
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 763 Session of
1997

INTRODUCED BY GREENLEAF, BELL, AFFLERBACH, TOMLINSON, MELLOW,
TILGHMAN, COSTA, HART, KASUNIC, LEMMOND, RHOADES, SALVATORE,
SCHWARTZ, STOUT, THOMPSON AND WILLIAMS, MARCH 21, 1997

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MARCH 21, 1997

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 finds as follows:

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

1 rights or remedies which are otherwise available to a consumer
2 under any other law.

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

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

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

14 Section 102. Definitions.

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

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

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

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

1 the manufacturer.

2 "Condition." A general problem that may be attributable to a
3 defect in more than one part.

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

9 "Days." Calendar days, unless otherwise specified in this
10 act.

11 "Department." The Department of Transportation of the
12 Commonwealth.

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

19 "Lease price." The aggregate of:

20 (1) Lessor's actual purchase costs.

21 (2) Collateral charges, if applicable.

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

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

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

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

29 "Lemon Law rights period." The term of the manufacturer's
30 written warranty, the period ending 18 months after the date of

1 the original delivery of a motor vehicle to a consumer or the
2 first 18,000 miles of operation attributable to a consumer,
3 whichever expires first, provided that the first repair attempt
4 must occur within the first 12 months or 12,000 miles of
5 operation.

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

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

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

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

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

1 term does not include mopeds, motorcycles or vehicles over
2 10,000 pounds gross vehicle weight rating. For purposes of this
3 definition, the limit of 10,000 pounds gross vehicle weight
4 rating does not apply to motor homes.

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

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

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

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

15 "Reasonable offset for use." The number of miles
16 attributable to a consumer up to the date of the third repair
17 attempt of the same nonconformity which is the subject of the
18 claim, or the first repair attempt of a nonconformity that is
19 likely to cause death or serious bodily injury, or the 20th
20 cumulative day when the vehicle is out of service by reason of
21 repair of one or more nonconformities, whichever occurs first,
22 multiplied by the purchase price of the vehicle and divided by
23 100,000.

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

1 new motor vehicle shall be provided.

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

9 CHAPTER 3

10 MANUFACTURER

11 Section 301. Duty of manufacturer to conform a motor vehicle to
12 warranty.

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

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

29 (c) Disclosure.--At the time of the consumer's purchase or
30 lease of the vehicle, the manufacturer shall provide to the

1 dealer and the dealer shall provide to the consumer the
2 disclosure required under section 501 and provide to the
3 consumer a written statement that explains the consumer's rights
4 and obligations under this act. The written statement shall be
5 prepared by the bureau and shall contain the bureau's toll-free
6 number that the consumer can contact to commence arbitration or
7 obtain information regarding rights and obligations under this
8 act.

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

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

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

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

30 Section 302. Nonconformity of motor vehicles.

1 (a) Notice to manufacturer.--

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

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

1 when the vehicle has been out of service by reason of repair
2 of one or more nonconformities to conform the motor vehicle
3 to the warranty.

4 (b) Refund or replacement.--

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

23 (2) Refunds shall be made to the consumer and lienholder
24 of record, if any, as their interests may appear. If
25 applicable, refunds shall be made to the lessor and lessee as
26 follows: the lessee shall receive the lessee cost less a
27 reasonable offset for use, and the lessor shall receive the
28 lease price less the aggregate deposit and rental payments
29 previously paid to the lessor for the leased vehicle. If it
30 is determined that the lessee is entitled to a refund under

1 this act, the consumer's lease agreement with the lessor
2 shall be terminated upon payment of the refund and no penalty
3 for early termination shall be assessed. The Department of
4 Revenue shall refund to the manufacturer any sales tax which
5 the manufacturer refunded to the consumer, lessee or lessor
6 under this section, if the manufacturer provides to the
7 Department of Revenue a written request for a refund and
8 evidence that the sales tax was paid when the vehicle was
9 purchased and that the manufacturer refunded the sales tax to
10 the consumer, lessee or lessor.

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

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

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

30 (3) The motor vehicle has been out of service by reason

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

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

13 Section 303. Affirmative defenses.

14 It is an affirmative defense under this act to claim any of
15 the following:

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

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

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

1 against the claim.

2 CHAPTER 5

3 CONSUMER RIGHTS

4 Section 501. Manufacturer responsibility to notify consumers.

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

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

20 CHAPTER 7

21 MOTOR VEHICLE ARBITRATION BOARD

22 Section 701. Establishment.

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

27 Section 702. Powers and duties of board.

28 (a) Location of hearing.--The board shall hear cases in
29 various locations throughout this Commonwealth so any consumer
30 whose dispute is eligible for arbitration by the board may

1 attend an arbitration hearing at a reasonably convenient
2 location and present a dispute orally. Arbitration proceedings
3 under this section shall be open to the public on reasonable and
4 nondiscriminatory terms.

