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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2657 Session of  
2000

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INTRODUCED BY ROHRER, BARRAR, BASTIAN, CORRIGAN, SAYLOR, STERN,  
E. Z. TAYLOR, TRELLO, WASHINGTON, WILT, YOUNGBLOOD, ZIMMERMAN  
AND WATERS, JULY 5, 2000

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JULY 5, 2000

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AN ACT

1 Relating to the rights of purchasers and lessees of defective  
2 new motor vehicles; creating a motor vehicle arbitration  
3 board; imposing obligations, duties of refund and  
4 replacement; making an appropriation; and making a repeal.

5 The General Assembly recognizes that a motor vehicle is a  
6 major consumer acquisition and that a defective motor vehicle  
7 undoubtedly creates a hardship for the consumer. The General  
8 Assembly further recognizes that a franchised motor vehicle  
9 dealer is an authorized service agent of the manufacturer. It is  
10 the intent of the General Assembly that a good faith motor  
11 vehicle warranty complaint by a consumer be resolved by the  
12 manufacturer within a specified period of time. It is further  
13 the intent of the General Assembly to provide the statutory  
14 procedures whereby a consumer may receive a replacement motor  
15 vehicle or a full refund for a motor vehicle which cannot be  
16 brought into conformity with the warranty provided for in this  
17 act. However, nothing in this act shall in any way limit the  
18 rights or remedies which are otherwise available to a consumer

1 under any other law.

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

8 CHAPTER 1  
9 PRELIMINARY PROVISIONS

10 Section 101. Short title.

11 This act shall be known and may be cited as the Automobile  
12 Lemon Law of 1997.

13 Section 102. Definitions.

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

17 "Board." The Motor Vehicle Arbitration Board as established  
18 in section 701.

19 "Bureau." The Bureau of Consumer Protection in the Office of  
20 Attorney General.

21 "Collateral charges." Additional charges to a consumer  
22 wholly incurred as a result of the acquisition of the motor  
23 vehicle. For the purposes of this act, the term includes, but is  
24 not limited to, manufacturer-installed or agent-installed items  
25 that are approved by the manufacturer, earned finance charges,  
26 sales taxes, the unused portion of service contracts, extended  
27 warranties determined on a pro rata basis and title charges. The  
28 term does not include attorney fees, except as provided in this  
29 act, or modifications not approved by the manufacturer.

30 "Condition." A general problem that may be attributable to a

1 defect in more than one part.

2 "Consumer." The purchaser or lessee, other than for purposes  
3 of lease or resale, of a new or previously untitled motor  
4 vehicle, or any other person entitled by the terms of the  
5 warranty to enforce the obligations of the warranty during the  
6 duration of the Lemon Law rights period.

7 "Days." Calendar days, unless otherwise specified in this  
8 act.

9 "Department." The Department of Transportation of the  
10 Commonwealth.

11 "Incidental charges." Those reasonable costs incurred by the  
12 consumer, including, but not limited to, towing charges and the  
13 costs of obtaining alternative transportation which are directly  
14 caused by the nonconformity or nonconformities which are the  
15 subject of the claim. The term does not include loss of use,  
16 loss of income or personal injury claims.

17 "Lease price." The aggregate of:

18 (1) Lessor's actual purchase costs.

19 (2) Collateral charges, if applicable.

20 (3) Any fee paid to another to obtain the lease.

21 (4) Any insurance or other costs expended by the lessor  
22 for the benefit of the lessee.

23 (5) An amount equal to State and local sales taxes, not  
24 otherwise included as collateral charges, paid by the lessor  
25 when the vehicle was initially purchased.

26 (6) An amount equal to 5% of paragraph (1).

27 "Lemon Law rights period." The term of the manufacturer's  
28 written warranty, the period ending 18 months after the date of  
29 the original delivery of a motor vehicle to a consumer or the  
30 first 18,000 miles of operation attributable to a consumer,

1   whichever expires first, provided that the first repair attempt  
2   must occur within the first 12 months or 12,000 miles of  
3   operation.

4       "Lessee." A consumer who leases a motor vehicle for one year  
5   or more under a written lease agreement which provides that the  
6   lessee is responsible for repairs to the motor vehicle.

7       "Lessee cost." The aggregate deposit, rental payments,  
8   capitalization costs and all other fees and payments previously  
9   paid to the lessor for the leased vehicle.

10       "Lessor." A person who holds title to a motor vehicle leased  
11   to a lessee under a written lease agreement or who holds the  
12   lessor's rights under the agreement.

