

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3004 Session of  
1996

INTRODUCED BY RAMOS, ROBERTS, ROBINSON, BELARDI, FEESE,  
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TANGRETTI, NOVEMBER 19, 1996

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 19, 1996

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," relating to the rights of purchasers of  
4 defective used motor vehicles; establishing the Used Motor  
5 Vehicle Lemon Law Enforcement Fund; and imposing a fee.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. The title and sections 1, 2, 3 and 7 of the act  
9 of March 28, 1984 (P.L.150, No.28), known as the Automobile  
10 Lemon Law, are amended to read:

11 AN ACT

12 Relating to the rights of purchasers of defective new or used  
13 motor vehicles; establishing the Used Motor Vehicle Lemon Law  
14 Enforcement Fund; and imposing a fee.

15 Section 1. Short title.

16 This act shall be known and may be cited as the New and Used  
17 Automobile Lemon Law.

18 Section 2. Definitions.

1       The following words and phrases when used in this act shall  
2 have the meanings given to them in this section unless the  
3 context clearly indicates otherwise:

4       "Consumer." The purchaser, other than for purposes of  
5 resale, of a used motor vehicle normally used for personal,  
6 family or household purposes and subject to a warranty, and the  
7 spouse or child of the purchaser if such motor vehicle is  
8 transferred to the spouse or child during any warranty  
9 applicable to such motor vehicle, and any other person entitled  
10 by the terms of such warranty to enforce the obligations of the  
11 warranty.

12       "Dealer" or "motor vehicle dealer." A person in the business  
13 of buying, selling or exchanging vehicles.

14       "Manufacturer." Any person engaged in the business of  
15 constructing or assembling new and unused motor vehicles or  
16 engaged in the business of importing new and unused motor  
17 vehicles into the United States for the purpose of selling or  
18 distributing new and unused motor vehicles to motor vehicle  
19 dealers in this Commonwealth.

20       "Manufacturer's express warranty" or "warranty." The written  
21 warranty of the manufacturer of a new automobile of its  
22 condition and fitness for use, including any terms or conditions  
23 precedent to the enforcement of obligations under the warranty.

24       "New motor vehicle." Any new and unused self-propelled,  
25 motorized conveyance driven upon public roads, streets or  
26 highways which is designed to transport not more than 15  
27 persons, which was purchased and is registered in the  
28 Commonwealth and is used or bought for use primarily for  
29 personal, family or household purposes, including a vehicle used  
30 by a manufacturer or dealer as a demonstrator or dealer car

1 prior to its sale. The term does not include motorcycles, motor  
2 homes or off-road vehicles.

3 "Nonconformity." A defect or condition which substantially  
4 impairs the use, value or safety of a new motor vehicle and does  
5 not conform to the manufacturer's express warranty.

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

11 "Repair insurance." A contract in writing for any period of  
12 time or any specific mileage to refund, repair, replace,  
13 maintain or take other action with respect to a used motor  
14 vehicle and which is regulated by the Insurance Department.

15 "Service contract." A contract in writing for any period of  
16 time or any specific mileage to refund, repair, replace,  
17 maintain or take other action with respect to a used motor  
18 vehicle and provided at an extra charge beyond the price of the  
19 used motor vehicle.

20 "Used motor vehicle." Any motor vehicle, excluding  
21 motorcycles, motor homes and off-road vehicles, which has been  
22 sold, bargained, exchanged or given away; which has had title  
23 transferred from the person who first acquired it from the  
24 manufacturer or dealer; or which has an odometer reading of 500  
25 miles or more, not including mileage incurred in delivery from  
26 the manufacturer or in transporting the vehicle between dealers  
27 for sale.

28 "Used motor vehicle dealer." For purposes of this act, a  
29 person or business which sells or offers for sale a used motor  
30 vehicle after selling or offering for sale three or more used

1 motor vehicles in the previous 12-month period. The term does  
2 not include a bank or financial institution, a business selling  
3 a used motor vehicle to an employee of that business, a lessor  
4 selling a leased vehicle to that vehicle's lessee, a family  
5 member of the lessee or an employee of the lessee.

6 "Used motor vehicle warranty." Any undertaking in connection  
7 with the sale by a used motor vehicle dealer of a used motor  
8 vehicle to refund, repair, replace, maintain or take other  
9 action with respect to such used motor vehicle and provided at  
10 no extra charge beyond the price of the used motor vehicle.

