

SENATE BILL NO. 210

BY SENATOR FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 32:1253(A)(3)(a) and R.S. 51:1941(3) and (6), 1943(A), and the introductory paragraph of 1944(A), to enact Part IV-A of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 32:1270.31 through 1270.41, and to repeal R.S. 51:1948(E), relative to recreational vehicle warranties; to provide for the function of certain appointed members of the Louisiana Motor Vehicle Commission; to provide relative to recreational vehicle warranties; to provide for definitions; to provide for the powers and duties of the Louisiana Motor Vehicle Commission; to provide relative to dealer responsibility; to provide relative to the manufacturer's duty to repair for nonconformity; to provide relative to consumer remedies; to provide for exclusiveness of consumer remedies, warranties, and preemptive periods relative to recreational vehicles; to provide for attorney fees; to revise the definition of "motor vehicle" relative to motor vehicle warranties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:1253(A)(3)(a) is hereby amended and reenacted and Part IV-A of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, comprised of R.S. 32:1270.31 through 1270.41, is hereby enacted to read as follows:

§1253. Motor Vehicle Commission; appointment and qualifications of members; terms of office; organization; oath; official bond; compensation; powers and duties

A. The Louisiana Motor Vehicle Commission is hereby created within the office of the governor and shall be composed of eighteen members appointed by the governor, as follows:

* * *

(3)(a) Each of the three remaining appointive members shall be a public member who is not a licensee under this Chapter and shall be appointed from the state at large. These three commissioners shall have the sole function of hearing and deciding matters concerning brokers and disputes between manufacturers, distributors, converters, motor vehicle lessor franchisors, or representatives and motor vehicle dealers, recreational products dealers, specialty vehicle dealers, ~~and~~ motor vehicle lessors, **and hearings pursuant to R.S. 32:1270.31 et seq.**

* * *

PART IV-A. RECREATIONAL VEHICLE WARRANTIES

§1270.31. Short title

This Part shall be known as and may be cited as the "New Recreational Vehicle Warranty Act".

§1270.32. Definitions

The following words, terms, and phrases, when used in this Part, shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(1) "Collateral costs" means sales tax, license fees, registration fees, and any similar government charges.

(2) "Commission" means the Louisiana Motor Vehicle Commission.

(3) "Consumer" means:

(a) The purchaser, other than for purposes of a resale, of a new recreational vehicle normally used for personal, family, or household purposes and subject to a manufacturer's express warranty.

(b) A person, other than for purposes of a resale, to whom a recreational vehicle is transferred during the term of an express warranty applicable to the recreational vehicle.

(c) Any other person entitled to enforce the recreational vehicle warranty.

(4) "Dealer" means a person who holds a license from the commission

1 authorized by the manufacturer to service the items in a recreational vehicle
 2 warranted by the manufacturer, who is actively engaged in the business of
 3 buying, selling, or exchanging new recreational vehicles at retail, and who has
 4 an established place of business.

5 (5) "Manufacturer" means any person, firm, association, corporation,
 6 or trust, resident or nonresident, who manufactures or assembles recreational
 7 vehicles or the chassis for recreational vehicles.

8 (6) "Manufacturer's express warranty" and "warranty" mean the
 9 written warranty issued by the manufacturer.

10 (7) "Nonconformity" means any specific or generic defect or condition
 11 which substantially impairs the use, market value, or both of a new recreational
 12 vehicle.

13 (8) "Out of service" means the days a recreational vehicle is not able to
 14 be used but does not include routine maintenance days.

15 (9) "Recreational vehicle" means a motorized or towable vehicle, sold in
 16 this state, that provides temporary living quarters for travel, recreation, and
 17 camping. For purposes of this Part, a "recreational vehicle" includes a motor
 18 home, a travel trailer, a fifth-wheel travel trailer, a folding camper trailer, a
 19 slide-in truck camper, and a park model trailer.

20 §1270.33. Commission; powers and duties; nonconformity notices; hearings;
 21 records

22 A. The commission is hereby vested with the powers and duties necessary
 23 to enable it to fully and effectively carry out the provisions and objectives of this
 24 Part and to adopt rules, regulations, and forms in accordance with the
 25 Administrative Procedure Act to accomplish the purposes of this Part. The
 26 enumeration of any power or authority herein shall not be construed to deny,
 27 impair, disparage, or limit any other power or authority of the commission.

