4. Name and address of the dealership from which the motorhome was acquired.
5. Date the claim was received by the dispute resolution provider.
6. Name of the mediator or arbitrator, if any.
7. A complete statement of the terms of the agreement, including, but not limited to: whether the motorhome is to be reacquired by a manufacturer and the identity of the manufacturer that will reacquire the motorhome; the amount of any moneys to be paid by the consumer or a manufacturer; the year, make, and model of any replacement motorhome or motorhome accepted by the consumer as a trade-assist; the date, time, location, and nature of any agreed-upon repair or replacement of a living facility component or non-living facility component and an estimate as to the anticipated length of time for such repair or replacement; and a time certain for performance.

(i) If a manufacturer fails to perform within the time required in any settlement agreement, the consumer must notify the dispute resolution provider of such failure in writing within 30 days of the required performance date. Within 10 days of receipt of such notice, the dispute resolution provider shall schedule the matter for an arbitration hearing pursuant to paragraph 8(g)3.

(j) Arbitration proceedings shall be open to the public on reasonable and nondiscriminatory terms.

1. The arbitration hearing shall be conducted by a single arbitrator assigned by the dispute resolution provider. The arbitrator shall not be the same person as the mediator who conducted the prior mediation conference in the dispute. The parties may factually object to an arbitrator based on the arbitrator's past or present relationship with a party or a party's attorney, direct or indirect, whether financial, professional, social, or of any other kind. The dispute resolution provider shall consider any such objection, determine its validity, and notify the parties of any determination. If the objection is determined valid, another arbitrator shall be assigned to the case.

2. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of records, documents and other evidence. Subpoenas so issued shall be served and, upon application to the court by a party to the arbitration, enforced in the

manner provided by law for the service and enforcement of subpoenas in civil actions. Fees for attendance as a witness shall be the same as for a witness in the state trial court.

3. At all arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and may be represented by counsel. The technical rules of evidence as are applicable to civil court proceedings do not apply to arbitrations conducted under this chapter. The arbitrator shall record the arbitration hearing and shall have the power to administer oaths. The arbitrator may inspect the vehicle if requested by a party or if the arbitrator considers such inspection appropriate.

4. The arbitrator may continue a hearing on his or her own motion or upon the request of a party for good cause shown. A request for continuance by the consumer constitutes a waiver of the time period set forth in subsection 7(h) for completion of all proceedings.

5. The arbitrator shall apply the provisions of this chapter and any rules promulgated hereunder by the Department in rendering the decision. The arbitrator shall have the authority to resolve disputes regarding a settlement agreement, if the arbitration is scheduled pursuant to paragraph 8(i).

6. The arbitrator shall render a decision within 10 days of the closing of the hearing. The decision shall be in legible writing on a form prescribed by the dispute resolution provider or Department. The dispute resolution provider shall send a copy of the decision to the consumer and each involved manufacturer by registered mail.

7. Either party may request that the arbitrator make a technical correction to the decision by filing a written request with the dispute resolution provider within 10 days after receipt of the written decision. Technical corrections shall be limited to computational errors, correction of a party's name or information regarding the motorhome, and typographical or spelling errors. Technical correction of a decision shall not toll the time for filing an appeal or for manufacturer compliance.

(k) The Department shall adopt rules to implement the provisions of this section.

10. Decision Compliance and Appeal

(a) A manufacturer shall comply with an arbitration decision within 40 days of the date the manufacturer receives the written decision. If the decision awards a consumer a replacement motorhome, the parties may agree in writing to extend the time for compliance. Compliance occurs on the date the consumer receives the relief specified in the arbitration award. If a manufacturer fails to comply with the decision within the time required, and no appeal has been filed, the consumer shall notify the Department of such failure. A consumer may apply to a court of competent jurisdiction in this state for entry of an order confirming the award. Such application shall be by motion filed within 40 days after the manufacturer's failure to comply and shall be heard in the manner and upon

notice provided by law or rule of court for the making and hearing of motions. Such application shall be served in the manner provided by law for the service of a civil summons. The consumer shall send a copy of the application for confirmation of the award and any order entered by the court confirming the award to the Department.

(b) A decision of the arbitrator is final and binding unless appealed by either party by filing a petition with the state civil trial court. A petition to the court to appeal a decision must be made within 30 days after the appealing party's receipt of the decision. The petition shall be filed in the county where the consumer resides, or where the motorhome was acquired, or where the arbitration hearing was conducted. Within 7 days after the petition has been filed, the appealing party must send a copy of the petition to the Department.

(c) An appeal of an arbitration decision to the state civil trial court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal an arbitration decision, the appealing party must state the action requested and the grounds relied upon for appeal. The decision of the arbitrator shall be admissible in evidence. Within 10 days of final disposition of the appeal, the appealing party shall furnish the Department with a copy of the order or judgment of the court, or if the appeal is resolved via a settlement between the parties, a copy of the settlement agreement.

(d) If a manufacturer appeals a decision of the arbitrator in favor of the consumer and the decision is upheld by the court, recovery by the consumer shall include the pecuniary value of the arbitration award, attorney's fees and costs incurred in connection with the appeal.

(e) In any civil action arising under this chapter relating to a dispute arbitrated pursuant to this section, the decision of the arbitrator is admissible in evidence. If a manufacturer appeals, the court may require the manufacturer to post security for the consumer's financial loss due to the passage of time for review.

(f) The Department shall adopt rules to implement the provisions of this section.

11. Other Remedies

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

12. Dealer Liability

Except as provided in this section, nothing in this chapter imposes any liability on a dealer or creates a cause of action by a consumer against a dealer, except for written warranties made by the dealer apart from the manufacturer's warranties. A dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the

absence of evidence that the related repairs had been carried out by the dealer in a manner materially inconsistent with the manufacturer's written or published instructions or the dealer failed to make a good faith effort to address the warranty concerns of the consumer.

13. Resale of returned motorhomes.

(a) A manufacturer who accepts the return of a motorhome by reason of a settlement, determination, or decision pursuant to this chapter shall notify the Department and report the vehicle identification number of that motorhome within 10 days after such acceptance, transfer, or disposal of the motorhome, whichever occurs later.

(b) A person shall not knowingly lease, sell at wholesale or retail, or transfer a title to a motorhome returned by reason of a settlement, determination, or decision pursuant to this chapter or similar statute of another state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer and the manufacturer warrants to repair such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The Department shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

(c) As used in this section, the term "settlement" means an agreement entered into between a manufacturer and consumer that occurs after a dispute is deemed eligible pursuant to section 8.

14. Enforcement of Compliance; Manufacturer Violation.

The Department may enforce and ensure compliance with the provisions of this chapter and rules adopted hereunder, may issue subpoenas requiring the attendance of witnesses and production of evidence, and may seek relief in the court of appropriate jurisdiction to compel compliance with such subpoenas. The Department may impose a civil penalty against a manufacturer of up to \$1,000 for each count or separate offense.

15. Certain agreements void.

Except as otherwise provided in this chapter, any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter, or that requires a consumer not to disclose the terms of such agreement as a condition thereof, is void as contrary to public policy.

16. Preemption

This chapter preempts any similar county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motorhome in this state.

17. Effective Date

This chapter shall apply to motorhomes purchased on or after January 1, 2009.