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

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

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

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

1 the consumer, the manufacturer has 30 days to comply with the
2 terms of the decision. An extension of this period is
3 permissible with the written agreement of the parties.
4 Compliance occurs on the date the consumer receives delivery of
5 an acceptable replacement motor vehicle or the refund specified
6 in the arbitration award. In any civil action arising under this
7 act and relating to a dispute arbitrated before the board, any
8 decision by the board is admissible in evidence. The failure of
9 the board to hear and decide disputes within 40 days shall not
10 invalidate the decision. The applicable statute of limitations
11 shall be tolled from the day the dispute is submitted to the
12 board until the board renders a decision.

13 Section 703. Consumer eligibility.

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

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

1 decision or failed to cure the nonconformity within the time
2 specified in the decision in the event that further repairs were
3 ordered.

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

7 (d) Consumer request.--

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

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

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

30 (a) General rule.--In addition to the fees required by

1 section 703(d), the bureau shall charge manufacturers additional
2 fees in order to pay for the administrative costs of operating
3 the board. The bureau shall fix the additional fees by
4 regulation and shall be subject to the act of June 25, 1982
5 (P.L.633, No.181), known as the Regulatory Review Act.

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

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

17 Section 705. Investigative powers and recordkeeping duties.

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

19 (1) Investigate disputes.

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

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

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

25 (c) Records and statistics.--

26 (1) The board shall maintain records of each dispute
27 submitted to the board, including an index of motor vehicles
28 by year, make and model, and shall compile aggregate annual
29 statistics for all disputes submitted to and decided by the
30 board, as well as annual statistics for each manufacturer

1 that include, but are not limited to, the number and percent
2 of:

3 (i) Replacement motor vehicle requests.

4 (ii) Purchase price refund requests.

5 (iii) Replacement motor vehicles obtained in
6 prehearing settlements.

7 (iv) Purchase price refunds obtained in prehearing
8 settlements.

9 (v) Replacement motor vehicles awarded in
10 arbitration.

11 (vi) Purchase price refunds awarded in arbitration.

12 (vii) Board decisions neither complied with nor
13 petitioned for appeal within the 25-day time periods set
14 forth under sections 702(e) and 706(a).

15 (viii) Board decisions appealed.

16 (ix) Board decisions upheld by the court.

17 (x) Appeals found by the court to be brought in bad
18 faith or solely for the purpose of harassment.

19 (2) The statistical compilations shall be public
20 information.

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

25 Section 706. Appeal of board's decision.

26 (a) Time for appeal.--A decision is final unless appealed by
27 either party. A petition to the court to appeal a decision must
28 be made within 25 days after receipt of the decision or within
29 10 days from the date the consumer indicates acceptance of the
30 decision to the manufacturer, whichever occurs first. Within

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

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

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

27 (d) Decision in favor of consumer.--If a decision of the
28 board in favor of the consumer is affirmed or upheld by the
29 court, or if a decision of the board in favor of the
30 manufacturer is reversed, recovery by the consumer shall include

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

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

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

20 CHAPTER 9

21 ADMINISTRATION AND ENFORCEMENT

22 Section 901. Rulemaking authority.

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

1 uniformity in the form and content of certification, regulation,
2 procedural evaluation of manufacturer-established programs,
3 required recordkeeping, required reporting wherever practicable
4 and required notices to consumers.

5 Section 902. Certification uniformity.

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

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

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

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

21 (4) The preparation of joint reports evaluating program
22 operations.

23 (5) The granting of joint certifications and
24 certification renewals.

25 (6) The issuance of joint denials or revocations of
26 certification.

27 (7) The holding of joint hearings.

28 Section 903. Enforcement.

29 The bureau may enforce and ensure compliance with the
30 provisions of this act and rules adopted hereunder, may issue

1 subpoenas requiring the attendance of witnesses and production
2 of evidence, and may seek relief in the appropriate court to
3 compel compliance with such subpoenas. Enforcement shall be
4 undertaken pursuant to section 905.

5 Section 904. Motor Vehicle Warranty Trust Fund.

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

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

14 Section 905. Unfair or deceptive trade practice.

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

19 Section 906. Consumer remedies.

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

28 Section 907. Dealer liability.

29 Nothing in this act imposes any liability on a franchised
30 motor vehicle dealer or creates a cause of action by a consumer

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

16 Section 908. Resale of returned vehicles.

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

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

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

27 Section 909. Certain agreements void.

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

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CHAPTER 15

MISCELLANEOUS PROVISIONS

Section 1501. Appropriation.

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

Section 1502. Repeal.

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

Section 1503. Pending proceedings.

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

Section 1504. Applicability.

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

Section 1505. Effective date.

This act shall take effect in 180 days.