

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 847 Session of
1993

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MUNDY, TRELLO, PISTELLA, KING, JOSEPHS AND GEIST,
MARCH 22, 1993

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 22, 1993

AN ACT

1 Amending the act of March 28, 1984 (P.L.150, No.28), entitled
2 "An act relating to the rights of purchasers of defective new
3 motor vehicles," extending the act to include leased
4 vehicles; changing and adding definitions; providing for the
5 Office of Automobile Lemon Law Actions; regulating new motor
6 vehicle rustproofing; and further providing for remedies
7 under the act.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The title and sections 2, 4(a), 6, 7 and 9 of the
11 act of March 28, 1984 (P.L.150, No.28), known as the Automobile
12 Lemon Law, are amended to read:

13 AN ACT

14 Relating to the rights of purchasers and lessees of defective
15 new motor vehicles.

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Collateral charges." Any sales-related charges, including,
3 but not limited to, sales tax, license fees, registration fees,
4 title fees, finance charges, transportation charges, dealer
5 preparation charges and any other charges for service contracts,
6 undercoating, rustproofing or installed options.

7 "Dealer" or "motor vehicle dealer." A person in the business
8 of buying, selling, leasing or exchanging vehicles.

9 "Manufacturer." Any person engaged in the business of
10 constructing or assembling new and unused motor vehicles or
11 engaged in the business of importing new and unused motor
12 vehicles into the United States for the purpose of selling or
13 distributing new and unused motor vehicles to motor vehicle
14 dealers in this Commonwealth.

15 ["Manufacturer's express warranty" or "warranty." The
16 written warranty of the manufacturer of a new automobile of its
17 condition and fitness for use, including any terms or conditions
18 precedent to the enforcement of obligations under the warranty.]

19 "New motor vehicle." Any new and unused self-propelled,
20 motorized conveyance driven upon public roads, streets or
21 highways which is designed to transport not more than 15
22 persons, which was purchased [and is registered] or leased in
23 the Commonwealth and is used or bought for use primarily for
24 personal, family or household purposes, including a vehicle used
25 by a manufacturer or dealer as a demonstrator or dealer car
26 prior to its sale. The term does not include motorcycles, [motor
27 homes or] off-road vehicles or those portions of motor homes
28 designated, used or maintained primarily as mobile dwellings.

29 "Nonconformity." A defect or condition which substantially
30 impairs the use, value or safety of a new motor vehicle and does

1 not conform to the manufacturer's express warranty or to any
2 other express or implied warranty applicable to the vehicle.

3 "Purchaser." A person, or his successors or assigns, who has
4 obtained ownership of a new motor vehicle by transfer or
5 purchase or who has entered into an agreement or contract for
6 the purchase or lease of a new motor vehicle which is used or
7 bought for use primarily for personal, family or household
8 purposes.

9 Section 4. Repair obligations.

10 (a) Repairs required.--The manufacturer of a new motor
11 vehicle [sold and registered] which is sold or leased in the
12 Commonwealth shall repair or correct, at no cost to the
13 purchaser, a nonconformity which substantially impairs the use,
14 value or safety of said motor vehicle [which may occur within a
15 period of one year following the actual delivery of the vehicle
16 to the purchaser, within the first 12,000 miles of use or during
17 the term of the warranty, whichever may first occur] and first
18 occurs within the earlier of a period of two years following the
19 actual delivery of the vehicle to the purchaser or the first
20 24,000 miles of use.

21 * * *

22 Section 6. [Presumption of a reasonable] Reasonable number of
23 attempts.

24 [It shall be presumed that a reasonable number of attempts] A
25 reasonable number of attempts shall be deemed to have been
26 undertaken to repair or correct a nonconformity if:

27 (1) the same nonconformity has been subject to repair
28 three times by the manufacturer, its agents or authorized
29 dealers and the nonconformity still exists; or

30 (2) the vehicle is out-of-service by reason of [any

nonconformity] repair of one or more nonconformities for a cumulative total of 30 or more calendar days.

