

2021 Regular Session

SENATE BILL NO. 210

BY SENATOR FOIL

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

MOTOR VEHICLES. Provides relative to recreational vehicle warranties. (8/1/21)

1 AN ACT  
2 To amend and reenact R.S. 32:1253(A)(3)(a) and R.S. 51:1941(3) and (6), 1943(A), and the  
3 introductory paragraph of 1944(A), to enact Part IV-A of Chapter 6 of Title 32 of the  
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 32:1270.31 through  
5 1270.41, and to repeal R.S. 51:1948(E), relative to recreational vehicle warranties;  
6 to provide for the function of certain appointed members of the Louisiana Motor  
7 Vehicle Commission; to provide relative to recreational vehicle warranties; to  
8 provide for definitions; to provide for the powers and duties of the Louisiana Motor  
9 Vehicle Commission; to provide relative to dealer responsibility; to provide relative  
10 to the manufacturer's duty to repair for nonconformity; to provide relative to  
11 consumer remedies; to provide for exclusiveness of consumer remedies, warranties,  
12 and preemptive periods relative to recreational vehicles; to provide for attorney fees;  
13 to revise the definition of "motor vehicle" relative to motor vehicle warranties; and  
14 to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 32:1253(A)(3)(a) is hereby amended and reenacted and Part IV-A  
17 of Chapter 6 of Title 32 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.

1 32:1270.31 through 1270.41, is hereby enacted to read as follows:

2 §1253. Motor Vehicle Commission; appointment and qualifications of members;  
3 terms of office; organization; oath; official bond; compensation;  
4 powers and duties

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

8 \* \* \*

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

16 \* \* \*

17 **PART IV-A. RECREATIONAL VEHICLE WARRANTIES**

18 **§1270.31. Short title**

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

21 **§1270.32. Definitions**

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

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

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

28 **(3) "Consumer" means:**

29 **(a) The purchaser, other than for purposes of a resale, of a new**

1 recreational vehicle normally used for personal, family, or household purposes  
2 and subject to a manufacturer's express warranty.

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

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

8 (4) "Dealer" means a person who holds a license from the commission  
9 authorized by the manufacturer to service the items in a recreational vehicle  
10 warranted by the manufacturer, who is actively engaged in the business of  
11 buying, selling, or exchanging new recreational vehicles at retail, and who has  
12 an established place of business.

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

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

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

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

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

28 §1270.33. Commission; powers and duties; nonconformity notices; hearings;

29 records

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

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

9           (1) Receive complaints of a recreational vehicle nonconformity to  
10          warranty from consumers.

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

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

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

18          §1270.34. Manufacturers' duty to repair; nonconformity

19          If a new recreational vehicle does not conform to the manufacturer's  
20          express warranty, and the consumer reports the nonconformity to the  
21          manufacturer, or any of its authorized recreational vehicle dealers, and makes  
22          the recreational vehicle available for repair before the expiration of the  
23          warranty, or not later than one year after the date of original delivery of the  
24          recreational vehicle to the consumer, the manufacturer, its agent, or its  
25          authorized dealer shall make repairs that are necessary to conform the vehicle  
26          to the manufacturer's express warranty, notwithstanding the fact that the  
27          repairs are made after the expiration of the warranty term or the one-year  
28          period.

29          §1270.35. Express warranties; time limit to conform

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

8           **(2)(a) Notwithstanding the provisions of Paragraph (1) of this**  
9           **Subsection, the consumer shall provide written notification of the need to repair**  
10           **the nonconformity to the manufacturer and the commission, and either of the**  
11           **following:**

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

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

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

23           **(c) The repair facility shall have ten business days from the date of**  
24           **delivery of the recreational vehicle to the facility to complete repairs using**  
25           **replacement parts and thirty calendar days from the date of delivery of the**  
26           **recreational vehicle to the facility to complete structural repairs to conform the**  
27           **recreational vehicle to the applicable warranty. The time periods provided in**  
28           **this Paragraph may be extended only if the consumer authorizes the extension**  
29           **in writing.**

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

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

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

12           **§1270.36. Recreational vehicle replacement or refund**

13           **A. If the commission determines a nonconformity in a recreational**  
14           **vehicle has not been repaired within the time periods provided in R.S.**  
15           **32:1270.35, the manufacturer shall either:**

16           **(1) Replace the recreational vehicle with a comparable new recreational**  
17           **vehicle.**

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

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

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

4            §1270.37. Attorney fees

5            If the commission's decision on nonconformity is appealed by either  
6            party, the court may award reasonable attorney fees to the prevailing party on  
7            appeal.

