

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 9
NEW MOTOR VEHICLE WARRANTIES -- MANUFACTURER'S DUTY TO REPAIR, REFUND OR
REPLACE

48-901. DEFINITIONS. For purposes of this chapter, the following terms have the following meanings:

(1) "Consumer" means the purchaser or lessee, other than for purposes of resale or sublease, of a new motor vehicle used for personal business use, personal, family or household purposes, or a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle.

(2) "Early termination costs" means expenses and obligations incurred by a motor vehicle lessor as a result of an early termination of a written lease agreement and surrender of a motor vehicle to a manufacturer under section [48-904](#), Idaho Code, including penalties for prepayment of finance arrangements.

(3) "Informal dispute settlement mechanism" means an arbitration process or procedure by which the manufacturer attempts to resolve disputes with consumers regarding motor vehicle nonconformities and repairs that arise during the vehicle's warranty period.

(4) "Lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four (4) months, used for personal business use, personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.

(5) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten (10) new motor vehicles.

(6) "Manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(7) "Motor vehicle" means a motor vehicle as defined in [chapter 1, title 49](#), Idaho Code, which is sold or licensed in this state but does not include:

(a) Motorcycle or farm tractor as defined in sections [49-107](#) and [49-114](#), Idaho Code; or

(b) Trailer as defined in section [49-121](#), Idaho Code; or

(c) Any motor vehicle with a gross laden weight over twelve thousand (12,000) pounds.

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

[48-901, added 1998, ch. 333, sec. 2, p. 1070.]

48-902. MANUFACTURER'S DUTY TO REPAIR -- SERVICE AND REPAIR FACILITIES. (1) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranties or during the period of two (2) years following the date of

original delivery of the new motor vehicle to a consumer, or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the vehicle to the applicable express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term or the two (2) year period.

(2) Every manufacturer of motor vehicles sold and for which the manufacturer has made an express warranty shall maintain sufficient service and repair facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties or designate and authorize as service and repair facilities independent repair or service facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties. As a means of complying with the provisions of this subsection, a manufacturer may, in a town or city where there is not a franchise market representative, enter into warranty service contracts with independent service and repair facilities.

[48-902, added 1998, ch. 333, sec. 2, p. 1071; am. 1999, ch. 333, sec. 1, p. 906.]

48-903. MANUFACTURER'S DUTY TO REFUND OR REPLACE. (1) If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the amount the consumer paid for the vehicle, inclusive of the value of any trade-in, not to exceed one hundred five percent (105%) of the manufacturer's suggested retail price of the motor vehicle. The manufacturer's suggested retail price shall include all manufacturer installed options. The one hundred five percent (105%) cap shall include the cost of any options or other modifications arranged, installed, or made by the manufacturer's agent, or its authorized dealer within thirty (30) days after the date of original delivery. The manufacturer shall refund to the consumer all other charges including, but not limited to, sales or excise tax, license fees and registration fees, reimbursement for towing and rental vehicle expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair. A reasonable allowance for the consumer's use of the vehicle shall be deducted from the refund to the consumer not to exceed the number of miles attributable to the consumer up to the date of the arbitration hearing multiplied by the purchase price of the vehicle and divided by one hundred twenty thousand (120,000). If the manufacturer offers a replacement vehicle under this section, the consumer has the option of rejecting the replacement vehicle and requiring the manufacturer to provide a refund. Refunds must be made to the consumer, and lienholder, if any, as their interests appear on the records of the division of motor vehicles of the Idaho transportation department. A manufacturer must give to the consumer an itemized statement listing each of the amounts refunded under this section. If the amount of sales or excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one (1) year of the return of the motor vehicle, the state tax commission may refund the tax, as determined under subsection (8) of this section, di-

rectly to the consumer and lienholder, if any, as their interests appear on the records of the division of motor vehicles. It is an affirmative defense to any claim under this chapter: (a) that an alleged nonconformity does not impair the use or market value, or (b) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(2) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if: (a) the same nonconformity has been subject to repair four (4) or more times by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two (2) years following the date of original delivery of the new motor vehicle to a consumer or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, but the nonconformity continues to exist. However, the manufacturer shall have at least one (1) opportunity to attempt to repair the vehicle before it is presumed a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranty; or (b) the vehicle is out of service by reason of repair for a cumulative total of thirty (30) or more business days during the term or during the period, whichever is the earlier date.

