

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1490 Session of
1991

INTRODUCED BY STISH, STUBAN, ROBINSON, KRUSZEWSKI, JAROLIN,
KREBS, LUCYK, BELFANTI, CAPPABIANCA, KOSINSKI, SALOOM,
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HARPER, MICOZZIE, FAJT, DERMODY, CARN, MELIO AND PISTELLA,
MAY 29, 1991

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 29, 1991

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," establishing an alternate informal dispute
4 settlement procedure; and imposing duties on the Office of
5 Attorney General and the Bureau of Consumer Protection.

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

8 Section 1. Section 2 of the act of March 28, 1984 (P.L.150,
9 No.28), known as the Automobile Lemon Law, is amended by adding
10 definitions to read:

11 Section 2. Definitions.

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

15 "Alternative dispute settlement procedure." An arbitration
16 process or procedure established by the Attorney General which
17 attempts to resolve disputes between a purchaser of a new motor
18 vehicle and a manufacturer regarding motor vehicle

nonconformities and repairs that arise during the vehicle's warranty period.

"Bureau." The Bureau of Consumer Protection within the Office of Attorney General.

"Collateral charges." Additional charges to a purchaser of a new motor vehicle, including, but not limited to, credit, insurance, warranty and service contract charges wholly incurred by the purchaser, and all sales tax, license and registration fees and other governmental charges.

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"Full purchase price." The contract price of a new motor vehicle, including charges for transportation, dealer-installed accessories and dealer services paid by a purchaser of a new motor vehicle, inclusive of any allowance for a trade-in vehicle.

"Incidental charges." Reasonable costs to the purchaser of a new motor vehicle which are directly the result of the nonconformity of the motor vehicle, including, but not limited to, reasonable repair, towing and rental car expenses.

"Informal dispute settlement procedure." An arbitration process or procedure by which the manufacturer attempts to resolve disputes with a purchaser regarding motor vehicle nonconformities and repairs that arise during the vehicle's warranty period.

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Section 2. Sections 5 and 9 of the act are amended to read:

Section 5. Manufacturer's duty for refund or replacement.

If the manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the

1 motor vehicle with a comparable motor vehicle of equal value or
2 accept return of the vehicle from the purchaser and refund to
3 the purchaser the full purchase price, including all collateral
4 charges, and all incidental charges, including a reimbursement
5 for towing and reasonable rental vehicle expenses incurred by a
6 purchaser as a result of the nonconformity, less a reasonable
7 allowance for the purchaser's use of the vehicle not exceeding
8 10¢ per mile driven or 10% of the purchase price of the vehicle,
9 whichever is less. Refunds shall be made to the purchaser and
10 lienholder, if any, as their interests may appear. A reasonable
11 allowance for use shall be that amount directly attributable to
12 use by the purchaser prior to his first report of the
13 nonconformity to the manufacturer. The purchaser shall be free
14 to elect a refund of the full purchase price, in lieu of
15 replacement, and in no case shall the manufacturer attempt to
16 coerce or otherwise persuade the purchaser to accept a
17 replacement vehicle. In the event the consumer elects a refund,
18 payment shall be made within 30 days of such election. A
19 consumer shall not be entitled to a refund or replacement if the
20 nonconformity does not substantially impair the use, value or
21 safety of the vehicle or the nonconformity is the result of
22 abuse, neglect or modification or alteration of the motor
23 vehicle by the purchaser.

24 Section 9. Informal dispute settlement procedure.

25 (a) General rule.--If the manufacturer has established an
26 informal dispute settlement procedure which complies with the
27 provisions of 16 CFR Pt. 703, as from time to time amended, the
28 provisions of section 8 shall not apply to any purchaser who has
29 not first resorted to such procedure as it relates to a remedy
30 for defects or conditions affecting the substantial use, value

1 or safety of the vehicle. The informal dispute settlement
2 procedure shall not be binding on the purchaser and, in lieu of
3 such settlement, the purchaser may pursue a remedy under section
4 8.

5 (b) Responsibilities of manufacturers.--Each manufacturer
6 establishing an informal dispute settlement procedure in this
7 Commonwealth shall have the procedure certified by the bureau to
8 ensure that such procedure complies with the provisions of 16
9 CFR Pt. 703, in effect October 1, 1983, and with the provisions
10 of this act. Any manufacturer establishing an informal dispute
11 settlement procedure shall file with the bureau a copy of the
12 annual audit required under the provisions of 16 CFR Pt. 703,
13 together with any additional information required for purposes
14 of certification, including the number of refunds and
15 replacements made in this Commonwealth pursuant to the
16 provisions of this act during the period audited.

17 (c) Alternate informal dispute settlement procedure.--The
18 Attorney General shall establish within the bureau an alternate
19 informal dispute settlement procedure and shall adopt any rules
20 and regulations, prescribe any fees and create any arbitration
21 boards or panels necessary to provide for the resolution of
22 warranty disputes between the purchaser and the manufacturer.
23 The purchaser shall have the option of submitting any dispute
24 arising from the nonconformance of a new motor vehicle, upon
25 payment of a prescribed filing fee, to the bureau for resolution
26 if a consumer is not satisfied with the decision reached in the
27 informal dispute settlement procedure established by the
28 manufacturer, if the manufacturer does not comply with the
29 decision of the settlement procedure or if the manufacturer has
30 not established such settlement procedure. The provisions of

1 section 8 shall not apply to a purchaser who has not first
2 resorted to the informal dispute settlement procedure.

3 (d) Requirements of alternate informal dispute settlement
4 procedure.--Upon application of the purchaser and payment of the
5 prescribed filing fee, all manufacturers shall submit to an
6 alternate informal dispute settlement procedure. Such alternate
7 procedure shall be conducted by the bureau or by a professional
8 arbitrator or arbitration firm appointed by the bureau under
9 regulations adopted by the Attorney General. The alternate
10 informal dispute settlement procedure shall ensure the personal
11 objectivity of its arbitrators and the rights of each party to
12 present its case and shall not prohibit or discourage the
13 consideration of any arguments regarding the nonconformity of a
14 new motor vehicle.

15 (e) Effect and admissibility of decision by informal dispute
16 settlement procedure.--The decision issued in an informal
17 dispute settlement procedure required by this section shall be
18 nonbinding on the parties involved. In any civil action arising
19 under this act, a written decision issued by an informal dispute
20 settlement procedure or any alternate settlement procedure and
21 any written findings upon which the decision is based, are
22 admissible in evidence.

23 (f) Duties of bureau.--The bureau shall adopt any rules and
24 regulations necessary to enforce the provisions of this section.
25 The bureau shall further:

26 (1) Establish procedures for certification of a
27 manufacturer's informal dispute settlement procedure.

28 (2) Screen all requests for arbitration before the
29 alternate informal dispute settlement procedure.

30 (3) Evaluate the operation of informal dispute

1 settlement procedures established by motor vehicle
2 manufacturers.

3 (4) Hear cases throughout this Commonwealth so that any
4 consumer whose dispute is approved for arbitration by the
5 alternate informal settlement procedure may attend a hearing
6 at a reasonably convenient location to present evidence in a
7 dispute.

8 (5) Prescribe a reasonable filing fee, payable by the
9 consumer and manufacturer, for each dispute approved for
10 arbitration by the informal dispute settlement procedure. In
11 no case shall such filing fee be in excess of \$35.

12 Section 3. This act shall take effect in 60 days.