

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 799 Session of
1999

INTRODUCED BY RAMOS, BELARDI, MELIO, YOUNGBLOOD, M. COHEN,
LAUGHLIN, PESCI, CURRY, CARN, HARHAI, KIRKLAND, WASHINGTON,
HORSEY, ROBINSON AND MICHLOVIC, MARCH 9, 1999

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 9, 1999

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," relating to the rights of purchasers of
4 defective used motor vehicles; establishing the Used Motor
5 Vehicle Lemon Law Enforcement Fund; and imposing a fee.

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

8 Section 1. The title and sections 1, 2, 3 and 7 of the act
9 of March 28, 1984 (P.L.150, No.28), known as the Automobile
10 Lemon Law, are amended to read:

11 AN ACT

12 Relating to the rights of purchasers of defective new or used
13 motor vehicles; establishing the Used Motor Vehicle Lemon Law
14 Enforcement Fund; and imposing a fee.

15 Section 1. Short title.

16 This act shall be known and may be cited as the New and Used
17 Automobile Lemon Law.

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Consumer." The purchaser, other than for purposes of
4 resale, of a used motor vehicle normally used for personal,
5 family or household purposes and subject to a warranty, and the
6 spouse or child of the purchaser if such motor vehicle is
7 transferred to the spouse or child during any warranty
8 applicable to such motor vehicle, and any other person entitled
9 by the terms of such warranty to enforce the obligations of the
10 warranty.

11 "Dealer" or "motor vehicle dealer." A person in the business
12 of buying, selling or exchanging vehicles.

13 "Manufacturer." Any person engaged in the business of
14 constructing or assembling new and unused motor vehicles or
15 engaged in the business of importing new and unused motor
16 vehicles into the United States for the purpose of selling or
17 distributing new and unused motor vehicles to motor vehicle
18 dealers in this Commonwealth.

19 "Manufacturer's express warranty" or "warranty." The written
20 warranty of the manufacturer of a new automobile of its
21 condition and fitness for use, including any terms or conditions
22 precedent to the enforcement of obligations under the warranty.

23 "New motor vehicle." Any new and unused self-propelled,
24 motorized conveyance driven upon public roads, streets or
25 highways which is designed to transport not more than 15
26 persons, which was purchased and is registered in the
27 Commonwealth and is used or bought for use primarily for
28 personal, family or household purposes, including a vehicle used
29 by a manufacturer or dealer as a demonstrator or dealer car
30 prior to its sale. The term does not include motorcycles, motor

1 homes or off-road vehicles.

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 ownership of a new motor vehicle by transfer or
7 purchase or who has entered into an agreement or contract for
8 the purchase of a new motor vehicle which is used or bought for
9 use primarily for personal, family or household purposes.

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

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

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

27 "Used motor vehicle dealer." For purposes of this act, a
28 person or business which sells or offers for sale a used motor
29 vehicle after selling or offering for sale three or more used
30 motor vehicles in the previous 12-month period. The term does

1 not include a bank or financial institution, a business selling
2 a used motor vehicle to an employee of that business, a lessor
3 selling a leased vehicle to that vehicle's lessee, a family
4 member of the lessee or an employee of the lessee.

5 "Used motor vehicle warranty." Any undertaking in connection
6 with the sale by a used motor vehicle dealer of a used motor
7 vehicle to refund, repair, replace, maintain or take other
8 action with respect to such used motor vehicle and provided at
9 no extra charge beyond the price of the used motor vehicle.

10 Section 3. Disclosure.

11 (a) New motor vehicles.--The Attorney General shall prepare
12 and publish in the Pennsylvania Bulletin a statement which
13 explains a purchaser's rights under this law. Manufacturers
14 shall provide to each purchaser at the time of original purchase
15 of a new motor vehicle a written statement containing a copy of
16 the Attorney General's statement and a listing of zone offices,
17 with addresses and phone numbers, which can be contacted by the
18 purchaser for the purpose of securing the remedies provided for
19 in this act.

20 (b) Used motor vehicles.--The Attorney General shall prepare
21 and publish in the Pennsylvania Bulletin a statement which
22 explains a consumer's rights under this act. Used motor vehicle
23 dealers shall provide to each consumer at the time of purchase
24 of a used motor vehicle a written statement containing a copy of
25 the Attorney General's statement and a listing of zone offices,
26 with addresses and phone numbers, which can be contacted by the
27 consumer for the purpose of securing the remedies provided for
28 in this act.