28 B. The powers and duties of the commission shall include but are not
 29 limited to the following:

30 (1) Receive complaints of a recreational vehicle nonconformity to

1 warranty from consumers.

2 (2) Keep records of consumer complaints of a nonconformity related to
3 recreational vehicle warranty defects.

4 (3) Notwithstanding the provisions of R.S. 32:1253(A)(3)(b), schedule
5 hearings on consumer complaints of a nonconformity before the commission's
6 three appointed members pursuant to R.S. 32:1253(A)(3)(a).

7 C. The commission may collect costs to defray the expense of
8 administering the requirements of this Part as authorized by R.S. 32:1260.

9 §1270.34. Manufacturers' duty to repair; nonconformity

10 If a new recreational vehicle does not conform to the manufacturer's
11 express warranty, and the consumer reports the nonconformity to the
12 manufacturer, or any of its authorized recreational vehicle dealers, and makes
13 the recreational vehicle available for repair before the expiration of the
14 warranty, or not later than one year after the date of original delivery of the
15 recreational vehicle to the consumer, the manufacturer, its agent, or its
16 authorized dealer shall make repairs that are necessary to conform the vehicle
17 to the manufacturer's express warranty, notwithstanding the fact that the
18 repairs are made after the expiration of the warranty term or the one-year
19 period.

20 §1270.35. Express warranties; time limit to conform

21 A.(1) It shall be presumed that a reasonable number of attempts have
22 been undertaken to conform a recreational vehicle to the applicable express
23 warranty if the vehicle is out of service by reason of repair for a cumulative
24 total of ninety or more calendar days, or the same nonconformity has been
25 subject to repair four or more times by the manufacturer, its agent, or its
26 authorized dealer, within the warranty term, or not later than one year from the
27 date of original delivery of the new recreational vehicle to the consumer.

28 (2)(a) Notwithstanding the provisions of Paragraph (1) of this
29 Subsection, the consumer shall provide written notification of the need to repair
30 the nonconformity to the manufacturer and the commission, and either of the

1 **following:**

2 **(i) Evidence of a cumulative total of at least ninety days of the**
3 **recreational vehicle being out of service within the warranty term.**

4 **(ii) Evidence that the same nonconformity has been subject to repair four**
5 **or more times by the manufacturer, its agent, or its authorized dealer, within**
6 **the warranty term, or not later than a period of one year from the date of**
7 **original delivery of the new recreational vehicle to the consumer.**

8 **(b) The manufacturer shall respond to the consumer not later than ten**
9 **business days after receipt of the consumer's written notification of a**
10 **nonconformity as to when and where the recreational vehicle may be delivered**
11 **for a final repair attempt. The repair facility shall be one that is authorized by**
12 **the manufacturer to perform the necessary warranty work.**

13 **(c) The repair facility shall have ten business days from the date of**
14 **delivery of the recreational vehicle to the facility to complete repairs using**
15 **replacement parts and thirty calendar days from the date of delivery of the**
16 **recreational vehicle to the facility to complete structural repairs to conform the**
17 **recreational vehicle to the applicable warranty. The time periods provided in**
18 **this Paragraph may be extended only if the consumer authorizes the extension**
19 **in writing.**

20 **(3) If a manufacturer fails to respond to the consumer or to perform the**
21 **repairs within the time periods provided in Paragraph (2) of this Subsection, the**
22 **manufacturer shall be considered to have waived his rights to a final attempt**
23 **to cure the nonconformity.**

24 **B. The duration of an express warranty shall be extended by any period**
25 **of time during which repair services are not available to the consumer because**
26 **of war, pandemic, invasion, strike, fire, flood, or natural disaster.**

27 **C. The provisions of Subsection A of this Section shall be suspended for**
28 **any period of time during which repair services cannot be performed by the**
29 **manufacturer, its agents, or authorized dealer, because of war, pandemic,**
30 **invasion, strike, fire, flood, or natural disaster.**