11 Section 3. Disclosure.

12 (a) New motor vehicles.--The Attorney General shall prepare  
13 and publish in the Pennsylvania Bulletin a statement which  
14 explains a purchaser's rights under this law. Manufacturers  
15 shall provide to each purchaser at the time of original purchase  
16 of a new motor vehicle a written statement containing a copy of  
17 the Attorney General's statement and a listing of zone offices,  
18 with addresses and phone numbers, which can be contacted by the  
19 purchaser for the purpose of securing the remedies provided for  
20 in this act.

21 (b) Used motor vehicles.--The Attorney General shall prepare  
22 and publish in the Pennsylvania Bulletin a statement which  
23 explains a consumer's rights under this act. Used motor vehicle  
24 dealers shall provide to each consumer at the time of purchase  
25 of a used motor vehicle a written statement containing a copy of  
26 the Attorney General's statement and a listing of zone offices,  
27 with addresses and phone numbers, which can be contacted by the  
28 consumer for the purpose of securing the remedies provided for  
29 in this act.

30 Section 7. Itemized statement required.

1       The manufacturer or dealer shall provide to the purchaser  
2 each time the purchaser's new or used motor vehicle is returned  
3 from being serviced or repaired a fully itemized statement  
4 indicating all work performed on said vehicle including, but not  
5 limited to, parts and labor. It shall be the duty of a dealer to  
6 notify the manufacturer of the existence of a nonconformity  
7 within seven days of the delivery by a purchaser of a vehicle  
8 subject to a nonconformity when it is delivered to the same  
9 dealer for the second time for repair of the same nonconformity.  
10 The notification shall be by certified mail, return receipt  
11 requested.

12       Section 2. The act is amended by adding sections to read:

13 Section 10.1. Used motor vehicle written warranty.

14       (a) Terms of used motor vehicle warranty.--No used motor  
15 vehicle dealer shall sell a used motor vehicle to a consumer  
16 without giving the consumer a written used motor vehicle  
17 warranty which shall, at minimum, apply for the following terms:

18           (1) If the used motor vehicle has 36,000 miles or less,  
19 the used motor vehicle warranty shall be, at minimum, 60 days  
20 or 3,000 miles, whichever comes first.

21           (2) If the used motor vehicle has more than 36,000  
22 miles, the used motor vehicle warranty shall be, at minimum,  
23 30 days or 1,000 miles, whichever comes first.

24       (b) Used motor vehicle warranty requirements.--The written  
25 used motor vehicle warranty shall require the used motor vehicle  
26 dealer or his agent to repair or, at the election of the used  
27 motor vehicle dealer, reimburse the consumer for the reasonable  
28 cost of repairing the failure of a covered part. Covered parts  
29 shall at least include the following items:

30           (1) Engine. All lubricated parts, water pump, fuel pump,

manifolds, engine block, cylinder head, rotary engine housings and flywheel.

(2) Transmission. The transmission case, internal parts and the torque converter.

(3) Drive axle. Front and rear drive axle housings and internal parts, axle shafts, propeller shafts and universal joints.

(4) Brakes. Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.

(5) Radiator.

(6) Steering. The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.

(7) Alternator, generator, starter and ignition system, excluding the battery.

(c) Notice to be given within used motor vehicle warranty period.--Such repair or reimbursement shall be made by the used motor vehicle dealer, notwithstanding the fact that the used motor vehicle warranty period has expired, provided that the consumer notifies the used motor vehicle dealer in writing of the failure of a covered part within the specified used motor vehicle warranty period.

(d) New car warranty.--If the warranty defined in section 2 is in effect at the time of the sale of the used motor vehicle, the used motor vehicle warranty specified in this act shall be required only for the period of time, if any, between the expiration of the new car warranty and the period specified in subsection (a).

