

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1445 Session of
2007

INTRODUCED BY BAKER, HERSHEY, HENNESSEY, CAUSER, COHEN, DeLUCA,
FLECK, FRANKEL, FREEMAN, GILLESPIE, GINGRICH, HELM, KOTIK,
MACKERETH, MAHONEY, MARSHALL, MOYER, MURT, PAYNE, PETRONE,
REICHLEY, SAYLOR, SIPTROTH, SOLOBAY, VULAKOVICH, WATSON,
J. WHITE AND WOJNAROSKI, SEPTEMBER 25, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, SEPTEMBER 25, 2007

AN ACT

1 Relating to the rights of consumers who purchase or lease used
2 motor vehicles with certain nonconformities; providing for
3 the duties of dealers of used motor vehicles; and
4 establishing a civil cause of action.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Used Motor
9 Vehicle Lemon Law.

10 Section 2. Definitions.

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

14 "Dealer" or "motor vehicle dealer." A person in the business
15 of buying, selling, leasing or exchanging used motor vehicles.

16 "Dealer's express warranty" or "warranty." The written
17 warranty of the dealer of a used motor vehicle of its condition
18 and fitness for use, including any terms or conditions precedent
19 to the enforcement of obligations under the warranty.

20 "Department." The Department of Transportation of the
21 Commonwealth.

22 "Manufacturer." Any person engaged in the business of
23 constructing or assembling new and unused motor vehicles or
24 engaged in the business of importing new and unused motor
25 vehicles into the United States for the purpose of selling or
26 distributing new and unused motor vehicles to motor vehicle
27 dealers in this Commonwealth.

28 "Manufacturer's express warranty." The written warranty of
29 the manufacturer of a new motor vehicle of its condition and
30 fitness for use, including any terms or conditions precedent to

1 the enforcement of obligations under the warranty.

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

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

11 "Used motor vehicle." Any self-propelled, motorized
12 conveyance driven upon public roads, streets or highways that:

13 (1) is designed to transport not more than 15 persons;

14 (2) was purchased or leased by a consumer from a dealer
15 for at least \$1,000 and at the time of such purchase or lease
16 was previously owned by another person;

17 (3) is registered in this Commonwealth or purchased or
18 leased elsewhere and registered for the first time in this
19 Commonwealth; and

20 (4) is used, leased or bought for use primarily for
21 personal, family or household purposes.

22 The term does not include a motorcycle, motor home or off-road
23 vehicle.

24 Section 3. Disclosure.

25 (a) Duty of Attorney General.--The Attorney General shall
26 prepare and publish in the Pennsylvania Bulletin a statement
27 which explains a consumer's rights under this law.

28 (b) Duty of dealers.--A dealer shall provide to each
29 consumer at the time of purchase or lease of a used motor
30 vehicle a written statement containing a copy of the Attorney

1 General's statement and a listing of zone offices, with
2 addresses and telephone numbers, which may be contacted by the
3 consumer for the purpose of securing the remedies provided for
4 in this act.

5 Section 4. Dealer's express warranty required.

6 (a) General rule.--No used motor vehicle shall be sold in
7 this Commonwealth by a dealer to a consumer unless, at the time
8 of sale, the dealer delivers to the consumer a dealer's express
9 warranty that covers the full cost of both parts and labor
10 necessary to repair any nonconformity which substantially
11 impairs the use, value or safety of the used motor vehicle.

12 (b) Nonapplicability.--Subsection (a) shall not apply to a
13 nonconformity involving parts or components covered under the
14 dealer's express warranty if:

15 (1) the manufacturer's express warranty has been
16 assigned or transferred to the consumer;

17 (2) the dealer's express warranty is enforceable
18 according to its terms;

19 (3) the dealer's express warranty is not inconsistent
20 with this section; and

21 (4) the dealer has assured the consumer that the repair
22 or correction authorized by the manufacturer's express
23 warranty was completed and removed the nonconformity.