13       "Manufacturer." A person engaged in the business of  
14   constructing or assembling new motor vehicles or installing on  
15   previously assembled vehicle chassis special bodies or equipment  
16   which, when installed, form an integral part of the new motor  
17   vehicle or a person engaged in the business of importing new  
18   motor vehicles into the United States for the purpose of selling  
19   or distributing new motor vehicles to new motor vehicle dealers.

20       "Motor vehicle." A self-propelled vehicle purchased or  
21   leased in this Commonwealth or purchased or leased elsewhere by  
22   a resident of this Commonwealth and titled for the first time in  
23   this Commonwealth and primarily designed for the transportation  
24   of persons or property over public streets and highways and used  
25   for personal, family or household purposes. The term includes  
26   the chassis, chassis cab and that portion of a motor home  
27   devoted to its propulsion, but does not include any portion  
28   designed, used or maintained primarily for human habitation. The  
29   term does not include mopeds, motorcycles or vehicles over  
30   10,000 pounds gross vehicle weight rating. For purposes of this

1 definition, the limit of 10,000 pounds gross vehicle weight  
2 rating does not apply to motor homes.

3 "Nonconformity." A defect or condition which substantially  
4 impairs the use, value or safety of a motor vehicle.

5 "Person." A natural person, partnership, firm, corporation,  
6 association, joint venture, trust or other legal entity.

7 "Program." An informal dispute settlement procedure  
8 established by a manufacturer which mediates and arbitrates  
9 motor vehicle warranty disputes arising in this Commonwealth.

10 "Purchase price." The cash price paid for the motor vehicle  
11 appearing in the sales agreement or contract, including any net  
12 allowance for a trade-in vehicle.

13 "Reasonable offset for use." The number of miles  
14 attributable to a consumer up to the date of the third repair  
15 attempt of the same nonconformity which is the subject of the  
16 claim, or the first repair attempt of a nonconformity that is  
17 likely to cause death or serious bodily injury, or the 20th  
18 cumulative day when the vehicle is out of service by reason of  
19 repair of one or more nonconformities, whichever occurs first,  
20 multiplied by the purchase price of the vehicle and divided by  
21 100,000.

22 "Replacement motor vehicle." A motor vehicle which is  
23 identical or reasonably equivalent to the motor vehicle to be  
24 replaced, as the motor vehicle to be replaced existed at the  
25 time of the consumer's acquisition. For purposes of this act,  
26 the replacement must be new if the motor vehicle was new at the  
27 time of the consumer's original acquisition. If the original  
28 acquisition model year is not available, a reasonably equivalent  
29 new motor vehicle shall be provided.

30 "Warranty." A written warranty issued by the manufacturer or

1 any affirmation of fact or promise made by the manufacturer,  
2 excluding statements made by the dealer, in connection with the  
3 sale or lease of a motor vehicle to a consumer which relates to  
4 the nature of the material or workmanship and affirms or  
5 promises that such material or workmanship is free of defects or  
6 will meet a specified level of performance.

7 CHAPTER 3

8 MANUFACTURER

9 Section 301. Duty of manufacturer to conform a motor vehicle to  
10 warranty.

11 (a) Repairs.--If a motor vehicle does not conform to the  
12 warranty and the consumer reports the nonconformity to the  
13 manufacturer or its authorized service agent during the Lemon  
14 Law rights period, the manufacturer or its authorized service  
15 agent shall make those repairs as are necessary to conform the  
16 vehicle to the warranty, irrespective of whether the repairs are  
17 made after the expiration of the Lemon Law rights period.

18 (b) Notification.--For purposes of the consumer notifying  
19 the manufacturer under section 302(a), a manufacturer shall  
20 provide the consumer with conspicuous notice of the address and  
21 phone number for its zone, district or regional office for this  
22 Commonwealth at the time of vehicle acquisition. Within 30 days  
23 of the introduction of the new model year for each make and  
24 model of motor vehicle sold in this Commonwealth, the  
25 manufacturer shall forward to the bureau a copy of the owner's  
26 manual and any written warranty provided for the vehicle.

27 (c) Disclosure.--At the time of the consumer's purchase or  
28 lease of the vehicle, the manufacturer shall provide to the  
29 dealer and the dealer shall provide to the consumer the  
30 disclosure required under section 501 and provide to the

1 consumer a written statement that explains the consumer's rights  
2 and obligations under this act. The written statement shall be  
3 prepared by the bureau and shall contain the bureau's toll-free  
4 number that the consumer can contact to commence arbitration or  
5 obtain information regarding rights and obligations under this  
6 act.