1 **§1270.36. Recreational vehicle replacement or refund**

2 **A. If the commission determines a nonconformity in a recreational**
3 **vehicle has not been repaired within the time periods provided in R.S.**
4 **32:1270.35, the manufacturer shall either:**

5 **(1) Replace the recreational vehicle with a comparable new recreational**
6 **vehicle.**

7 **(2) At the manufacturer's option, accept return of the recreational**
8 **vehicle and refund the full purchase price, and any amounts paid by the**
9 **consumer at the point of sale, and all collateral costs, less a reasonable**
10 **allowance for use by the consumer, or any holder of a perfected security interest**
11 **in the recreational vehicle, as their interest may appear, if the transaction was**
12 **a sale. Refunds shall be made to the consumer and lienholder of record, if any,**
13 **as their interests may appear.**

14 **B. A reasonable allowance for use by the consumer shall be determined**
15 **by the commission and shall be that amount directly attributable to use by the**
16 **consumer prior to his first written notice of a nonconformity to the**
17 **manufacturer, agent, or dealer, and during any subsequent period when the**
18 **vehicle was not out of service by reason of repair.**

19 **C. The consumer shall have no more than one hundred eighty days after**
20 **the end of the express warranty term to file a complaint with the manufacturer**
21 **and the commission to force compliance with the provisions of this Section.**

22 **§1270.37. Attorney fees**

23 **If the commission's decision on nonconformity is appealed by either**
24 **party, the court may award reasonable attorney fees to the prevailing party on**
25 **appeal.**

26 **§1270.38. Transfer of title; time limitation**

27 **Upon receipt of the comparable new recreational vehicle or refund**
28 **pursuant to R.S. 32:1270.36, the consumer shall surrender the recreational**
29 **vehicle subject to the nonconformity to the manufacturer together with the**
30 **certificate of title with all endorsements necessary to transfer title to the**

1 manufacturer. The manufacturer shall provide the consumer with a
2 comparable new recreational vehicle or refund no later than thirty days after
3 receipt of an offer to transfer title in compliance with this Section by the
4 consumer, or no later than thirty days after a decision by the commission.

5 **§1270.39. Mandatory disclosure of a nonconformity to warranty by sellers**

6 A.(1) Upon the sale or transfer of title by a manufacturer, its agent, or
7 any dealer of any second-hand recreational vehicle, previously returned to a
8 manufacturer for nonconformity to its warranty pursuant to the requirements
9 of this Part, the manufacturer shall execute an instrument in writing on a form
10 prescribed by the commission setting forth the following information in ten
11 point, all capital type, and deliver to the buyer:

12 "IMPORTANT: THIS RECREATIONAL VEHICLE WAS
13 RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID
14 NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR
15 CONDITION WAS NOT FIXED WITHIN THE TIME PROVIDED BY
16 LOUISIANA LAW."

17 (2) Notice that a recreational vehicle was returned to the manufacturer
18 because it did not conform to its warranty shall also be conspicuously printed
19 on the recreational vehicle's certificate of title.

20 B. The failure of a manufacturer to deliver the instrument required by
21 this Section shall constitute a violation of this Part and is punishable by a fine
22 of not less than five hundred dollars nor more than one thousand dollars for
23 each violation.

24 **§1270.40. Notification of nonconformity remedy; dealer responsibility**

25 Prior to or during the delivery of the recreational vehicle to the
26 consumer, the dealer shall inform the consumer in writing of the remedy for a
27 nonconformity defect as provided in this Part.

28 **§1270.41. Exclusiveness**

29 This Part provides exclusive remedies, warranties, and preemptive
30 periods as between the manufacturer, dealer, and consumer, relative to

1 nonconformity defects as defined in this Part, and no other provisions of law
2 relative to recreational vehicle warranties and redhibitory vices and defects
3 shall apply. Nothing herein shall be construed to affect or limit any warranty
4 of title.

5 Section 2. R.S. 51:1941(3) and (6), 1943(A), and the introductory paragraph of
6 1944(A) are hereby amended and reenacted to read as follows:

7 §1941. Definitions

8 The following definitions apply when used in this Chapter:

9 * * *

10 (3) "Dealer" means a person authorized by the manufacturer and actively
11 engaged in the business of buying, selling, or exchanging new automobiles, new
12 personal watercraft, or new all-terrain vehicles, ~~or new motor homes~~ at retail and
13 who has an established place of business.