24 Section 5. Repair obligations.

25 (a) Repairs required.--A dealer shall repair or correct, at
26 no cost to the consumer of a used motor vehicle, a nonconformity
27 that substantially impairs the use, value or safety of the used
28 motor vehicle which may occur:

29 (1) if the used motor vehicle has mileage of less than
30 50,000 miles at the time of sale or lease, within a period of

1 120 days following the actual delivery of the vehicle to the
2 consumer, within the first 5,000 miles of use by the consumer
3 or during the term of the warranty, whichever may first
4 occur;

5 (2) if the used motor vehicle has mileage of at least
6 50,000 miles but less than 100,000 miles at the time of sale
7 or lease, within a period of 90 days following the actual
8 delivery of the vehicle to the consumer, within the first
9 2,500 miles of use by the consumer or during the term of the
10 warranty, whichever may first occur;

11 (3) if the used motor vehicle has mileage of at least
12 100,000 miles but less than 125,000 miles at the time of sale
13 or lease, within a period of 20 days following the actual
14 delivery of the vehicle to the consumer, within the first
15 1,000 miles of use by the consumer or during the term of the
16 warranty, whichever may first occur;

17 (4) if the used motor vehicle has mileage that is
18 unknown or not readily discernable from visual indications of
19 the odometer and was manufactured less than eight years prior
20 to the time of sale, within a period of 120 days following
21 the actual delivery of the vehicle to the consumer, within
22 the first 5,000 miles of use by the consumer or during the
23 term of the warranty, whichever may first occur;

24 (5) if the used motor vehicle has mileage that is
25 unknown or not readily discernable from visual indications of
26 the odometer and was manufactured at least eight years prior
27 to the time of sale, within a period of 20 days following the
28 actual delivery of the vehicle to the consumer, within the
29 first 1,000 miles of use by the consumer or during the term
30 of the warranty, whichever may first occur; or

1 (6) if the used motor vehicle has a nonfunctional
2 odometer at the time of sale, within a period of one year
3 following the actual delivery of the vehicle to the consumer.

4 (b) Delivery of used motor vehicle.--

5 (1) The consumer of a used motor vehicle with a
6 nonconformity that the consumer wishes to have repaired or
7 corrected by the dealer under this act must deliver the used
8 motor vehicle to the dealer's authorized service and repair
9 facility prior to 30 business days after the expiration date
10 of the applicable warranty period under subsection (a)
11 unless:

12 (i) the size and weight or method of attachment or
13 method of installation or nature of the nonconformity
14 makes delivery unreasonable; or

15 (ii) the vehicle is inoperable and the dealer has
16 refused to pay the charge to tow the used motor vehicle
17 more than 50 miles.

18 (2) Should the consumer be unable to effect return of
19 the used motor vehicle, the consumer shall notify the dealer
20 or its authorized service and repair facility. Written notice
21 of nonconformity to the dealer or its authorized service and
22 repair facility shall constitute return of the used motor
23 vehicle when the consumer is unable to return the used motor
24 vehicle due to nonconformity.

25 (3) Upon receipt of the notice of nonconformity, the
26 dealer shall, at its option, service or repair the used motor
27 vehicle where it is located or pick up the used motor vehicle
28 for service and repair or arrange for transporting the used
29 motor vehicle to its authorized service and repair facility.

30 (4) All costs of transporting the used motor vehicle up

1 to a distance of 50 miles, when the purchaser is unable to
2 effect return due to nonconformity, shall be at the dealer's
3 expense.

4 Section 6. Duties of dealer after return of used motor vehicle.

5 (a) General rule.--Upon the return of a used motor vehicle
6 with a nonconformity, the dealer may repair the used motor
7 vehicle or arrange for and make payment for the prompt repair by
8 another person.

9 (b) Warranty repair receipt.--When the used motor vehicle
10 has been repaired under subsection (a) and returned to the
11 consumer, the dealer shall provide the consumer with a warranty
12 repair receipt that states:

13 (1) The nature of the nonconformity complained of by the
14 consumer.

15 (2) The repair work performed, including labor time, on
16 the nonconformity.

17 (3) If the repair work was not performed by the dealer,
18 the name and address of the person who performed the repair
19 work.