7 (d) Repair order.--A manufacturer, through its authorized  
8 service agent, shall provide to the consumer, each time his  
9 motor vehicle is returned after being examined or repaired under  
10 the warranty, a fully itemized, legible statement or repair  
11 order indicating any test drive performed, any diagnosis made  
12 and all work performed on the motor vehicle, including, but not  
13 limited to, a general description of the problem reported by the  
14 consumer or an identification of the defect or condition, parts  
15 and labor, the date and the odometer reading when the motor  
16 vehicle was submitted for examination or repair and the date  
17 when the repair or examination was completed.

18 (e) Report copy.--Upon request from the consumer, the  
19 manufacturer or its authorized service agent shall:

20 (1) provide a copy of any report or computer reading  
21 compiled by the manufacturer or its authorized service agent  
22 regarding inspection, diagnosis or test-drive of the motor  
23 vehicle; and

24 (2) provide a copy of any relevant technical service  
25 bulletin issued by the manufacturer applicable to the year  
26 and model of the consumer's motor vehicle as it pertains to  
27 any material, feature, component or the performance thereof.

28 Section 302. Nonconformity of motor vehicles.

29 (a) Notice to manufacturer.--

30 (1) After three attempts have been made to repair the



1 same nonconformity that substantially impairs the motor  
2 vehicle or after one attempt to repair a nonconformity  
3 involving a defect in the braking or steering system that is  
4 likely to cause death or serious bodily injury, the consumer  
5 shall give written notification, by certified or registered  
6 mail or by overnight service at the address provided under  
7 section 301(b), to the manufacturer of the need to repair the  
8 nonconformity in order to allow the manufacturer a final  
9 attempt to cure the nonconformity. The manufacturer shall,  
10 within ten days after receipt of such notification, notify  
11 and provide the consumer with the opportunity to have the  
12 vehicle repaired at a reasonably accessible repair facility  
13 and after delivery of the vehicle to the designated repair  
14 facility by the consumer, the manufacturer shall, within ten  
15 days, conform the motor vehicle to the warranty. If the  
16 manufacturer fails to notify and provide the consumer with  
17 the opportunity to have the vehicle repaired at a reasonably  
18 accessible repair facility or perform the repairs within the  
19 time periods prescribed in this subsection, the requirement  
20 that the manufacturer be given a final attempt to cure the  
21 nonconformity does not apply.

22 (2) Upon 20 or more cumulative days when the motor  
23 vehicle has been out of service by reason of repair of one or  
24 more nonconformities, the consumer shall give written  
25 notification to the manufacturer by certified or registered  
26 mail or by overnight service at the address provided under  
27 section 301(b). Commencing upon the date such notification is  
28 received, the manufacturer shall have ten cumulative days  
29 when the vehicle has been out of service by reason of repair  
30 of one or more nonconformities to conform the motor vehicle

1 to the warranty.

2 (b) Refund or replacement.--

3 (1) If the manufacturer or its authorized service agent  
4 has not conformed the motor vehicle to the warranty by  
5 repairing or correcting one or more nonconformities that  
6 substantially impair the motor vehicle after a reasonable  
7 number of attempts, the manufacturer, within 40 days, shall,  
8 at the time of its receipt of payment of a reasonable offset  
9 for use by the consumer, replace the motor vehicle with a  
10 replacement motor vehicle acceptable to the consumer or  
11 repurchase the motor vehicle from the consumer or lessor and  
12 refund to the consumer or lessor the full purchase or lease  
13 price, less a reasonable offset for use. The replacement or  
14 refund shall include payment of all collateral and reasonably  
15 incurred incidental charges. The consumer shall have an  
16 unconditional right to choose a refund rather than a  
17 replacement. In connection with a refund or replacement, the  
18 consumer, lienholder or lessor shall furnish to the  
19 manufacturer clear title to and possession of the motor  
20 vehicle in a reasonable condition.

21 (2) Refunds shall be made to the consumer and lienholder  
22 of record, if any, as their interests may appear. If  
23 applicable, refunds shall be made to the lessor and lessee as  
24 follows: the lessee shall receive the lessee cost less a  
25 reasonable offset for use, and the lessor shall receive the  
26 lease price less the aggregate deposit and rental payments  
27 previously paid to the lessor for the leased vehicle. If it  
28 is determined that the lessee is entitled to a refund under  
29 this act, the consumer's lease agreement with the lessor  
30 shall be terminated upon payment of the refund and no penalty

1 for early termination shall be assessed. The Department of  
2 Revenue shall refund to the manufacturer any sales tax which  
3 the manufacturer refunded to the consumer, lessee or lessor  
4 under this section if the manufacturer provides to the  
5 Department of Revenue a written request for a refund and  
6 evidence that the sales tax was paid when the vehicle was  
7 purchased and that the manufacturer refunded the sales tax to  
8 the consumer, lessee or lessor.