(3) If the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle and is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two (2) years following the date of original delivery of the new motor vehicle to a consumer or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, and the nonconformity continues to exist. However, the manufacturer shall have at least one (1) opportunity to attempt to repair the vehicle before it is presumed a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranty.

(4) The term of an applicable express warranty, the two (2) year period and the thirty (30) day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, or fire, flood, or other natural disaster.

(5) The presumption contained in subsection (2) of this section applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested. However, if the manufacturer is not notified either by the consumer or the manufacturer's agent or authorized dealer, then the manufacturer shall have at least one (1) opportunity to cure the alleged defect.

(6) The expiration of the time periods set forth in subsection (2) of this section does not bar a consumer from receiving a refund or replacement vehicle under subsection (1) of this section if the reasonable number of at-

tempts to correct the nonconformity causing the substantial impairment occur within three (3) years following the date of original delivery of the new motor vehicle to a consumer, provided the consumer first reported the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranty.

(7) The manufacturer shall provide to its agent or authorized dealer and, at the time of purchase or lease, the manufacturer's agent or authorized dealer shall provide a written statement to the consumer in the new motor vehicle warranty guide, in 10-point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER THE STATE'S LEMON LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE OR YOUR LEASE PAYMENTS. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE. YOU ALSO HAVE A RIGHT TO SUBMIT YOUR CASE TO THE CONSUMER ARBITRATION PROGRAM WHICH THE MANUFACTURER MUST OFFER IN THIS STATE."

(8) The amount of the sales or excise tax to be paid by the manufacturer to the consumer under subsection (1) of this section shall be the tax paid by the consumer when the vehicle was purchased less an amount equal to the tax paid multiplied by a fraction, the denominator of which is the purchase price of the vehicle and the numerator of which is the allowance deducted from the refund for the consumer's use of the vehicle.

[48-903, added 1998, ch. 333, sec. 2, p. 1071; am. 1999, ch. 333, sec. 2, p. 907.]

48-904. MANUFACTURER'S DUTY TO CONSUMERS WITH LEASED VEHICLES. A consumer who leases a new motor vehicle has the same rights against the manufacturer under this section as a consumer who purchases a new motor vehicle, except that, if it is determined that the manufacturer must accept return of the consumer's leased vehicle pursuant to section [48-903](#), Idaho Code, then the consumer lessee is not entitled to a replacement vehicle, but is entitled only to a refund as provided in this section. In such a case, the consumer's leased vehicle shall be returned to the manufacturer and the consumer's written lease with the motor vehicle lessor must be terminated after all charges are settled. The manufacturer shall provide the consumer with a full refund of all costs and charges described below less a reasonable allowance for use. The manufacturer shall provide to the consumer a refund of the pro rata amount of any down payment paid by the consumer on the written lease. The pro rata amount of such a refund shall be the amount of the down payment divided by the number of months of the lease agreement and that amount multiplied by the number of months remaining after the date of the arbitration. The manufacturer shall also refund to the consumer amounts identified as additional charges set forth in section [48-903](#), Idaho Code, if actually paid by the consumer. The reasonable allowance for use shall be the lease payments made by the consumer until the time of the award of a refund. The manufacturer shall provide the motor vehicle lessor or its assignee with a full refund of the early termination charges plus the residual value of the vehicle, as specified in the lease agreement. The amount of any refund by the manufacturer to the consumer for the pro rata portion of the down payment plus the amount of the refund to the motor vehicle lessor or its assignee by the manufacturer shall not exceed one hundred five percent (105%) of the vehicle's original manufacturer's suggested retail price.

[48-904, added 1998, ch. 333, sec. 2, p. 1074.]

48-905. RESALE OR RE-LEASE OF RETURNED MOTOR VEHICLE. (1) If a motor vehicle has been returned under the provisions of section [48-903](#), Idaho Code, or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold or re-leased in this state unless:

(a) The manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; and

(b) The manufacturer provides the consumer with a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY IDAHO LAW."