29 Section 7. Itemized statement required.

30 The manufacturer or dealer shall provide to the purchaser

1 each time the purchaser's new or used motor vehicle is returned
2 from being serviced or repaired a fully itemized statement
3 indicating all work performed on said vehicle including, but not
4 limited to, parts and labor. It shall be the duty of a dealer to
5 notify the manufacturer of the existence of a nonconformity
6 within seven days of the delivery by a purchaser of a vehicle
7 subject to a nonconformity when it is delivered to the same
8 dealer for the second time for repair of the same nonconformity.
9 The notification shall be by certified mail, return receipt
10 requested.

11 Section 2. The act is amended by adding sections to read:

12 Section 10.1. Used motor vehicle written warranty.

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

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

20 (2) If the used motor vehicle has more than 36,000
21 miles, the used motor vehicle warranty shall be, at minimum,
22 30 days or 1,000 miles, whichever comes first.

23 (b) Used motor vehicle warranty requirements.--The written
24 used motor vehicle warranty shall require the used motor vehicle
25 dealer or his agent to repair or, at the election of the used
26 motor vehicle dealer, reimburse the consumer for the reasonable
27 cost of repairing the failure of a covered part. Covered parts
28 shall at least include the following items:

29 (1) Engine. All lubricated parts, water pump, fuel pump,
30 manifolds, engine block, cylinder head, rotary engine

1 housings and flywheel.

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

4 (3) Drive axle. Front and rear drive axle housings and
5 internal parts, axle shafts, propeller shafts and universal
6 joints.

7 (4) Brakes. Master cylinder, vacuum assist booster,
8 wheel cylinders, hydraulic lines and fittings and disc brake
9 calipers.

10 (5) Radiator.

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

13 (7) Alternator, generator, starter and ignition system,
14 excluding the battery.

15 (c) Notice to be given within used motor vehicle warranty
16 period.--Such repair or reimbursement shall be made by the used
17 motor vehicle dealer, notwithstanding the fact that the used
18 motor vehicle warranty period has expired, provided that the
19 consumer notifies the used motor vehicle dealer in writing of
20 the failure of a covered part within the specified used motor
21 vehicle warranty period.

22 (d) New car warranty.--If the warranty defined in section 2
23 is in effect at the time of the sale of the used motor vehicle,
24 the used motor vehicle warranty specified in this act shall be
25 required only for the period of time, if any, between the
26 expiration of the new car warranty and the period specified in
27 subsection (a).

28 (e) Exclusions permitted.--The written used motor vehicle
29 warranty may contain additional language excluding coverage:

30 (1) for a failure of a covered part caused by a lack of

1 customary maintenance;

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

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

10 (4) for maintenance services and the parts used in
11 connection with such services such as seals, gaskets, oil or
12 grease unless required in connection with the repair of a
13 covered part;

14 (5) for a motor tune-up;

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

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

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

22 (9) if the used motor vehicle is rented to another
23 person;

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

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

30 (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 10.2. Failure to honor used motor vehicle warranty.

(a) Failure of used motor vehicle dealer.--If the used motor
vehicle dealer or his agent fails to correct a malfunction or
defect, as required by the used motor vehicle 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 used motor vehicle 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
increase or decrease the market value of the vehicle. In
determining the purchase price to be refunded, the purchase
price shall be deemed equal to the sum of the actual cash
difference paid for the used motor vehicle plus, if the used
motor vehicle dealer elects not to return any vehicles traded in
by the consumer, the wholesale value of any such traded-in
vehicles as listed in the National Auto Dealers Association Used
Car Guide, or such other guide as may be specified in
regulations promulgated by the Secretary of Transportation, as
adjusted for mileage, improvements and any major physical or
mechanical defects in the traded-in vehicle at the time of
trade-in. The contract of sale for the used motor vehicle shall
include conspicuous language indicating that, if the consumer
should be entitled to a refund pursuant to this section, the
value of any used motor vehicle traded in by the consumer, if
the used motor vehicle dealer elects not to return it to the
consumer, for purposes of determining the amount of such refund,