9 (c) Nonconformity.--It is presumed that a reasonable number  
10 of attempts have been undertaken to conform a motor vehicle to  
11 the warranty if, during the Lemon Law rights period, any of the  
12 following occur:

13 (1) The same nonconformity that substantially impairs  
14 the motor vehicle has been subject to examination or repair  
15 at least three times by the manufacturer or its authorized  
16 service agent, provided the first repair attempt occurred  
17 within the first 12 months or 12,000 miles of operation, plus  
18 a final attempt by the manufacturer to repair the motor  
19 vehicle if undertaken as provided for in subsection (a)(1)  
20 and such nonconformity continues to exist.

21 (2) A nonconformity involving a defect in the braking or  
22 steering system that is likely to cause death or serious  
23 bodily injury has been subject to examination or repair at  
24 least one time by the manufacturer or its authorized service  
25 agent, plus a final attempt by the manufacturer to repair the  
26 motor vehicle if undertaken as provided for in subsection  
27 (a)(1), and such nonconformity continues to exist.

28 (3) The motor vehicle has been out of service by reason  
29 of repair by the manufacturer or its authorized service  
30 agent, of one or more nonconformities that substantially

1       impair the motor vehicle for a cumulative total of 30 or more  
2       days, exclusive of downtime for routine maintenance  
3       prescribed by the owner's manual. The 20-day period may be  
4       extended by any period of time during which repair services  
5       are not available to the consumer because of war, invasion,  
6       strike, fire, flood or natural disaster.

7       (d) Refusal to examine or repair.--No manufacturer or its  
8       authorized service agent may refuse to examine or repair any  
9       nonconformity for the purpose of avoiding liability under this  
10      act.

#### 11      Section 303. Affirmative defenses.

12      It is an affirmative defense under this act to claim any of  
13      the following:

14           (1) The alleged nonconformity or nonconformities do not  
15      substantially impair the motor vehicle.

16           (2) A nonconformity is the result of an accident, abuse,  
17      neglect or unauthorized modification or alteration of the  
18      motor vehicle by persons other than the manufacturer or its  
19      authorized service agent. An unauthorized modification or  
20      alteration of the motor vehicle by an authorized service  
21      agent may be an affirmative defense for the manufacturer if  
22      disclosure is made to the consumer concerning how the  
23      modification will affect the consumer's rights under this  
24      act, the written notice is signed by the consumer and a copy  
25      of the consumer's signed written notice is sent to the  
26      manufacturer by the service agent.

27           (3) The claim by the consumer was not filed in good  
28      faith. Any other defenses allowed by law may be raised  
29      against the claim.

1 CONSUMER RIGHTS

2 Section 501. Manufacturer responsibility to notify consumers.

3 (a) Notification of consumer.--At the time of the consumer's  
4 purchase or lease of the vehicle, a manufacturer shall provide  
5 to the dealer and the dealer shall provide to the consumer, in  
6 written materials accompanying the vehicle, a statement that the  
7 consumer may have the right to certain remedies under this act.  
8 The written materials shall include a statement that before a  
9 consumer can bring a civil action under this act, the consumer  
10 must first submit the dispute to the Pennsylvania Motor Vehicle  
11 Arbitration Board.

12 (b) Manufacturer voluntary dispute program.--A manufacturer  
13 who has established a voluntary informal dispute settlement  
14 procedure shall provide to the dealer and the dealer shall  
15 provide to the consumer, at the time of the purchase or lease of  
16 the vehicle, a statement of when and where to file a claim with  
17 that program.

18 CHAPTER 7

19 MOTOR VEHICLE ARBITRATION BOARD

20 Section 701. Establishment.

21 The bureau shall contract with a private entity to establish  
22 the Motor Vehicle Arbitration Board. The board may select as  
23 many members as necessary to carry out the provisions of this  
24 act.

25 Section 702. Powers and duties of board.

26 (a) Location of hearing.--The board shall hear cases in  
27 various locations throughout this Commonwealth so any consumer  
28 whose dispute is eligible for arbitration by the board may  
29 attend an arbitration hearing at a reasonably convenient  
30 location and present a dispute orally. Arbitration proceedings

1 under this section shall be open to the public on reasonable and  
2 nondiscriminatory terms.