The provisions of this chapter apply to the resold or re-leased motor vehicle for full term of the warranty required under this section. If a manufacturer has a program similar to the requirements of this subsection and that program provides, at a minimum, substantially the same protections for subsequent consumers, then the manufacturer shall be considered to be in compliance with this subsection.

(2) Notwithstanding the provisions of subsection (1) of this section, if a new motor vehicle has been returned under the provisions of section [48-903](#), Idaho Code, or a similar statute of another state because of a non-conformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven and the failure has not been repaired by the manufacturer, its agent or its authorized dealer, the motor vehicle may not be resold in this state.

[48-905, added 1998, ch. 333, sec. 2, p. 1074.]

48-906. ALTERNATIVE DISPUTE SETTLEMENT MECHANISM. (1) Any manufacturer doing business in this state, entering into franchise agreements for the sale of its motor vehicles in this state, or offering express warranties on its motor vehicles sold or distributed for sale in this state shall operate, or participate in, an informal dispute settlement mechanism located in the state of Idaho which complies with the provisions of [title 16](#), code of federal regulations, part 703, and the requirements of this section. The provisions of section [48-903](#), Idaho Code, concerning refunds or replacement do not apply to a consumer who has not first used this mechanism before commencing a civil action, unless the manufacturer allows a consumer to commence an action without first using this mechanism.

(2) An informal dispute settlement mechanism provided for by this chapter shall, at the time a request for arbitration is made, provide to the consumer and to each person who will arbitrate the consumer's dispute, information about this chapter as approved and directed by the attorney general, in consultation with interested parties. The informal dispute settlement mechanism shall permit the parties to present or submit any arguments based on this chapter and shall not prohibit or discourage the consideration of any such arguments.

(3) If, in an informal dispute settlement mechanism, it is decided that a consumer is entitled to a replacement vehicle or refund under section [48-903](#), Idaho Code, then any refund or replacement offered by the manufacturer or selected by a consumer shall include and itemize all amounts authorized by section [48-903](#), Idaho Code. If the amount of excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one (1) year of the return of the motor vehicle, the state tax commission may refund the sales tax, as determined under subsection (8) of section [48-903](#), Idaho Code, directly to the consumer and lienholder, if any, as their interests appear on the records of the division of motor vehicles of the Idaho transportation department.

(4) No documents shall be received by any informal dispute settlement mechanism unless those documents have been provided to each of the parties in the dispute at or prior to the mechanism's meeting, with an opportunity for the parties to comment on the documents either in writing or orally. If a consumer is present during the informal dispute settlement mechanism's meeting, the consumer may request postponement of the mechanism's meeting to allow sufficient time to review any documents presented at the time of the meeting which had not been presented to the consumer prior to the meeting.

(5) The informal dispute settlement mechanism shall allow each party to appear and make an oral presentation in the state of Idaho unless the consumer agrees to submit the dispute for decision on the basis of documents alone or by telephone, or unless the party fails to appear for an oral presentation after reasonable prior written notice. However, the manufacturer or its representative may participate in the informal dispute settlement mechanism's meeting by telephone if it chooses. If the consumer agrees to submit the dispute for decision on the basis of documents alone, then manufacturer or dealer representatives may not participate in the discussion or decision of the dispute.

(6) Consumers shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the informal dispute settlement hearing.

(7) Where there has been a recent attempt by the manufacturer to repair a consumer's vehicle, but no response has yet been received by the informal dispute mechanism from the consumer as to whether the repairs were successfully completed, the parties must be given the opportunity to present any additional information regarding the manufacturer's recent repair attempt before any final decision is rendered by the informal dispute settlement mechanism. This provision shall not prejudice a consumer's rights under this chapter.

(8) If the manufacturer knows that a technical service bulletin directly applies to the specific mechanical problem being disputed by the consumer, then the manufacturer shall provide the technical service bulletin to the consumer at reasonable cost upon request. The mechanism shall review any such technical service bulletins submitted by either party.