(e) Exclusions permitted.--The written used motor vehicle warranty may contain additional language excluding coverage:

1       (1) for a failure of a covered part caused by a lack of  
2 customary maintenance;

3       (2) for a failure of a covered part caused by collision,  
4 abuse, negligence, theft, vandalism, fire or other casualty,  
5 and damage from the environment (windstorm, lightning, road  
6 hazards, etc.);

7       (3) if the odometer has been stopped or altered such  
8 that the vehicle's actual mileage cannot be readily  
9 determined or if any covered part has been altered such that  
10 a covered part was thereby caused to fail;

11       (4) for maintenance services and the parts used in  
12 connection with such services such as seals, gaskets, oil or  
13 grease unless required in connection with the repair of a  
14 covered part;

15       (5) for a motor tune-up;

16       (6) for a failure resulting from racing or other  
17 competition;

18       (7) for a failure caused by towing a trailer or another  
19 vehicle unless the used motor vehicle is equipped for this as  
20 recommended by the manufacturer;

21       (8) if the used motor vehicle is used to carry  
22 passengers for hire;

23       (9) if the used motor vehicle is rented to another  
24 person;

25       (10) for repair of valves or rings to correct low  
26 compression or oil consumption which are considered normal  
27 wear;

28       (11) to the extent otherwise permitted by law, for  
29 property damage arising or allegedly arising out of the  
30 failure of a covered part; and

1       (12) to the extent otherwise permitted by law, for loss  
2       of the use of the used motor vehicle, loss of time,  
3       inconvenience, commercial loss or consequential damages.

4   Section 10.2. Failure to honor used motor vehicle warranty.

5       (a) Failure of used motor vehicle dealer.--If the used motor  
6       vehicle dealer or his agent fails to correct a malfunction or  
7       defect, as required by the used motor vehicle warranty specified  
8       in this act, which substantially impairs the value of the used  
9       motor vehicle to the consumer after a reasonable period of time,  
10       the used motor vehicle dealer shall accept return of the used  
11       motor vehicle from the consumer and refund to the consumer the  
12       full purchase price, including sales or use tax, less a  
13       reasonable allowance for any damage not attributable to normal  
14       wear or usage, and adjustment for any modifications which either  
15       increase or decrease the market value of the vehicle. In  
16       determining the purchase price to be refunded, the purchase  
17       price shall be deemed equal to the sum of the actual cash  
18       difference paid for the used motor vehicle plus, if the used  
19       motor vehicle dealer elects not to return any vehicles traded in  
20       by the consumer, the wholesale value of any such traded-in  
21       vehicles as listed in the National Auto Dealers Association Used  
22       Car Guide, or such other guide as may be specified in  
23       regulations promulgated by the Secretary of Transportation, as  
24       adjusted for mileage, improvements and any major physical or  
25       mechanical defects in the traded-in vehicle at the time of  
26       trade-in. The contract of sale for the used motor vehicle shall  
27       include conspicuous language indicating that, if the consumer  
28       should be entitled to a refund pursuant to this section, the  
29       value of any used motor vehicle traded in by the consumer, if  
30       the used motor vehicle dealer elects not to return it to the



1 consumer, for purposes of determining the amount of such refund,  
2 will be determined by reference to the National Auto Dealers  
3 Association Used Car Guide wholesale value, or such other guide  
4 as may be approved by the Secretary of Transportation, as  
5 adjusted for mileage, improvements and any major physical or  
6 mechanical defects, rather than the value listed in the sales  
7 contract. Refunds shall be made to the consumer and lienholder,  
8 if any, as their interests may appear on the records of  
9 ownership kept by the Bureau of Motor Vehicles. If the amount to  
10 be refunded to the lienholder will be insufficient to discharge  
11 the lien, the used motor vehicle dealer shall notify the  
12 consumer in writing by certified mail that the consumer has 30  
13 days to pay the lienholder the amount which, together with the  
14 amount to be refunded by the used motor vehicle dealer, will be  
15 sufficient to discharge the lien. The notice to the consumer  
16 shall contain conspicuous language warning the consumer that  
17 failure to pay such funds to the lienholder within 30 days will  
18 terminate the used motor vehicle dealer's obligation to provide  
19 a refund. If the consumer fails to make such payment within 30  
20 days, the used motor vehicle dealer shall have no further  
21 responsibility to provide a refund under this section.  
22 Alternatively, the used motor vehicle dealer may elect to offer  
23 to replace the used motor vehicle with a comparably priced  
24 vehicle, with such adjustment in price to which the parties may  
25 agree. The consumer shall not be obligated to accept a  
26 replacement vehicle but may instead elect to receive the refund  
27 provided under this section. It shall be an affirmative defense  
28 to any claim under this section that:  
29 (1) the malfunction or defect does not substantially  
30 impair such value; or

1       (2) the malfunction or defect is the result of abuse,  
2       neglect or unreasonable modifications or alterations of the  
3       used motor vehicle.