8            §1270.38. Transfer of title; time limitation

9            Upon receipt of the comparable new recreational vehicle or refund  
10           pursuant to R.S. 32:1270.36, the consumer shall surrender the recreational  
11           vehicle subject to the nonconformity to the manufacturer together with the  
12           certificate of title with all endorsements necessary to transfer title to the  
13           manufacturer. The manufacturer shall provide the consumer with a  
14           comparable new recreational vehicle or refund no later than thirty days after  
15           receipt of an offer to transfer title in compliance with this Section by the  
16           consumer, or no later than thirty days after a decision by the commission.

17           §1270.39. Mandatory disclosure of a nonconformity to warranty by sellers

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

24           "IMPORTANT: THIS RECREATIONAL VEHICLE WAS  
25           RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID  
26           NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR  
27           CONDITION WAS NOT FIXED WITHIN THE TIME PROVIDED BY  
28           LOUISIANA LAW."

29           (2) Notice that a recreational vehicle was returned to the manufacturer

1 because it did not conform to its warranty shall also be conspicuously printed  
2 on the recreational vehicle's certificate of title.

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

7 §1270.40. Notification of nonconformity remedy; dealer responsibility

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

11 §1270.41. Exclusiveness

12 This Part provides exclusive remedies, warranties, and preemptive  
13 periods as between the manufacturer, dealer, and consumer, relative to  
14 nonconformity defects as defined in this Part, and no other provisions of law  
15 relative to recreational vehicle warranties and redhibitory vices and defects  
16 shall apply. Nothing herein shall be construed to affect or limit any warranty  
17 of title.

18 Section 2. R.S. 51:1941(3) and (6), 1943(A), and the introductory paragraph of  
19 1944(A) are hereby amended and reenacted to read as follows:

20 §1941. Definitions

21 The following definitions apply when used in this Chapter:

22 \* \* \*

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

27 \* \* \*

28 (6) "Motor vehicle" means a passenger motor vehicle or a passenger and  
29 commercial motor vehicle as defined in R.S. 32:1252(~~13~~), sold in this state on or

1 after September 1, 1984. "Motor vehicle" shall include a personal watercraft as  
 2 defined in R.S. 34:855.2 and an all-terrain vehicle as defined in R.S. ~~32:771(1)~~  
 3 **32:1252**, sold in this state or still under warranty on or after August 15, 1999, which  
 4 is used exclusively for personal and not commercial purposes. ~~"Motor vehicle" shall~~  
 5 ~~include the chassis and drive train of a motor home as defined in R.S. 32:1252(12),~~  
 6 ~~sold in this state or still under warranty on or after August 15, 1999, which is used~~  
 7 ~~exclusively for personal and not commercial purposes.~~ For the purposes of this  
 8 Chapter, the following motor vehicles are excluded:

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

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

11 \* \* \*

12 §1943. Express warranties; time limit to conform

13 A.(1) It shall be presumed that a reasonable number of attempts have been  
 14 undertaken to conform a motor vehicle to the applicable express warranties if the  
 15 vehicle is out of service by reason of repair for a cumulative total of forty-five or  
 16 more calendar days or the same nonconformity has been subject to repair four or  
 17 more times by the manufacturer, its agent, or its authorized dealer within the  
 18 warranty term or during a period of one year following the date of the original  
 19 delivery of the motor vehicle to the consumer, whichever is the earlier date.

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

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

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

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

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

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

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

\* \* \*

§1944. Motor vehicle replacement or refund

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

\* \* \*

Section 3. R.S. 51:1948(E) is hereby repealed.

The original instrument was prepared by Sharon F. Lyles. The following  
 digest, which does not constitute a part of the legislative instrument, was  
 prepared by Cathy R. Wells.

Present law creates the Louisiana Motor Vehicle Commission in the office of the governor and provides for appointment of three public members who are not licensed by the

commission from the state at large to hear and decide 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.

Proposed law adds hearings relative to recreational vehicle warranties.

Proposed law provides for the "New Recreational Vehicle Warranty Act".

Proposed law provides for definitions of the terms "collateral costs", "commission", "consumer", "dealer", "manufacturer", "manufacturer's express warranty" and "warranty", "nonconformity", "out of service", and "recreational vehicle" applicable to recreational vehicle warranties.