3 (b) Member qualifications.--A board member shall not be  
4 employed by a manufacturer, a franchised motor vehicle dealer,  
5 the bureau or the consumer, or be a staff person or decision  
6 maker for a manufacturer-established program. The members of the  
7 board shall construe and apply the provisions of this act and  
8 rules adopted hereunder in making their decisions. Board members  
9 shall be trained in the application of this act and any rules  
10 adopted thereunder.

11 (c) Inspection of vehicles.--At all arbitration proceedings,  
12 the parties may present oral and written testimony, present  
13 witnesses and evidence relevant to the dispute, cross-examine  
14 witnesses and be represented by counsel. The board shall also  
15 inspect the vehicle if requested by a party or if the board  
16 deems such inspection appropriate.

17 (d) Relief.--The board shall grant the relief specified in  
18 section 302(b) to the consumer, if the consumer is entitled to  
19 relief under this act. The board shall dismiss a dispute if the  
20 board finds it is without jurisdiction in the matter or, if,  
21 after considering all the evidence presented, the board finds  
22 that the consumer is not entitled to relief under this act.

23 (e) Contents of decision.--The board shall hear and decide  
24 the dispute within 40 days from the date it deems the dispute  
25 eligible for arbitration. The decision of the board shall  
26 contain written findings of fact and rationale for the decision  
27 and shall be sent by certified or registered mail to the  
28 consumer and the manufacturer. If the decision is in favor of  
29 the consumer, the manufacturer has 30 days to comply with the  
30 terms of the decision. An extension of this period is

1 permissible with the written agreement of the parties.  
2 Compliance occurs on the date the consumer receives delivery of  
3 an acceptable replacement motor vehicle or the refund specified  
4 in the arbitration award. In any civil action arising under this  
5 act and relating to a dispute arbitrated before the board, any  
6 decision by the board is admissible in evidence. The failure of  
7 the board to hear and decide disputes within 40 days shall not  
8 invalidate the decision. The applicable statute of limitations  
9 shall be tolled from the day the dispute is submitted to the  
10 board until the board renders a decision.

11 Section 703. Consumer eligibility.

12 (a) Decision or performance not timely.--If a consumer  
13 resorts to a manufacturer's program and a decision is not  
14 rendered within 40 days or performed within a reasonable period  
15 of time not to exceed 30 days after the decision has been  
16 rendered, except for extenuating circumstances agreed to in  
17 writing by the consumer, and the consumer has notified the  
18 manufacturer under section 302(a), the consumer may submit the  
19 dispute to the board for arbitration.

20 (b) Consumer dissatisfaction.--A consumer who resorts to a  
21 manufacturer's program and is not satisfied with the decision  
22 reached or the performance of the decision may submit the  
23 dispute to the board for arbitration. No manufacturer may seek  
24 review of a decision of its program. For purposes of this  
25 subsection, "not satisfied with the performance of the decision"  
26 means, following the consumer's acceptance of the decision, the  
27 consumer indicates that the manufacturer failed to comply with  
28 the terms of the decision within the time specified in the  
29 decision or failed to cure the nonconformity within the time  
30 specified in the decision in the event that further repairs were

1 ordered.

2 (c) No program.--If a manufacturer has no program, a  
3 consumer seeking relief under section 302(b) shall submit the  
4 dispute for arbitration.

5 (d) Consumer request.--

6 (1) A consumer seeking relief pursuant to section 302(b)  
7 may request arbitration conducted by the board provided that  
8 such request is made within 30 months from the date of the  
9 original delivery of the motor vehicle to a consumer. All  
10 manufacturers shall submit to arbitration conducted by the  
11 board if the dispute is deemed eligible for arbitration.

12 (2) A consumer whose request for arbitration is  
13 submitted to the board shall pay a filing fee of \$50 by  
14 certified check or money order payable to the Bureau of  
15 Consumer Protection. If the board's decision is in favor of  
16 the consumer, in addition to any other relief provided under  
17 this act, the board shall order the manufacturer to refund to  
18 the consumer the \$50 filing fee. Upon notification by the  
19 board of the consumer's request for arbitration, the  
20 manufacturer shall promptly submit a fee of \$250 payable to  
21 the Bureau of Consumer Protection.