4       (b) Presumptions.--It shall be presumed that the used motor  
5       vehicle dealer has had a reasonable opportunity to correct a  
6       malfunction or defect in a used motor vehicle, if:

7       (1) the same malfunction or defect has been subject to  
8       repair three or more times by the selling used motor vehicle  
9       dealer or his agent within either warranty period, but such  
10       malfunction or defect continues to exist; or

11       (2) the vehicle is out of service by reason of repair or  
12       malfunction or defect for a cumulative total of 15 or more  
13       days during either warranty period. The period shall not  
14       include days when the used motor vehicle dealer is unable to  
15       complete the repair because of the unavailability of  
16       necessary repair parts. The used motor vehicle dealer shall  
17       be required to exercise due diligence in attempting to obtain  
18       necessary repair parts, provided that, if a vehicle has been  
19       out of service for a cumulative total of 45 days, even if a  
20       portion of that time is attributable to the unavailability of  
21       replacement parts, the consumer shall be entitled to the  
22       replacement or refund remedies provided in this section.

23       (c) Extension of either warranty term.--The term of any  
24       warranty, service contract or repair insurance shall be extended  
25       by any time period during which the used motor vehicle is in the  
26       possession of the used motor vehicle dealer or his duly  
27       authorized agent for the purpose of repairing the used motor  
28       vehicle under the terms and obligations of either warranty,  
29       service contract or repair insurance.

30       (d) Nonextension of either warranty term.--The term of any

warranty, service contract or repair insurance, and the 15-day out-of-service period, shall not be extended by any time during which repair services are not available to the consumer because of war, invasion or strike, or fire, flood or other natural disaster.

Section 10.3. Waiver void.

(a) Waiver against public policy.--Any agreement entered into by a consumer for the purchase of a used motor vehicle which waives, limits or disclaims the rights set forth in this act shall be void as contrary to public policy. If a used motor vehicle dealer fails to give the written used motor vehicle warranty required by this act, the used motor vehicle dealer nevertheless shall be deemed to have given the used motor vehicle warranty as a matter of law.

(b) Other remedies available.--Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(c) Exceptions.--This act shall not apply to used motor vehicles sold for less than \$1,500, or to used motor vehicles with over 100,000 miles at the time of sale if said mileage and the loss of used car Lemon Law protection is indicated in writing at the time of sale, nor shall it apply to the sale of classic cars registered under 75 Pa.C.S. (relating to vehicles).

Section 10.4. Inspection requirements.

Anyone who sells a used motor vehicle in this Commonwealth to a buyer who titles and registers the vehicle in this Commonwealth must provide proof of State inspection to the buyer at time of delivery of the used motor vehicle. Proof of State inspection shall be a validly affixed window sticker issued no more than ten days prior to delivery or an itemized checklist of

those items which must be performed for the vehicle to pass inspection. The checklist shall include an estimate of costs for the repairs to be performed and shall be signed by the inspection mechanic.

Section 10.5. Arbitration and enforcement.

(a) Informal dispute settlement procedure.--If a used motor vehicle dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of 16 CFR Part 703, the provisions of this act concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

(b) Rights not abrogated.--In no event shall a consumer who has resorted to an informal dispute settlement procedure be precluded from seeking the rights or remedies available by law.

(c) Attorney fees may be awarded.--In an action brought to enforce the provisions of this act, the court may award reasonable attorney fees to a prevailing plaintiff.

(d) Statute of limitations.--Any action brought pursuant to this act shall be commenced within three years of the date of original delivery of the used motor vehicle to the consumer.

Section 10.6. Establishment of fund; imposition of fee.

(a) Fund established.--There is hereby established a fund to be known as the Used Motor Vehicle Lemon Law Enforcement Fund. This fund shall be established in and maintained by the Office of Attorney General. The purpose of this fund is to insure enforcement by the Office of Attorney General. Moneys shall be used by the Office of Attorney General only to enforce this act.

(b) Fees.--Every used motor vehicle dealer subject to this act shall pay an annual fee of \$50 to be placed in the fund established in subsection (a).

1       Section 3. The amendment or addition of the title and  
2 sections 1, 2, 3, 7, 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 shall  
3 apply to all used motor vehicles sold on or after the effective  
4 date of this act.

5       Section 4. This act shall take effect in 90 days.