Proposed law authorizes the Louisiana Motor Vehicle Commission to adopt and enforce reasonable rules and regulations, and to prescribe forms pursuant to the Administrative Procedure Act necessary to exercise the objectives of proposed law and lists without limitation the powers and duties of the commission to include the receipt of nonconformity complaints from consumers, record keeping of nonconformity complaints, hearings on nonconformity complaints, and collection of costs associated with requirements of proposed law.

Proposed law requires the manufacturer of a recreational vehicle, or any of its authorized dealers, to make repairs necessary to conform the vehicle to the manufacturer's express warranty when a consumer reports nonconformity before the expiration of the warranty or not later than one year from the date of original delivery to the consumer.

Proposed law provides for a presumption of a reasonable number of attempts to conform a recreational vehicle to the express warranty if the vehicle is out of service by reason of repair for a cumulative total of 90 or more calendar days and the same nonconformity has been subject to repair four or more times by the manufacturer. Proposed law further provides that notwithstanding the presumption, the consumer shall provide written notice of a nonconformity to the manufacturer and the commission of the need to repair and evidence that the recreational vehicle has been out of service a total of at least 90 days or has been subject to repair four or more times.

Proposed law provides the manufacturer 10 business days from receipt of written notice of a nonconformity to attempt a final repair and requires the manufacturer to notify the consumer where and when to deliver the recreational vehicle to the repair facility. Proposed law provides the designated repair facility 10 business days for repairs using replacement parts and 30 calendar days for structural repairs. Only written extensions of the repair time periods by the consumer are authorized. Proposed law provides that a manufacturer is considered to have waived its right to a final attempt to cure the nonconformity if the manufacturer fails to respond or to perform the repairs in these time periods.

Proposed law authorizes courts to award reasonable attorney fees to the prevailing party on appeal if the commission's decision on nonconformity is appealed by either party.

Proposed law extends the express warranty term for the consumer and the manufacturer when repair services are not available or cannot be performed because of war, pandemic, invasion, strike, fire, flood, or natural disaster.

Proposed law provides that upon the commission's determination of a recreational vehicle's nonconformity, the manufacturer, at its option, is required to either replace the vehicle with a comparable new recreational vehicle, or to accept return of the recreational vehicle and refund to the consumer the vehicle's full purchase price and collateral costs minus a reasonable allowance for the consumer's use of the vehicle prior to notice of a nonconformity or subsequent use when the vehicle was not out of service for repair.

Proposed law provides that when the consumer receives a new recreational vehicle or refund, the consumer is required to surrender the certificate of title to the manufacturer not later than 30 days after offer to transfer title or not later than 30 days after the commission's decision.

Proposed law provides that a seller of a recreational vehicle previously returned to a manufacturer for nonconformity to warranty shall provide a written mandatory disclosure of nonconformity instrument to a buyer and subjects the manufacturer to a fine of not less than \$500 nor more than \$1,000 for each violation of nondisclosure.

Proposed law provides that its remedies, warranties, and preemptive periods relative to nonconformity defects of recreational vehicles are exclusive as between the manufacturer, dealer, and consumer.

Present law provides relative to the motor vehicle warranties law, (R.S. 51:1941 et seq.)

Present law defines a "motor vehicle" pursuant to motor vehicle warranties to include a motor home and the chassis and drive train of a motor home.

Proposed law removes motor home and the chassis and drive train of a motor home including the chassis and drive train from the definition and removes references to motor homes throughout the motor vehicle warranties law.

Effective August 1, 2021.

(Amends R.S. 32:1253(A)(3)(a) and R.S. 51:1941(3) and (6), 1943(A), and 1944(A)(intro para); adds R.S. 32:1270.31-1270.41; repeals R.S. 51:1948(E))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Makes technical changes.
2. Requires warranty disputes be heard by the three-member panel of the La. Motor Vehicle Commission.
3. Provides which expenses are recoverable by the commission if a warranty dispute hearing is held.
4. Removes the requirement that a consumer first participate in the manufacturer's informal dispute resolution prior to a complaint being filed with the commission.

##### Senate Floor Amendments to Engrossed bill:

1. Authorizes courts to award reasonable attorney fees to the prevailing party on appeal if the commission's decision on nonconformity is appealed by either party.
2. Require the dealer to provide written notification of the remedy for any nonconformity defect.