Section 7. Itemized statement required.

The manufacturer or dealer shall provide to the purchaser each time the purchaser's vehicle is returned from being serviced or repaired a fully itemized statement indicating all work performed on said vehicle including, but not limited to, parts and labor. The statement shall also include the date and the odometer reading when the vehicle was submitted for repair and the date and odometer reading when the vehicle was available for return to the consumer. It shall be the duty of a dealer to notify the manufacturer of the existence of a nonconformity within seven days of the delivery by a purchaser of a vehicle subject to a nonconformity when it is delivered to the same dealer for the second time for repair of the same nonconformity. The notification shall be by certified mail, return receipt requested. Timely submission of sufficiently detailed warranty claims to the manufacturer shall constitute notice under this section.

Section 9. [Informal dispute settlement procedure.] Alternate arbitration.

[If the manufacturer has established an informal dispute settlement procedure which complies with the provisions of 16 CFR Pt. 703, as from time to time amended, the provisions of section 8 shall not apply to any purchaser who has not first resorted to such procedure as it relates to a remedy for defects or conditions affecting the substantial use, value or safety of the vehicle. The informal dispute settlement procedure shall not be binding on the purchaser and, in lieu of such settlement, the purchaser may pursue a remedy under section 8.]

1 (a) Establishment.--Each purchaser shall have the option of
2 submitting any dispute arising under the provisions of this act
3 upon the payment of a prescribed reasonable filing fee to an
4 alternate arbitration mechanism established pursuant to
5 regulations promulgated under this act by the Office of Attorney
6 General. Upon application of the purchaser, all manufacturers
7 shall submit to such alternate arbitration. This alternate
8 arbitration shall be conducted by a professional arbitrator or
9 arbitration firm appointed by and under regulations established
10 by the Attorney General. This mechanism shall insure the
11 personal objectivity of its arbitrators and the right of each
12 party to present its case, to be in attendance during any
13 presentation made by the other party and to rebut or refute such
14 presentation.

15 (b) Regulations.--The Attorney General shall promulgate
16 regulations as may be necessary to carry out the provisions of
17 this act. These regulations shall be consistent with the common
18 and statutory law of the Commonwealth, the Pennsylvania Rules of
19 Civil Procedure and the Pennsylvania rules of evidence.

20 (c) Opinion and order.--The appointed professional
21 arbitrator or arbitration firm shall, within 60 days of receipt
22 by the Attorney General of a complaint, issue an opinion and
23 order containing findings as to whether the motor vehicle in
24 dispute meets the standards set forth by this section for
25 vehicles that are required to be replaced or refunded. In
26 addition to any other recovery, any prevailing purchaser shall
27 be awarded reasonable attorney fees and costs.

28 (d) Judicial review.--A purchaser or manufacturer aggrieved
29 by an arbitration award may, within 30 days of the date of the
30 decision, appeal the decision to the court of common pleas.

1 Appeal shall be a trial de novo in the court of common pleas in
2 accordance with the rules regarding appeals in compulsory civil
3 arbitration and the Pennsylvania Rules of Civil Procedure.

4 (e) Admissibility of record on appeal.--Where an appeal is
5 taken, findings of fact of the arbitrator or arbitration firm
6 shall be admissible as evidence before the court.

7 (f) Penalty.--Any manufacturer which, within 30 days of any
8 arbitration award in favor of the purchaser under this act,
9 fails to appeal the decision and does not deliver a refund or
10 replacement vehicle or notify the consumer of the estimated
11 delivery date of the replacement vehicle shall be punished by a
12 civil penalty of \$1,000 per day until the delivery of the refund
13 or replacement. The estimated delivery date shall not exceed 60
14 days from the date the manufacturer notifies the consumer that a
15 delivery will be made. The penalty shall not exceed \$10,000 for
16 each violation. The amount of the penalty shall begin to
17 accumulate on the 31st day following the arbitration decision.