22 (e) Consumer lawsuit.--A consumer shall submit the dispute  
23 to the board which shall issue a decision prior to filing a  
24 lawsuit under section 905 or 906. Participation in a  
25 manufacturer's program is not required for submitting a dispute  
26 to the board or for filing a lawsuit under section 905 or 906.  
27 Section 704. Additional fees.

28 (a) General rule.--In addition to the fees required by  
29 section 703(d), the bureau shall charge manufacturers additional  
30 fees in order to pay for the administrative costs of operating



1 the board. The bureau shall fix the additional fees by  
2 regulation and shall be subject to the act of June 25, 1982  
3 (P.L.633, No.181), known as the Regulatory Review Act.

4 (b) Increase to additional fees.--If the revenues collected  
5 from the fees under section 703(d) and this section are  
6 insufficient to pay for the expenditures of the board during a  
7 two-year period, then the bureau shall increase the additional  
8 fees established under this section in the same manner. The  
9 increase to the additional fees shall be such that the projected  
10 revenues will meet or exceed projected expenditures.

11 (c) Use of fees.--All fees collected under section 703(d)  
12 and this section shall be expended by the bureau solely for the  
13 purpose of administering this act, including, but not limited  
14 to, hearings conducted by the board.

15 Section 705. Investigative powers and recordkeeping duties.

16 (a) Investigative powers.--The board shall:

17 (1) Investigate disputes.

18 (2) Subpoena records, documents and other evidence.

19 (3) Compel the attendance of witnesses before the board.

20 (b) Issuance of subpoenas.--The board shall issue subpoenas  
21 for witnesses or documents at the request of either party to a  
22 dispute which is pending before the board.

23 (c) Records and statistics.--

24 (1) The board shall maintain records of each dispute  
25 submitted to the board, including an index of motor vehicles  
26 by year, make and model, and shall compile aggregate annual  
27 statistics for all disputes submitted to and decided by the  
28 board, as well as annual statistics for each manufacturer  
29 that include, but are not limited to, the number and percent  
30 of:

- (i) Replacement motor vehicle requests.
- (ii) Purchase price refund requests.
- (iii) Replacement motor vehicles obtained in prehearing settlements.
- (iv) Purchase price refunds obtained in prehearing settlements.
- (v) Replacement motor vehicles awarded in arbitration.
- (vi) Purchase price refunds awarded in arbitration.
- (vii) Board decisions neither complied with nor petitioned for appeal within the 25-day time periods set forth under sections 702(e) and 706(a).
- (viii) Board decisions appealed.
- (ix) Board decisions upheld by the court.
- (x) Appeals found by the court to be brought in bad faith or solely for the purpose of harassment.

(2) The statistical compilations shall be public information.

(3) The board shall provide the records and statistical information as required in this section to the bureau on an annual basis not later than 60 days after the end of each year.

#### Section 706. Appeal of board's decision.

(a) Time for appeal.--A decision is final unless appealed by either party. A petition to the court to appeal a decision must be made within 25 days after receipt of the decision or within 10 days from the date the consumer indicates acceptance of the decision to the manufacturer, whichever occurs first. Within seven days after the petition has been filed, the appealing party must send, by certified, registered or express mail, a

1 copy of the petition to the board. If the board receives no  
2 notice of the petition within 60 days after the manufacturer's  
3 receipt of a decision in favor of the consumer and the consumer  
4 has indicated acceptance of the decision within the 25-day  
5 period prescribed under section 702(e), but the manufacturer has  
6 neither complied with nor petitioned to appeal such decision,  
7 the board may impose a civil penalty of up to \$1,000 a day  
8 against the manufacturer until the amount stands at twice the  
9 purchase price of the motor vehicle. It shall be an affirmative  
10 defense if the manufacturer provides clear and convincing  
11 evidence that the delay or failure was beyond its control or was  
12 acceptable to the consumer as evidenced by a written statement  
13 signed by the consumer.

14 (b) Manufacturer's failure to comply.--If the manufacturer  
15 fails to comply with a decision which has been timely accepted  
16 by the consumer or fails to file a petition within the 25-day  
17 time periods set forth under subsection (a), the court shall  
18 affirm the board's decision upon application by the consumer.

19 (c) Trial de novo.--An appeal of a decision by the board to  
20 the court by a consumer or a manufacturer shall be by trial de  
21 novo, and such appeal may be based upon stipulated facts. In a  
22 written petition to appeal a decision by the board, the  
23 appealing party must state the action requested and the grounds  
24 relied upon for appeal.