14 * * *

15 (6) "Motor vehicle" means a passenger motor vehicle or a passenger and
16 commercial motor vehicle as defined in R.S. 32:1252~~(13)~~, sold in this state on or
17 after September 1, 1984. "Motor vehicle" shall include a personal watercraft as
18 defined in R.S. 34:855.2 and an all-terrain vehicle as defined in R.S. 32:771~~(1)~~
19 32:1252, sold in this state or still under warranty on or after August 15, 1999, which
20 is used exclusively for personal and not commercial purposes. ~~"Motor vehicle" shall~~
21 ~~include the chassis and drive train of a motor home as defined in R.S. 32:1252(12),~~
22 ~~sold in this state or still under warranty on or after August 15, 1999, which is used~~
23 ~~exclusively for personal and not commercial purposes.~~ For the purposes of this
24 Chapter, the following motor vehicles are excluded:

25 (a) Motor vehicles, ~~except for motor homes~~, 10,000 GVW or above.

26 (b) Motor vehicles used exclusively for commercial purposes.

27 * * *

28 §1943. Express warranties; time limit to conform

29 A.(1) It shall be presumed that a reasonable number of attempts have been
30 undertaken to conform a motor vehicle to the applicable express warranties if the

1 vehicle is out of service by reason of repair for a cumulative total of forty-five or
2 more calendar days or the same nonconformity has been subject to repair four or
3 more times by the manufacturer, its agent, or its authorized dealer within the
4 warranty term or during a period of one year following the date of the original
5 delivery of the motor vehicle to the consumer, whichever is the earlier date.

6 (2)(a) ~~Notwithstanding the provisions of Paragraph (1) of this Subsection, in~~
7 ~~the case of a motor home, the consumer shall provide written notification to the~~
8 ~~manufacturer of any of the following:~~

9 (i) ~~The need to repair the nonconformity.~~

10 (ii) ~~Evidence of a cumulative total of at least ninety days of the motor home~~
11 ~~being out of service.~~

12 (iii) ~~Evidence that the same nonconformity has been subject to repair four or~~
13 ~~more times by the manufacturer, its agent, or its authorized dealer within the~~
14 ~~warranty term or during a period of one year following the date of the original~~
15 ~~delivery of the motor vehicle to the consumer, whichever is the earlier date.~~

16 (b) ~~Upon such notification, the manufacturer shall have a final attempt to~~
17 ~~repair the vehicle. The manufacturer shall have five business days upon receipt of~~
18 ~~such notification to respond to the consumer as to where the motor home may be~~
19 ~~delivered for repair. The repair facility shall be one which is authorized by the~~
20 ~~manufacturer to perform the necessary warranty work.~~

21 (c) ~~Once delivered, the repair facility shall have ten business days within~~
22 ~~which to conform the vehicle to the applicable warranty. The time periods provided~~
23 ~~for in this Paragraph may only be extended if the consumer authorizes such~~
24 ~~extension in writing.~~

25 (3) If a manufacturer fails to respond to the consumer or to perform the
26 repairs within the time periods described in Paragraphs (1) and (2) of this Subsection,
27 such manufacturer shall be ~~deemed~~ **considered** to have waived his rights to a final
28 attempt to cure the nonconformity.

29 * * *

30 §1944. Motor vehicle replacement or refund

1 A. If a nonconformity in a motor home has not been repaired within the time
2 periods provided for in R.S. 32:1943(A)(2), or if after four or more attempts within
3 the express warranty term or during a period of one year following the date of the
4 original delivery to the consumer of a motor vehicle ~~which is not a motor home,~~
5 whichever is the earlier, the nonconformity has not been repaired or if the vehicle is
6 out of service by reason of repair for a cumulative total of ~~ninety~~ **forty-five** or more
7 calendar days during the warranty period, the manufacturer shall:

* * *

9 Section 3. R.S. 51:1948(E) is hereby repealed in its entirety.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____