
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1032 Session of
1991

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KRUSZEWSKI, JAMES, TELEK AND MICHLOVIC, APRIL 8, 1991

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 8, 1991

AN ACT

1 Relating to the rights of purchasers of defective used motor
2 vehicles; establishing an enforcement fund; and imposing a
3 fee.

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

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "Consumer." The purchaser, other than for purposes of
14 resale, of a used motor vehicle normally used for personal,
15 family or household purposes and subject to a warranty, and the
16 spouse or child of the purchaser if such motor vehicle is

1 transferred to the spouse or child during the duration of any
2 warranty applicable to such motor vehicle, and any other person
3 entitled by the terms of such warranty to enforce the
4 obligations of the warranty.

5 "Dealer." Any person or business which sells or offers for
6 sale a used vehicle after selling or offering for sale three or
7 more used vehicles in the previous 12-month period. The term
8 does not include a bank or financial institution, a business
9 selling a used vehicle to an employee of that business, a lessor
10 selling a leased vehicle to that vehicle's lessee, a family
11 member of the lessee, or an employee of the lessee.

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

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

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

29 "Warranty." Any undertaking in connection with the sale by a
30 dealer of a used motor vehicle to refund, repair, replace,

1 maintain or take other action with respect to such used motor
2 vehicle and provided at no extra charge beyond the price of the
3 used motor vehicle.

4 Section 3. Written warranty required; terms.

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

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

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

14 (b) Warranty requirements.--The written warranty shall
15 require the dealer or his agent to repair or, at the election of
16 the dealer, reimburse the consumer for the reasonable cost of
17 repairing the failure of a covered part. Covered parts shall at
18 least include the following items:

19 (1) Engine. All lubricated parts, water pump, fuel pump,
20 manifolds, engine block, cylinder head, rotary engine
21 housings and flywheel.

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

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

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

30 (5) Radiator.

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

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

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

10 (d) New car warranty.--If the warranty provided for in the
11 act of March 28, 1984 (P.L.150, No.28), known as the Automobile
12 Lemon Law, is in effect at the time of the sale of the used
13 motor vehicle, the warranty specified in this act shall be
14 required only for the period of time, if any, between the
15 expiration of the new car warranty and the period specified in
16 subsection (a).

17 (e) Exclusions permitted.--The written warranty may contain
18 additional language excluding coverage:

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

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

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

29 (4) for maintenance services and the parts used in
30 connection with such services such as seals, gaskets, oil or

grease unless required in connection with the repair of a covered part;

(5) for a motor tune-up;

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

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

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

(9) if the used motor vehicle is rented to someone else;

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

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

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

Section 4. Failure to honor warranty.

(a) Failure of dealer.--If the dealer or his agent fails to correct a malfunction or defect, as required by the warranty specified in this act, which substantially impairs the value of the used motor vehicle to the consumer after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund to the consumer the full purchase price, including sales or use tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and adjustment for any modifications which either

1 increase or decrease the market value of the vehicle. In
2 determining the purchase price to be refunded, the purchase
3 price shall be deemed equal to the sum of the actual cash
4 difference paid for the used motor vehicle plus, if the dealer
5 elects to not return any vehicles traded in by the consumer, the
6 wholesale value of any such traded-in vehicles as listed in the
7 National Auto Dealers Association Used Car Guide, or such other
8 guide as may be specified in regulations promulgated by the
9 Secretary of Transportation, as adjusted for mileage,
10 improvements and any major physical or mechanical defects in the
11 traded-in vehicle at the time of trade-in. The contract of sale
12 for the used motor vehicle shall include conspicuous language
13 indicating that, if the consumer should be entitled to a refund
14 pursuant to this section, the value of any vehicle traded in by
15 the consumer, if the dealer elects to not return it to the
16 consumer, for purposes of determining the amount of such refund,
17 will be determined by reference to the National Auto Dealers
18 Association Used Car Guide wholesale value, or such other guide
19 as may be approved by the Secretary of Transportation, as
20 adjusted for mileage, improvements and any major physical or
21 mechanical defects, rather than the value listed in the sales
22 contract. Refunds shall be made to the consumer and lienholder,
23 if any, as their interests may appear on the records of
24 ownership kept by the Bureau of Motor Vehicles. If the amount to
25 be refunded to the lienholder will be insufficient to discharge
26 the lien, the dealer shall notify the consumer in writing by
27 certified mail that the consumer has 30 days to pay the
28 lienholder the amount which, together with the amount to be
29 refunded by the dealer, will be sufficient to discharge the
30 lien. The notice to the consumer shall contain conspicuous