18 (g) Enforcement.--If 30 days has elapsed from the issuance
19 of an arbitration award in favor of the purchaser, no appeal has
20 been taken, no award has been delivered and no fine has been
21 paid, the Attorney General shall initiate proceedings against
22 the manufacturer to enforce the arbitration award or the payment
23 of fines.

24 Section 2. The act is amended by adding a section to read:
25 Section 9.1. Compilation of statistics.

26 (a) Duty.--The Office of Attorney General shall maintain
27 records of each arbitration complaint filed with the Office of
28 Attorney General, including an index of new motor vehicles by
29 year, make and model. The Office of Attorney General shall
30 compile aggregate annual statistics for all arbitration

complaints filed and annual statistics for each manufacturer,
which shall include, but not be limited to, for each arbitration
complaint filed, the number and percent of:

(1) replacement motor vehicle requests;

(2) purchase price refund requests;

(3) replacement motor vehicles obtained in prehearing
settlements;

(4) purchase price refunds obtained in prehearing
settlements;

(5) replacement motor vehicles awarded;

(6) purchase price refunds awarded;

(7) decisions neither complied with during the required
period nor petitioned for appeal within the 30-day period;

(8) decisions appealed; and

(9) results of decisions appealed.

(b) Status.--The statistical compilations under this section
shall be public information and shall be published in an annual
report.

Section 3. Section 10(a) of the act is amended to read:

Section 10. Resale of returned motor vehicle.

(a) Vehicles may not be resold.--If a motor vehicle has been
returned under the provisions of this act or a similar statute
of another state, it may not be resold in this State unless:

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

(2) The manufacturer provides the consumer with a
written statement on a separate piece of paper, in ten point
all capital type, in substantially the following form:

1 "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER
2 BECAUSE IT DID NOT CONFORM TO THE [MANUFACTURER'S EXPRESS
3 WARRANTY] WARRANTIES APPLICABLE TO THE VEHICLE, AND THE
4 NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS
5 PROVIDED BY THE PENNSYLVANIA AUTOMOBILE LEMON LAW."

6 The statement shall also be conspicuously printed on the
7 motor vehicle's certificate of title or noted by the word
8 "lemon."

9 The provisions of this section apply to the resold motor vehicle
10 for the full term of the warranty required under this
11 subsection.

12 * * *

13 Section 4. The act is amended by adding a section to read:
14 Section 10.1. Rustproofing.

15 (a) General rule.--Whenever a motor vehicle dealer offers to
16 rustproof a new motor vehicle which the dealer is offering for
17 sale at retail, the motor vehicle dealer shall:

18 (1) inform the purchaser that rustproofing by the dealer
19 is optional; and

20 (2) inform the purchaser if the vehicle has been
21 rustproofed by the manufacturer and of what, if any,
22 manufacturer's warranty is applicable to that rustproofing.

23 (b) Exception.--Subsection (a) shall not be applicable if
24 the motor vehicle dealer rustproofed a new motor vehicle before
25 offering it for sale to that purchaser; however, the dealer
26 shall inform the purchaser whenever dealer rustproofing has an
27 effect on any manufacturer's warranty applicable to the vehicle.

28 (c) Enforcement and regulations.--The Office of Attorney
29 General is authorized to enforce this section and may adopt
30 regulations as may be necessary for the enforcement and

1 administration of this section.

2 (d) Nonapplicability.--This section shall not be applicable
3 to any new motor vehicle which has been rustproofed by a motor
4 vehicle dealer prior to the effective date of this section.

5 Section 5. Section 12 of the act is amended to read:

6 Section 12. Rights preserved.

7 Nothing in this act shall limit the purchaser from pursuing
8 any other rights or remedies under any other law, contract or
9 warranty. No purchaser shall be required to pursue any procedure
10 under any manufacturer arbitration process or otherwise prior to
11 pursuing the remedies provided for in this act.

12 Section 6. This act shall take effect in 60 days.