25 (d) Decision in favor of consumer.--If a decision of the  
26 board in favor of the consumer is affirmed or upheld by the  
27 court or if a decision of the board in favor of the manufacturer  
28 is reversed, recovery by the consumer shall include the  
29 pecuniary value of the award, attorney fees reasonably incurred  
30 in obtaining the award, all costs and filing fees and continuing

1 damages in the amount of \$25 a day for all days beyond the 25-  
2 day period following the manufacturer's receipt of the  
3 consumer's acceptance of the board's decision. If a court  
4 determines that a manufacturer filed a petition for appeal by  
5 trial de novo in bad faith or brought such appeal solely for the  
6 purpose of harassment, the court shall double and may triple the  
7 amount of the total award.

8 (e) Condition for appellate review.--Appellate review of a  
9 court decision in favor of the consumer may be conditioned upon  
10 payment by the manufacturer of the consumer's attorney fees  
11 reasonably incurred and giving security for costs and expenses  
12 incurred during the appellate review period.

13 (f) Exemption.--All provisions in this section pertaining to  
14 compulsory arbitration before the board, the proceedings and  
15 decisions of the board and any appeals thereof, are exempt from  
16 the provisions of 2 Pa.C.S. (relating to administrative law and  
17 procedure).

## 18 CHAPTER 9

### 19 ADMINISTRATION AND ENFORCEMENT

20 Section 901. Rulemaking authority.

21 The bureau may adopt rules and regulations necessary to  
22 administer and enforce this act. These rules and regulations,  
23 when promulgated pursuant to the act of July 31, 1968 (P.L.769,  
24 No.240), referred to as the Commonwealth Documents Law, shall  
25 have the force and effect of law. In prescribing rules and forms  
26 under this act, the bureau may cooperate with agencies that  
27 perform similar functions in other states with a view to  
28 effectuating the policy of this act to achieve maximum  
29 uniformity in the form and content of certification, regulation,  
30 procedural evaluation of manufacturer-established programs,

1 required recordkeeping, required reporting wherever practicable  
2 and required notices to consumers.

3 Section 902. Certification uniformity.

4 To encourage uniform application, interpretation and  
5 enforcement of this section, and in implementing regulations  
6 adopted under section 901, the bureau may cooperate with  
7 agencies that perform similar functions in any other states that  
8 enact these or similar sections. The cooperation authorized by  
9 this subsection may include the following:

10 (1) The establishment of a central depository for copies  
11 of all applications and accompanying materials submitted by  
12 manufacturers for certification, all reports prepared,  
13 notices issued and determinations made by the bureau under  
14 Chapter 7.

15 (2) The sharing and exchanging of information, documents  
16 and records pertaining to program operations.

17 (3) The sharing of personnel to perform joint reviews,  
18 surveys and investigations of program operations.

19 (4) The preparation of joint reports evaluating program  
20 operations.

21 (5) The granting of joint certifications and  
22 certification renewals.

23 (6) The issuance of joint denials or revocations of  
24 certification.

25 (7) The holding of joint hearings.

26 Section 903. Enforcement.

27 The bureau may enforce and ensure compliance with the  
28 provisions of this act and rules adopted under this act, may  
29 issue subpoenas requiring the attendance of witnesses and  
30 production of evidence and may seek relief in the appropriate

1 court to compel compliance with such subpoenas. Enforcement  
2 shall be undertaken pursuant to section 905.

3 Section 904. Motor Vehicle Warranty Trust Fund.

4 (a) Establishment.--There is hereby established a separate  
5 account in the State Treasury to be known as the Motor Vehicle  
6 Warranty Trust Fund. This fund shall be administered by the  
7 bureau. All civil penalties collected by the bureau shall be  
8 paid into this fund.

9 (b) Appropriation.--All moneys in the fund are hereby  
10 appropriated to the bureau on a continuing basis to carry out  
11 this act.

12 Section 905. Unfair or deceptive trade practice.

13 A violation of this act is an unfair or deceptive act or  
14 practice as defined in the act of December 17, 1968 (P.L.1224,  
15 No.387), known as the Unfair Trade Practices and Consumer  
16 Protection Law.

17 Section 906. Consumer remedies.

18 A consumer may file an action in court under this act  
19 provided the action is filed within 36 months of the date of  
20 original delivery of the motor vehicle to the consumer. A  
21 consumer has the right to trial by jury. The court shall award a  
22 consumer who prevails in either action the amount of any  
23 pecuniary loss, reasonable attorney fees and costs. This act  
24 does not prohibit a consumer from pursuing other rights or  
25 remedies under any other law.