(9) A consumer may be charged a fee to participate in an informal dispute settlement mechanism required by this chapter, but the fee may not exceed the conciliation court filing fee in the county where the arbitration is conducted.

(10) Any party to the dispute has the right to be represented by an attorney in an informal dispute settlement mechanism.

(11) The informal dispute settlement mechanism has all the evidence-gathering powers granted an arbitrator under the uniform arbitration act.

(12) A decision issued in an informal dispute settlement mechanism required by this section may be in writing and signed.

[48-906, added 1998, ch. 333, sec. 2, p. 1075.]

48-907. EFFECT AND ADMISSIBILITY OF DECISION BY INFORMAL DISPUTE SETTLEMENT MECHANISM. The decision issued in an informal dispute settlement mechanism required by this chapter is nonbinding on the parties involved, unless otherwise agreed by the parties. Any party, upon application, may remove the decision to district court for a trial de novo. If the manufacturer is aggrieved by the decision of the informal dispute settlement mechanism, an application to remove the decision must be filed in the district court within thirty (30) days after the date the decision is received by the parties. If the application to remove is not made within thirty (30) days, then the district court shall, upon application of a party, issue an order confirming the decision. A written decision issued by an informal dispute settlement mechanism, and any written findings upon which the decision is based, are admissible as nonbinding evidence in any subsequent legal action and are not subject to further foundation requirements.

[48-907, added 1998, ch. 333, sec. 2, p. 1076.]

48-908. TREBLE DAMAGES FOR BAD FAITH APPEAL OF DECISION. If the district court finds that a party has removed a decision of an informal dispute settlement mechanism in bad faith, by asserting a claim or defense that is frivolous and costly to the other party, or by asserting an unfounded position solely to delay recovery by the other party, then the court shall award to the prevailing party three (3) times the actual damages sustained, together with costs and attorney's fees.

[48-908, added 1998, ch. 333, sec. 2, p. 1077.]

48-909. CIVIL REMEDY. Any consumer injured by a violation of this chapter may bring a civil action to enforce this chapter and recover costs and disbursements, including reasonable attorney's fees incurred in the civil action. However, the provisions of this section do not include recovery of attorney's fees previously incurred in the course of informal dispute resolution. In addition to the remedies provided herein, the attorney general may, when in the public interest, bring an action pursuant to the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code, against any manufacturer for violation of this chapter. For purposes of such action, violations of this chapter shall be deemed to be violations of Idaho's consumer protection act. In any such action, the attorney general and district court shall have the same authority as is granted the attorney general and district court under the Idaho consumer protection act.

[48-909, added 1998, ch. 333, sec. 2, p. 1077.]

48-910. LIMITATION ON ACTIONS. A civil action brought under this chapter must be commenced within three (3) years of the date of original delivery of the new motor vehicle to a consumer, except that if the consumer applies to

an informal dispute settlement mechanism within three (3) years of the date of original delivery of the new motor vehicle to a consumer, and if the consumer is aggrieved by the decision of the informal dispute settlement mechanism, then any appeal of that decision brought under this chapter must be commenced within three (3) months after the date of the final decision by the mechanism.

[48-910, added 1998, ch. 333, sec. 2, p. 1077.]

48-911. REMEDY NONEXCLUSIVE. Nothing in this chapter limits the rights or remedies which are otherwise available to a consumer under any other law.

[48-911, added 1998, ch. 333, sec. 2, p. 1077.]

48-912. DISCLOSURE REQUIREMENT. In addition to any investigative powers authorized by law, the attorney general may inspect the records of the informal dispute settlement mechanism upon reasonable notice, during regular business hours, and may make available to the public information about the operation of the mechanism, but data on an individual case may not be disclosed without the prior consent of the affected parties.

[48-912, added 1998, ch. 333, sec. 2, p. 1077.]

48-913. DEALER LIABILITY. Nothing in this chapter imposes liability on a dealer or creates an additional cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. 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, unless there is evidence that the related repairs had not been carried out by the dealer in a timely manner or in a manner substantially consistent with the manufacturer's published instructions.

[48-913, added 1998, ch. 333, sec. 2, p. 1078.]