1 language warning the consumer that failure to pay such funds to
2 the lienholder within 30 days will terminate the dealer's
3 obligation to provide a refund. If the consumer fails to make
4 such payment within 30 days, the dealer shall have no further
5 responsibility to provide a refund under this section.
6 Alternatively, the dealer may elect to offer to replace the used
7 motor vehicle with a comparably priced vehicle, with such
8 adjustment in price to which the parties may agree. The consumer
9 shall not be obligated to accept a replacement vehicle but may
10 instead elect to receive the refund provided under this section.
11 It shall be an affirmative defense to any claim under this
12 section that:

13 (1) the malfunction or defect does not substantially
14 impair such value; or

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

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

21 (1) the same malfunction or defect has been subject to
22 repair three or more times by the selling dealer or his agent
23 within the warranty period, but such malfunction or defect
24 continues to exist; or

25 (2) the vehicle is out of service by reason of repair or
26 malfunction or defect for a cumulative total of 15 or more
27 days during the warranty period. The period shall not include
28 days when the dealer is unable to complete the repair because
29 of the unavailability of necessary repair parts. The dealer
30 shall be required to exercise due diligence in attempting to

1 obtain necessary repair parts, provided that, if a vehicle
2 has been out of service for a cumulative total of 45 days,
3 even if a portion of that time is attributable to the
4 unavailability of replacement parts, the consumer shall be
5 entitled to the replacement or refund remedies provided in
6 this section.

7 (c) Extension of warranty term.--The term of any warranty,
8 service contract or repair insurance shall be extended by any
9 time period during which the used motor vehicle is in the
10 possession of the dealer or his duly authorized agent for the
11 purpose of repairing the used motor vehicle under the terms and
12 obligations of the warranty, service contract or repair
13 insurance.

14 (d) Nonextension of warranty term.--The term of any
15 warranty, service contract or repair insurance, and the 15-day
16 out-of-service period, shall not be extended by any time during
17 which repair services are not available to the consumer because
18 of war, invasion or strike, or fire, flood or other natural
19 disaster.

20 Section 5. Waiver void.

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

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

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

8 Section 6. Inspection requirements.

9 Anyone who sells a used motor vehicle in Pennsylvania to a
10 buyer who titles and registers the vehicle in Pennsylvania must
11 provide proof of State inspection to the buyer at time of
12 delivery of the vehicle. Proof of State inspection shall be a
13 validly affixed window sticker issued no more than ten days
14 prior to delivery or an itemized checklist of those items which
15 must be performed for the vehicle to pass inspection. The
16 checklist shall include an estimate of costs for the repairs to
17 be performed and shall be signed by the inspection mechanic.

18 Section 7. Arbitration and enforcement.

19 (a) Informal dispute settlement procedure.--If a dealer has
20 established or participates in an informal dispute settlement
21 procedure which complies in all respects with the provisions of
22 16 CFR Part 703, the provisions of this act concerning refunds
23 or replacement shall not apply to any consumer who has not first
24 resorted to such procedure.

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

28 (c) Attorney fees may be awarded.--In an action brought to
29 enforce the provisions of this act, the court may award
30 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 8. Itemized statement required.

The dealer shall provide to the consumer, each time the consumer's vehicle is returned from being serviced or repaired, a fully itemized statement indicating all work performed on such vehicle, including, but not limited to, parts and labor.

Section 9. Disclosure.

The Attorney General shall prepare and publish in the Pennsylvania Bulletin a statement which explains a consumer's rights under this act. Dealers shall provide to each consumer at the time of purchase of a used motor vehicle a written statement containing a copy of the Attorney General's statement and a listing of zone offices, with addresses and phone numbers, which can be contacted by the consumer for the purpose of securing the remedies provided for in this act.

Section 10. 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 dealer subject to this act shall pay an annual fee of \$50 to be placed in the fund established in subsection (a).

Section 11. Application of unfair trade act.

A violation of this act shall also be a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair

1 Trade Practices and Consumer Protection Law.

2 Section 12. Applicability.

3 This act shall apply to all used motor vehicles sold on or
4 after the effective date of this act.

5 Section 13. Effective date.

6 This act shall take effect in 90 days.