26 Section 907. Dealer liability.

27 Nothing in this act imposes any liability on a franchised  
28 motor vehicle dealer or creates a cause of action by a consumer  
29 against a dealer, except for written express warranties made by  
30 the dealer apart from the manufacturer's warranties. A dealer

1 may not be made a party defendant in any action involving or  
2 relating to this act, except as provided in this section. The  
3 manufacturer shall not charge back or require reimbursement by  
4 the dealer for any costs, including, but not limited to, any  
5 refunds or vehicle replacements, incurred by the manufacturer  
6 arising out of this act, in the absence of a finding by a court  
7 or other separate impartial proceeding that the related repairs  
8 had been carried out by the dealer in a manner substantially  
9 inconsistent with the manufacturer's published instructions. A  
10 manufacturer who is found by a court to have improperly charged  
11 back a dealer because of a violation of this section shall be  
12 liable to the injured dealer for full reimbursement plus  
13 reasonable costs and any attorney fees.

14 Section 908. Resale of returned vehicles.

15 (a) Returned vehicles eligible for resale.--A manufacturer  
16 who accepts the return of a motor vehicle by reason of a  
17 settlement, determination or decision pursuant to this act or  
18 similar statute of any other state or a manufacturer's buy-back  
19 program for a refund or replacement motor vehicle done pursuant  
20 to this act shall notify the bureau and the department and  
21 report the vehicle identification number of that motor vehicle  
22 within ten days after the acceptance. The department shall note  
23 that the motor vehicle was returned under this act on the  
24 registration issued for the motor vehicle, and the department  
25 shall then issue a registration with a designation which  
26 reflects that the vehicle was returned pursuant to this act or a  
27 similar statute prior to its resale. A person shall not  
28 knowingly lease, sell, either at wholesale or retail, or  
29 transfer a title to a motor vehicle returned by reason of a  
30 settlement, determination or decision pursuant to this act or

1 similar statute of any other state unless the nature of the  
2 nonconformity is clearly and conspicuously disclosed to the  
3 prospective transferee, lessee or buyer. Any person who fails to  
4 make disclosures as required by this section shall be subject to  
5 a civil penalty of \$2,500 for the first violation and \$5,000 for  
6 each subsequent violation. The bureau shall prescribe by rule  
7 the form, content and procedure pertaining to such disclosure  
8 statement, recognizing the need of manufacturers to implement a  
9 uniform disclosure form. The manufacturer shall make a  
10 reasonable effort to ensure that the disclosure is made to the  
11 first subsequent retail buyer or lessee. For purposes of this  
12 subsection, "settlement" includes an agreement entered into  
13 between the manufacturer and the consumer that occurs after the  
14 dispute has been submitted to a manufacturer-established program  
15 or is eligible by the bureau for arbitration before the Motor  
16 Vehicle Arbitration Board.

17 (b) Returned vehicles not to be resold.--Notwithstanding the  
18 provisions of subsection (a), if a motor vehicle has been  
19 returned under the provisions of this act or a similar statute  
20 of another state because of a nonconformity resulting in a  
21 complete failure of the braking or steering system of the motor  
22 vehicle likely to cause death or serious bodily injury if the  
23 vehicle is driven, the motor vehicle may not be resold in this  
24 Commonwealth.

25 Section 909. Certain agreements void.

26 An agreement entered into by a consumer that waives, limits  
27 or disclaims the rights set forth in this act is void as  
28 contrary to public policy.

29 CHAPTER 15

30 MISCELLANEOUS PROVISIONS



1 Section 1501. Appropriation.

2 The sum of \$300,000, or as much thereof as may be necessary,  
3 is hereby appropriated to the Bureau of Consumer Protection for  
4 the current fiscal year to carry out the provisions of this act.

5 Section 1502. Repeal.

6 The act of March 28, 1984 (P.L.150, No.28), known as the  
7 Automobile Lemon Law, is repealed.

8 Section 1503. Pending proceedings.

9 A claim made or pending under the act of March 28, 1984  
10 (P.L.150, No.28), known as the Automobile Lemon Law, prior to  
11 the effective date of this act shall not be affected by the  
12 repeal of the Automobile Lemon Law and the claim shall proceed  
13 to a final determination according to the provisions of the  
14 Automobile Lemon Law.

15 Section 1504. Applicability.

16 This act shall apply to claims made by a consumer on or after  
17 the effective date of this act.

18 Section 1505. Effective date.

19 This act shall take effect in 180 days.