1 will be determined by reference to the National Auto Dealers
2 Association Used Car Guide wholesale value, or such other guide
3 as may be approved by the Secretary of Transportation, as
4 adjusted for mileage, improvements and any major physical or
5 mechanical defects, rather than the value listed in the sales
6 contract. Refunds shall be made to the consumer and lienholder,
7 if any, as their interests may appear on the records of
8 ownership kept by the Bureau of Motor Vehicles. If the amount to
9 be refunded to the lienholder will be insufficient to discharge
10 the lien, the used motor vehicle dealer shall notify the
11 consumer in writing by certified mail that the consumer has 30
12 days to pay the lienholder the amount which, together with the
13 amount to be refunded by the used motor vehicle dealer, will be
14 sufficient to discharge the lien. The notice to the consumer
15 shall contain conspicuous language warning the consumer that
16 failure to pay such funds to the lienholder within 30 days will
17 terminate the used motor vehicle dealer's obligation to provide
18 a refund. If the consumer fails to make such payment within 30
19 days, the used motor vehicle dealer shall have no further
20 responsibility to provide a refund under this section.
21 Alternatively, the used motor vehicle dealer may elect to offer
22 to replace the used motor vehicle with a comparably priced
23 vehicle, with such adjustment in price to which the parties may
24 agree. The consumer shall not be obligated to accept a
25 replacement vehicle but may instead elect to receive the refund
26 provided under this section. It shall be an affirmative defense
27 to any claim under this section that:

28 (1) the malfunction or defect does not substantially
29 impair such value; or

30 (2) the malfunction or defect is the result of abuse,

neglect or unreasonable modifications or alterations of the used motor vehicle.

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

(1) the same malfunction or defect has been subject to repair three or more times by the selling used motor vehicle dealer or his agent within either warranty period, but such malfunction or defect continues to exist; or

(2) the vehicle is out of service by reason of repair or malfunction or defect for a cumulative total of 15 or more days during either warranty period. The period shall not include days when the used motor vehicle dealer is unable to complete the repair because of the unavailability of necessary repair parts. The used motor vehicle dealer shall be required to exercise due diligence in attempting to obtain necessary repair parts, provided that, if a vehicle has been out of service for a cumulative total of 45 days, even if a portion of that time is attributable to the unavailability of replacement parts, the consumer shall be entitled to the replacement or refund remedies provided in this section.

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

(d) Nonextension of either warranty term.--The term of any warranty, service contract or repair insurance, and the 15-day

out-of-service period, shall not be extended by any time during which repair services are not available to the consumer because of war, invasion or strike, or fire, flood or other natural disaster.

Section 10.3. Waiver void.

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

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

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

Section 10.4. Inspection requirements.

Anyone who sells a used motor vehicle in this Commonwealth to a buyer who titles and registers the vehicle in this Commonwealth must provide proof of State inspection to the buyer at time of delivery of the used motor vehicle. Proof of State inspection shall be a validly affixed window sticker issued no more than ten days prior to delivery or an itemized checklist of those items which must be performed for the vehicle to pass

1 inspection. The checklist shall include an estimate of costs for
2 the repairs to be performed and shall be signed by the
3 inspection mechanic.

4 Section 10.5. Arbitration and enforcement.

5 (a) Informal dispute settlement procedure.--If a used motor
6 vehicle dealer has established or participates in an informal
7 dispute settlement procedure which complies in all respects with
8 the provisions of 16 CFR Pt. 703 (relating to informal dispute
9 settlement procedures), the provisions of this act concerning
10 refunds or replacement shall not apply to any consumer who has
11 not first resorted to such procedure.

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

15 (c) Attorney fees may be awarded.--In an action brought to
16 enforce the provisions of this act, the court may award
17 reasonable attorney fees to a prevailing plaintiff.

18 (d) Statute of limitations.--Any action brought pursuant to
19 this act shall be commenced within three years of the date of
20 original delivery of the used motor vehicle to the consumer.

21 Section 10.6. Establishment of fund; imposition of fee.

22 (a) Fund established.--There is hereby established a fund to
23 be known as the Used Motor Vehicle Lemon Law Enforcement Fund.
24 This fund shall be established in and maintained by the Office
25 of Attorney General. The purpose of this fund is to insure
26 enforcement by the Office of Attorney General. Moneys shall be
27 used by the Office of Attorney General only to enforce this act.

28 (b) Fees.--Every used motor vehicle dealer subject to this
29 act shall pay an annual fee of \$50 to be placed in the fund
30 established in subsection (a).

1 Section 3. The amendment or addition of the title and
2 sections 1, 2, 3, 7, 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 of
3 the act shall apply to all used motor vehicles sold on or after
4 the effective date of this act.

5 Section 4. This act shall take effect in 90 days.