20 (4) A description of the replacement parts used in the
21 repair work.

22 Section 7. Dealer's duty for refund.

23 (a) General rule.--If the dealer fails to repair or correct
24 a nonconformity after three attempts or if the used motor
25 vehicle is out of service for more than a cumulative total of
26 ten business days after the consumer has returned it to the
27 dealer for repair, the dealer shall accept return of the used
28 motor vehicle and refund to the consumer the full purchase price
29 or lease price, including all collateral charges, less a
30 reasonable allowance for the purchaser's use of the vehicle not

1 exceeding 10¢ per mile driven or 10% of the purchase price of
2 the vehicle, whichever is less. In the case where the odometer
3 of the used motor vehicle is inoperable, the reasonable
4 allowance for the purchaser's use of the vehicle shall be equal
5 to 10% of the purchase price.

6 (b) Use of vehicle until refund.--If the dealer fails to
7 accept return of the used motor vehicle and pay the refund in
8 accordance with this section, the consumer shall have the option
9 of operating the used motor vehicle until such time as the
10 dealer accepts return of the used motor vehicle and pays the
11 refund in accordance with this section.

12 (c) Payment of refunds.--

13 (1) A dealer shall pay the refund to the consumer and
14 lienholder, if any, as their interests may appear. A
15 reasonable allowance for use shall be that amount directly
16 attributable to use by the consumer prior to the consumer's
17 first report of the nonconformity to the dealer.

18 (2) The dealer shall pay the refund within 30 days of
19 acceptance of the return of the used motor vehicle.

20 (d) Limitation.--A consumer shall not be entitled to a
21 refund if:

22 (1) the nonconformity does not substantially impair the
23 use, value or safety of the vehicle; or

24 (2) the nonconformity is the result of abuse, neglect or
25 modification or alteration of the motor vehicle by the
26 consumer.

27 (e) Construction.--For purposes of the ten-day period
28 specified under subsection (a), a used motor vehicle shall not
29 be construed to be out of service for any day in which a part
30 necessary to repair a nonconformity complained of by the

1 consumer is not in the dealer's possession, if the dealer has
2 ordered the part by reasonable means on the same day on which
3 the dealer knew or should have known that the part was
4 necessary. In no event shall unavailability of a part operate to
5 toll the total ten-day period.

6 Section 8. Civil cause of action.

7 Any consumer who purchases a used motor vehicle and suffers
8 any loss due to nonconformity of the used motor vehicle as a
9 result of the dealer's failure to comply with this act may bring
10 a civil action in a court of common pleas and, in addition to
11 other relief, shall be entitled to recover reasonable attorney
12 fees and all court costs.

13 Section 9. Returned used motor vehicles not to be resold.

14 If a used motor vehicle has been returned under the
15 provisions of this act or a similar statute of another state
16 because of a nonconformity resulting in a complete failure of
17 the braking or steering system of the used motor vehicle likely
18 to cause death or serious bodily injury if the used motor
19 vehicle were driven, the used motor vehicle may not be resold in
20 this Commonwealth.

21 Section 10. Agreement waiving, limiting or disclaiming rights.

22 Any agreement entered into by a consumer that waives, limits
23 or disclaims the rights set forth in this act is void as
24 contrary to public policy. Where applicable, the rights set
25 forth in this act shall extend to a subsequent purchaser, lessee
26 or transferee of the used motor vehicle.

27 Section 11. Application of unfair trade act.

28 A violation of this act shall also be a violation of the act
29 of December 17, 1968 (P.L.1224, No.387), known as the Unfair
30 Trade Practices and Consumer Protection Law.

1 Section 12. Rights preserved.

2 Nothing in this act shall limit a consumer from pursuing any
3 other rights or remedies under any other law, contract or
4 warranty.

5 Section 13. Nonwaiver of act.

6 The provisions of this act shall not be waived.

7 Section 14. Applicability.

8 This act shall apply to used motor vehicles purchased after
9 the effective date of this section.

10 Section 15. Effective date.

11 This act shall take effect in 60 days.